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Don't be late: SEC now enforcing Section 16 and Regulation 13D filing deadlines

By Michael Dunn

In 2013, the Securities and Exchange Commission (the "SEC") announced it was following the example of urban police enforcement by pursuing a "broken windows" strategy aimed at reducing serious violations of securities laws by having a zero tolerance policy for even the smallest of infractions. In announcing the strategy in October 2013, SEC Chair Mary Jo White noted that "minor violations that are overlooked or ignored can feed bigger ones, and, perhaps more importantly, can foster a culture where laws are increasingly treated as toothless guidelines."

In furtherance of the SEC's broken windows strategy, the SEC recently announced charges against 28 officers, directors or major shareholders and six public companies for delinquent filings under Section 16(a) and Regulation 13D of the Securities Exchange Act of 1934, as amended (the "Exchange Act"). These enforcement actions mark the first time the SEC has brought enforcement actions for late filings absent some other violation of securities laws such as fraud under Section 10(b) of the Exchange Act or violations of the short-swing profit rules or short-selling prohibitions under Sections 16(b) and 16(c) of the Exchange Act.

Utilizing a quantitative analytics software program for the first time with respect to Section 16 and Regulation 13D filings, the SEC's Division of Enforcement initially targeted individuals with "especially high rates of filing deficiencies." In announcing the actions, the Director of the Division of Enforcement stated that "[w]e are bringing these actions together to send a clear message about the importance of these filing provisions. 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 enforcement actions targeted 13 individuals who were officers or directors of public companies, five individual who were 5% stockholders in public companies, ten investment firms and six public companies. All but one of the individuals and companies targeted by the SEC entered into settlement agreements with the SEC accepting penalties ranging from $25,000 to $100,000 for individuals and $64,000 to $150,000 for entities.

All of the penalties were imposed under Section 21B of the Exchange Act, substantially all of which were Tier 2 or Tier 3 violations for deliberate or reckless disregard of a regulatory requirement.

The enforcement actions are the latest in a series of actions by the SEC designed to impose significant penalties for violations historically considered to be minor infractions, with the intent of creating a significant incentive for compliance, including Regulation D amendments proposed in July 2013 that, if adopted, would disqualify issuers from Regulation D exemptions for failing to timely file a Form D even if all of the underlying exemption criteria are satisfied.

If you have any questions, please contact your Seyfarth attorney or Michael Dunn at *mdunn@seyfarth.com*.

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