



SEC CHARGES A TOTAL OF 34 COMPANIES AND INDIVIDUALS FOR VIOLATIONS OF BENEFICIAL OWNERSHIP REPORTING REQUIREMENTS

On September 10, 2014, the Securities and Exchange Commission (SEC) announced charges against a total of 34 officers, directors, major shareholders and public companies for violations of federal securities laws in an unprecedented crackdown on late or delinquent Form 4, Schedule 13D and Schedule 13G filings. In its press release announcing the charges, the SEC noted that the charges “stem from an SEC enforcement initiative” focusing on Form 4, Schedule 13D and Schedule 13G filings. Commenting on the charges, Andrew J. Ceresney, Director of the SEC’s Division of Enforcement, stated: “Officers, directors, major shareholders, and issuers should all take note: inadvertence is no defense to filing violations, and we will vigorously police these sorts of violations through streamlined actions.”

The charges relate to various alleged violations of Sections 16(a), 13(a), 13(d) and 13(g) of the Securities Exchange Act of 1934 (Exchange Act) and related rules and regulations. Section 16(a) of the Exchange Act and related rules and regulations require officers and directors of a public company with a registered class of equity securities, and beneficial owners of more than ten percent of such class, to file a Form 4 with the SEC within two business days of acquiring or disposing of securities of such class. Section 13(a) of the Exchange Act and related rules and regulations (including Item 405 of Regulation S-K), require, among other things, public companies with a registered class of equity securities to disclose late or delinquent Section 16(a) filings in annual proxy statements or annual reports. Section 13(d) of the Exchange Act and related rules and regulations require beneficial owners who acquire more than 5% of the registered class to file a Schedule 13D with the SEC within 10 days of the acquisition to disclose certain beneficial ownership information and to file an amendment to the Schedule 13D to promptly report any material changes in their beneficial ownership or prior Schedule 13D disclosures. Certain institutional investors (e.g., registered broker-dealers, investment advisers and investment companies) are eligible to file a short-form Schedule 13G instead of Schedule 13D within 45 days after the end of the calendar year, provided that such filers are required to file within 10 days after the end of the first month in which their beneficial ownership exceeds 10%. In addition, other passive investors who certify that they have acquired the securities without the purpose or effect of changing or influencing control of the issuer also may file a short-form Schedule 13G. Schedule 13G filers are required to file annual amendments, as well as upon acquiring beneficial ownership in excess of 10%. In addition, passive investors (other than certain institutional investors) cease to be eligible for reporting on Schedule 13G upon acquiring beneficial ownership in excess of 20%. As Sections 16(a), 13(a), 13(d) and 13(g) impose an affirmative duty of reporting on filers, a finding of scienter is not required to find a violation of any of these sections.

Many of the officers, directors and major shareholders charged by the SEC were found to have repeatedly submitted untimely disclosures, some filing reports years after initially due. In addition, six public companies were charged for having contributed to their insiders’ delinquent filings or having failed to report their insiders’ filing delinquencies. The SEC sought to impose not only cease-and-desist orders, but also civil money penalties against those charged. All but one of those charged agreed to



settle the charges, each agreeing to pay a penalty ranging from \$25,000 to \$150,000, for a combined total of \$2.6 million.

The charges brought against the insiders reveal a variety of flagrant reporting violations. One executive officer who was charged was found to have failed to file more than a dozen Form 4's on time or at all that would have reported the sale of more than 165,000 shares with a market value of over \$1 million. By contrast, another executive officer who was charged agreed to pay the SEC a \$25,000 settlement for filing several Form 4's days or weeks after they were due.

The beneficial owners of greater than 5% of an issuer's equity securities were charged for a variety of violations. For example, one beneficial owner who initially qualified for a Schedule 13G filing failed to report his ownership interest in a Schedule 13D when his ownership exceeded the 20% threshold. Another beneficial owner failed to disclose three separate decreases in his beneficial ownership on time.

The six public companies that were charged were found to have caused Section 16(a) violations by their officers and directors due to their negligence in performing Section 16(a) filing tasks that they voluntarily agreed to undertake on behalf of their officers and directors or failing to disclose late or delinquent Section 16(a) filings in their annual proxy statements or annual reports as required by Item 405 of Regulation S-K. All six public companies agreed to settle the charges brought against them for payments of up to \$150,000. In response to the charges, many of these companies have announced revamped compliance processes and newly hired personnel to prevent future violations of Section 16(a).

In its press release announcing the charges, the SEC also announced the use of "quantitative analytics" to identify "individuals and companies with especially high rates of filing deficiencies." In July 2013, the SEC announced the Center for Risk and Quantitative Analytics to bolster the SEC Enforcement Division's capabilities by "employing quantitative data and analysis to profile high-risk behaviors and transactions and support initiatives to detect misconduct, increasing the Division's ability to investigate and prevent conduct that harms investors."

In light of the recent charges, public companies should actively take steps now to assess their beneficial ownership reporting compliance programs and ensure that they are robust and effective in preventing reporting violations.



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