Securities Law ALERT ▪

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SEC Announces Charges Against Corporate Insiders for Violating Reporting Obligations Under the Exchange Act

On September 10, 2014, the Securities and Exchange Commission (SEC) announced charges against 28 officers, directors and major shareholders for violating the public reporting requirements under Section 16(a) and Sections 13(d) and (g) of the Exchange Act of 1934.[1] In addition to the charges against the insiders themselves, the SEC also charged six publicly traded companies for contributing to filing failures by insiders or failing to report their insiders' filing delinquencies.

These enforcement actions targeted insiders who repeatedly filed late reports, with delinquencies noted as "weeks, months or even years," and serve as a reminder to public companies and insiders of the importance of their compliance with these reporting requirements.

Background

Section 16(a) of the Exchange Act requires officers, directors and certain beneficial owners of more than 10 percent of a registered class of a company's stock to report their ownership and transactions in company stock on Forms 3, 4 and 5. With few exceptions, company insiders must report transactions in company stock within two business days. Public companies must disclose in their 10-K's and proxy statements the names of any delinquent insiders and the number of late reports and transactions for each.

Similarly, Sections 13(d) and (g) require beneficial owners of more than 5 percent of a registered class of a company's stock to report on Schedule 13D or 13G their holdings and other information with respect to company securities.

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[1] A copy of the SEC's press release is available at http://www.sec.gov/News/PressRelease/Detail/PressRelease/1370542904678#.

SEC Enforcement Initiative

The SEC identified insiders that repeatedly filed their required ownership reports late and charged them with Exchange Act violations. The SEC's orders named 13 officers or directors of public companies, five individuals who were beneficial owners of public company stock and 10 investment firms in connection with their beneficial ownership of public company stock. The penalties imposed on these individuals and entities ranged from $25,000 to $120,000. In addition, the SEC orders also named six public companies for contributing to filing failures by insiders or failing to report their insiders' filing delinquencies. The penalties imposed on these companies ranged from $75,000 to $150,000.

What This Means for Public Companies

While the reporting requirements under Sections 16 and 13 should be of no surprise to public companies and insiders, this recent SEC enforcement initiative should serve as a reminder that good reporting and compliance practices are important. As indicated in the SEC release, "the reporting requirements in the federal securities laws are not mere suggestions, they are legal obligations that must be obeyed." Those who fail to follow these obligations run the risk of facing an SEC enforcement action. Reporting under Section 16 and Sections 13(d) and (g) ultimately is the responsibility of the insider, but public companies should nonetheless review their existing policies and practices to determine whether they adequately address the regulatory reporting and filing requirements and serve to encourage compliance.

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