



Avoid the SEC Penalty Box – Late Insider Reporting

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On September 27, 2023, the Securities and Exchange Commission (SEC) announced civil penalties against several officers, directors, and major shareholders for failing to timely report and file disclosures relating to their holdings and transactions in company stock. In total, six individuals and five public companies were charged and paid civil penalties in connection with their violation of disclosure obligations. As a result of failing to file or filing late, the SEC estimated that investors were deprived of information regarding over \$90 million in company-stock transactions. The SEC enforcement team used data analytics to determine who repeatedly neglected to file or reported filings late, some of whom were years behind—others, only weeks.

RECENT SEC ENFORCEMENT ON INSIDER VIOLATION

The SEC Division of Enforcement brought similar charges against late filers in recent years, signaling the need for timely filings and sophisticated monitoring capabilities of insider disclosures. In 2014, 33 individuals and companies settled charges related to Form 4 and Schedule 13D and 13G reports, totaling \$2.4 million in financial penalties. The focus on insider disclosure compliance is a newer phenomenon: prior to 2014, the SEC generally only included Form 4 or Schedule 13D and 13G actions in conjunction with other violations of securities laws.

SECTION 16(A) AND SCHEDULE 13D AND 13G REPORTING REQUIREMENTS

The SEC requires “insiders” to file disclosures regarding holdings and transactions that might change or influence company management and policies. Under Section 16(a) of the Exchange Act, corporate officers, directors, and beneficial owners of more than 10% of any class of equity securities must report their company stock transactions in a filing called a “Form 4” within two business days of the related transaction.¹ Form 4 filings include information about the insider, their relationship to the company and its securities, the type of transaction that occurred, and the

amount and type of securities involved. A failure to file Form 4 timely must be reported in proxy statements or 10-Ks and can lead to fines.

Additional required disclosures include Schedule 13D and 13G reports, which must be filed when a person or group of persons acquires more than 5% of a registered class of the company's stock.² Much like Form 4 reports, these disclosures provide transparency and give investors the ability to discern stock ownership trends. Because these disclosures arise from active transactions, staying on top of deadlines can prove difficult for public companies with many directors or weak internal controls.

AVOIDING REPORTING FAILURES

When considering transactions in company securities, public companies should ensure that internal controls appropriately address the timely filing of insider disclosures. Officers, directors, and other beneficial owners should be reminded of the disclosure requirements and obligations required by the SEC. Companies should revisit compliance and pre-clearance procedures concerning company-stock transactions to ensure appropriate lead time in preparing Form 4 and similar filings. The capital markets team at Winston & Strawn LLP can assist in the preparation and timely filing of Section 16(a) or Schedule 13D and 13G disclosures, avoiding costly violations, civil penalties, and unwanted attention from the SEC.

Jesse Dowdle, Law Clerk, also contributed to this blog.

Capital Markets & Securities Law Watch will continue to monitor developments in this area and will provide our readers with updates.

¹ 17 C.F.R. § 240.16a-2.

² 17 C.F.R. § 240.13d-1(a)

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