



October 9, 2014

Client Alert

SEC Charges Insiders for Failure to Report Stock Holdings

The SEC announced charges against 28 officers, directors and major shareholders (collectively, insiders) with violations of Sections 16(a), 13(d) and 13(g) of the Securities Exchange Act of 1934, as amended (the “Exchange Act”),¹ for failing to promptly report information disclosing their holdings and transactions in company stock. The SEC also charged six publicly traded companies for contributing to the filing failures by insiders or for failing to report the insiders’ delinquent filings. Of the 34 individuals and companies named in the SEC’s actions, 33 agreed to settle the charges and pay financial penalties ranging from \$25,000 to \$150,000, for an aggregate of \$2.6 million.

The SEC’s charges stem from an enforcement initiative that focuses on two types of ownership reports that provide investors with the opportunity to evaluate whether the holdings and transactions of company insiders could be indicative of a company’s future prospects. Section 16(a) of the Exchange Act requires executive officers, directors and certain beneficial owners of more than 10% of a registered class of any equity security of an issuer to report on Form 4 transactions that result in a change in beneficial ownership within two business days following the date of the transaction. In addition, issuers are required to disclose in their annual proxy statements any late filings made by those persons subject to Section 16(a) filing requirements. Separately, Sections 13(d) and 13(g) of the Exchange Act require any person who directly or indirectly acquires beneficial ownership of more than 5% of any class of any issuer’s outstanding equity securities to report such beneficial interest on

¹ SEC Press Release, SEC Announces Charges Against Corporate Insiders for Violating Laws Requiring Prompt Reporting of Transactions and Holdings (Sept. 10, 2014) is available [here](#).

Schedule 13D within ten days after such acquisition (or alternatively, when eligible to file the shortened Form 13G, within 45 days after the end of the calendar year).

According to the SEC, it used “quantitative data sources and ranking algorithms” to identify the insiders charged as repeated late filers, some of whose filings “were delayed by weeks, months, or even years.” In bringing these actions together, the SEC was sending a clear message about the importance of beneficial ownership filing requirements. Indeed, Andrew J. Ceresney, Director of the SEC’s Division of Enforcement, called on officers, directors, major shareholders and issuers to take note that “inadvertence is no defense to filing violations,” and stated that the SEC would “vigorously police these sorts of violations through streamlined actions.”

Reporting requirements under Sections 16(a), 13(d) or 13(g) of the Exchange Act apply irrespective of whether any profits have been made or a person’s reasons for acquiring or disposing of holdings or engaging in other transactions. It is important to recognize that the failure to timely file a beneficial ownership report constitutes a violation of SEC rules, even if the violation was inadvertent.

The SEC’s actions in bringing charges against multiple persons in connection with failures to file ownership reports are consistent with the “broken windows” policy articulated by SEC Chair Mary Jo White in a speech she delivered last year to the Securities Enforcement Forum, in which she described the “broken windows” theory.² The “broken windows” theory is that when a window is broken and someone fixes it, it signifies that disorder will not be tolerated; but when the window is not fixed, it signals that no one cares, and so breaking windows costs nothing. Applying the theory to the securities markets, Chair White stated that minor violations that are overlooked or ignored can feed bigger ones, and most importantly, can foster a culture where laws are treated as toothless. Consequently, she said that the SEC would pursue “even the smallest infractions” of the federal securities laws.

Conclusion

The clear message is that not just fraud, but even violations of ownership report filing requirements will result in SEC scrutiny and possible enforcement actions. Officers, directors, major shareholders and issuers should make certain the required filings under Sections 16(a), 13(d) and 13(g) are made in a timely manner.

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Please consult with Meryl Wiener, any of the undersigned or your regular Warsaw Burstein attorney to discuss any questions you may have about your SEC filing requirements.

² Chair Mary Jo White, Remarks at the Securities Enforcement Forum (Oct. 9, 2013) is available [here](#).

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