

SEC Enforcement Program Targets Exchange Act Sections 13(d) and (g) and 16(a) Filing Deficiencies

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In an enforcement push calculated to step-up compliance with its securities ownership filing rules, the Securities and Exchange Commission (“SEC”) recently announced enforcement settlements with directors, officers and significant shareholders for failures to timely file paperwork under Sections 16(a) and 13(d) and (g) under the Securities Exchange Act of 1934 (“Exchange Act”). Significantly, the SEC also charged several public companies with contributing to the filing failures of their corporate insiders or failing to report these insiders’ filing delinquencies in SEC reports.

Sections 13(d) and (g) requires the beneficial owners of more than 5% of a registered class of voting equity securities to file beneficial ownership reports on Schedule 13D or, if eligible, Schedule 13G. Section 16(a) requires directors, officers and beneficial owners of more than 10% of a registered class of securities to file reports of their beneficial ownership and transactions on Forms 3, 4 and 5.

Using quantitative analytics to identify individuals and companies with high rates of filing deficiencies, the SEC focused its enforcement program on the more egregious violations of repeat offenders, at least for the time being.

Those with these Exchange Act filing obligations should be alert and exercise great diligence to assure compliance. In all, the SEC charged 34 individuals and companies, including 13 officers and directors, five individual shareholders, 10 investment firms and six public companies. All but one of the defendants settled with the SEC and agreed to pay fines ranging from \$25,000 to \$150,000.

The SEC’s enhanced enforcement of these filing requirements is a call to action for public companies and their officers, directors and stockholders. The SEC has demonstrated it will monitor and enforce timely filing of beneficial ownership reports under Sections 13(d) and (g) and 16(a).

The SEC also reiterated its long held position that inadvertent failures to file or to file timely do not shield deficient filers from responsibility. No intent to violate these laws is necessary.

In charging the public companies, the SEC indicated that companies voluntarily undertaking to assist their insiders with their filing obligations will be held responsible for a failure to follow through. In addition, the SEC noted that the companies failing to report filing deficiencies in their proxy statements and other public filings that were known or should have been known by the companies will be held accountable.

Public reporting companies should review their public disclosure policies to verify they properly cover issues relevant to Sections 13(d) and (g) and 16(a) reporting and confirm there is redundancy and oversight in any filing process for the insiders so that no trade goes unreported.

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