



SEC Charges Skechers with Failure to Disclose Related Person Transactions

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OVERVIEW

On March 7, 2024, the Securities and Exchange Commission (SEC or Commission) announced charges against Skechers U.S.A. Inc. (Skechers) for violating Rules 13a-1 and 14a-3 under the Securities Exchange Act of 1934, as amended (the Exchange Act), by failing to disclose certain transactions with related persons in reports filed with the SEC for the years 2018 through 2021. In settling the charges, Skechers agreed to pay a \$1.25 million civil penalty.

Rule 13a-1 requires that domestic issuers of registered securities file with the SEC Annual Reports on Form 10-K (Annual Reports), which must contain all information required by SEC rules. Rule 14a-3 prohibits the solicitation of proxies unless the registrant furnishes stockholders with all information specified by Schedule 14A.

Publicly listed companies filing their Annual Report or Proxy Statement on Schedule 14A (Proxy Statement) involving the election of directors must furnish the information required by Item 404 of Regulation S-K. Item 404(a) requires registrants to describe all transactions or series of transactions since the beginning of the registrant's last fiscal year that exceed \$120,000 in which the registrant was a participant and a "related person" had a direct or indirect material interest (RPT Disclosures).

A "related person" includes any of the following:

- a director or executive officer of the registrant;
- a nominee for director;
- an immediate family member of a director or executive officer or a nominee for director of the registrant, including any child, stepchild, parent, stepparent, spouse, sibling, mother-in-law, father-in-law, son-in-law, daughter-in-law, brother-in-law, or sister-in-law of such director, executive officer or nominee for director, and any person other than a tenant or employee sharing the household of such director, executive officer or nominee for director (each an Immediate Family Member);
- any 5% or more security holder, if the transaction in which the security holder had a material direct or indirect interest occurred at a time in which said security holder was a 5% or more security holder; or

- an Immediate Family Member of a 5% or more security holder, if the transaction in which the security holder had a material direct or indirect interest occurred at a time in which said security holder was a 5% or more security holder.

RPT Disclosures must include the name of the related person, the basis on which the person is a related person, the related person's interest in the transaction, and the approximate dollar amount of the transaction. In the case of indebtedness, the amount involved in the transaction must include the largest aggregate amount of principal outstanding during the disclosure period, the amount outstanding as of the latest practicable date before disclosure, the amount of principal paid during the disclosure period, the amount of interest paid during the disclosure period, and the rate or amount of interest payable on the indebtedness.

As described in the order, Skechers failed to make the following RPT Disclosures:

- in its Annual Reports and Proxy Statements for fiscal years 2018 and 2019, \$210,000 in compensation to an Immediate Family Member of a director and executive officer of Skechers;
- in its Annual Report and Proxy Statement for fiscal year 2020, \$213,645 in compensation to an Immediate Family Member of an executive officer and director of Skechers;
- in its Annual Report and Proxy Statement for fiscal year 2021, \$155,419 in compensation to an Immediate Family Member of an executive officer and director of Skechers and \$486,790 in compensation to an Immediate Family Member of a different executive officer and director of Skechers; and
- in its Proxy Statements for fiscal years 2018–2021, one or more executive officers and/or directors of Skechers who owed in excess of \$120,000 to Skechers with respect to personal expenses paid for by Skechers but had not yet been reimbursed.

In each of its deficient Annual Reports, Skechers stated that its RPT Disclosures were incorporated by reference to its forthcoming Proxy Statement. This is a process known as “forward incorporation,” which is allowed when the referenced Proxy Statement will involve the election of directors and will be filed within 120 days of the last day of the fiscal year connected to the Annual Report. If the registrant fails to include disclosures in its Proxy Statement that were forward incorporated in its Annual Report, or the Proxy Statement is not filed within 120 days of the end of the relevant fiscal year, the registrant must file an amended Annual Report, called a 10-K/A, to rectify the deficiency before the end of the 120-day period.

In these instances, Skechers forward incorporated its RPT Disclosures in its Annual Reports and failed to include such required disclosures in its Proxy Statements for the years 2018 through 2021. Skechers then failed to timely file 10-K/As to cure the deficiencies in its Annual Reports. Skechers further failed to make RPT Disclosures involving the indebtedness of its executive officers and/or directors to the company in its Proxy Statements during the specified period. Due to these deficiencies, the SEC found that Skechers violated both Rule 13a-1 and Rule 14a-3.

SEC FOCUS ON RPT DISCLOSURES

These charges are just the latest in a recent uptick in enforcement actions by the SEC involving deficient RPT Disclosures, and an overall increase in enforcement actions by the SEC generally. In September 2023, the SEC announced charges against Maximus, Inc. (Maximus) and Lyft Inc. (Lyft) for failing to make RPT Disclosures. The SEC found that Maximus violated Rules 13a-1 and 14a-3 for failing to disclose the employment of an Immediate Family Member of an executive officer during the years 2019 through 2021. Maximus agreed to pay a \$500,000 civil penalty to settle the charges. The SEC found that Lyft failed to disclose a director's material interest in a sale of approximately \$424 million worth of private shares before Lyft's initial public offering in March 2019, in connection with which the director received an unspecified seven-figure pay-out. Lyft agreed to pay a \$10 million civil penalty to settle the charges.

BEST PRACTICES FOR RPT DISCLOSURES

Given the SEC's increased focus on enforcing RPT Disclosure requirements, we have compiled the below suggestions for drafting RPT Disclosures.

1. **Provide Comprehensive Disclosure.** Ensure that all related party transactions are disclosed, including those with directors, officers and their family members, in order to provide a clear picture to stockholders. Make sure to include the following requirements:
 - a. The name of the related person and the basis on which the person is a related person;
 - b. The related person's interest in the transaction with the registrant, including the related person's position(s) or relationship(s) with, or ownership in, a firm, corporation, or other entity that is a party to, or has an interest in, the transaction;
 - c. The approximate dollar value of the amount involved in the transaction;
 - d. The approximate dollar value of the amount of the related person's interest in the transaction, which shall be computed without regard to the amount of profit or loss; and
 - e. Any other information regarding the transaction, or the related person in the context of the transaction, that is material to investors in light of the circumstances of the particular transaction.
2. **Conduct a Quantitative Materiality Assessment.** The rule requires disclosure of any transaction, since the beginning of the registrant's last fiscal year, or any currently proposed transaction, in which the registrant was or is to be a participant and the amount involved exceeds \$120,000, and in which any related person had or will have a direct or indirect material interest.
 - a. In order to calculate the amount of the transaction, the rule requires a lookback period of more than one year.
 - i. Make sure to include the last fiscal year in the calculation, as well as the "stub period" between the end of the fiscal year and such filing to see whether the transaction meets the threshold amount of \$120,000.
3. **Use Plain Language.** Write in clear, simple language that is easily understandable by stockholders.
4. **Address Conflicts of Interest.** Disclose any conflicts of interest that may arise from the transaction and how they are being managed, approved and mitigated. Include any Board of Directors action that was taken in connection with the related party transaction.

By adhering to these practices, companies can enhance transparency and compliance with SEC regulations, mitigating the risk of enforcement actions.

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