LEGAL UPDATES

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SEC Levies Extensive Penalties for Late Beneficial Ownership Reporting and Insider Transaction Reports

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On September 25, 2024, the Securities and Exchange Commission (SEC) announced settlements with 23 entities and individuals for untimely reporting related to their respective holdings and transactions in public company stock. The charges stem from violations of beneficial ownership reporting under both Section 13 and Section 16 of the Securities Exchange Act of 1934 (Exchange Act). Under Section 13, a Schedule 13D (or Schedule 13G under certain circumstances) must be filed by any person or group that has acquired beneficial ownership of more than five percent of a class of an issuer's voting equity that are registered pursuant to Section 12 of the Exchange Act. Though some settlements were brought under the former 10-day initial filing deadline for Schedule 13Ds, the SEC recently adopted amendments that are now effective that revised the initial filing deadlines for both Schedule 13D (five business days after achieving the requisite beneficial ownership) and 13G (generally 45 days after the end of the calendar quarter in which the requisite beneficial ownership is achieved)—for additional details concerning the updated initial filing and amendment deadlines for these disclosures, please refer to our previous client alert discussing the amendments.

Section 16 of the Exchange Act generally requires holdings to be reported by any insider (i.e., a director, officer, or 10% beneficial owner) within 10 days after becoming an insider (Form 3), within two business days of a non-exempt acquisition or disposition (Form 4), or within 45 days after the fiscal year end of the issuer to report certain previously unreported transactions (Form 5). Many public companies opt to assist their insiders' compliance efforts by filing Section 16 reports on their behalf. The SEC also penalized five such companies in its latest enforcement sweep, finding they acted negligently in their performance of such tasks and thus were a cause of their insiders' failure to file on a timely basis, despite the company being notified and/or having the necessary information to complete the filings in a timely manner. The SEC also found that two additional companies both caused their insiders' violations and failed to fully disclose the late filings in the companies' annual proxy statements as required by Item 405 of SEC Regulation S-K.

The SEC issued total penalties ranging from $10,000 to $200,000 for each of the 10 individuals involved in these cases, and from $40,000 to $750,000 for each of the 13 companies, totaling more than $3.8 million overall. This latest round of enforcement follows enforcement actions related to Section 16 brought by the SEC in 2014, 2015, and 2020. These latest enforcement actions, including the use of data analytics to catch filing violations, seem to indicate a trend of more direct policing by the SEC of Section 16 reporting violations, in addition to the traditional reliance on enforcement of Section 16's short-swing trading sanctions by private litigants.

The settlement orders varied, but with one constant theme—untimeliness. The common targets of the SEC were habitual late filers. Individuals who were fined were typically not only owners of 5% to 10% of equity in a company, but also held an important role in the company such as chairman of the board or chief executive officer. The SEC noted that these "actions are a reminder to large investors that they must commit necessary resources to ensure these reports are filed on time." Without appropriate compliance procedures in place, filers (and companies that file on behalf of their insiders) risk being subject to SEC investigations and hefty fines.

What this means to you

Companies should review their compliance policies and procedures in place to ensure their ability to satisfy the short reporting deadlines related to beneficial ownership and insider transaction reports. Where companies have opted to file Section 16 reports on behalf of their insiders, these companies bear the responsibility—and liability—of completing the appropriate filings for insiders on a timely basis. As the SEC continues its trend of more aggressive enforcement with the help of data analytics to identify violations, entities (and their insiders) who are subject to these reporting obligations should remain diligent by continuously monitoring and reinforcing their Section 13 and Section 16 compliance policies and procedures and committing the necessary resources to ensure filings are made on time.

Contact us

Husch Blackwell's Securities & Corporate Governance team will continue to monitor these changes and their implications. Should you have any questions, please do not hesitate to contact Craig Adoor, Steve Barrett, Robert Joseph, Victoria Sitz, Andrew Spector, Blake Heyer, Shelby Moylan, or your Husch Blackwell attorney.