

Recent SEC Enforcement Actions Highlight Risks of Failing to Timely File Reports of Beneficial Ownership

The Securities and Exchange Commission (SEC) recently announced charges against a number of directors and officers, companies and significant stockholders for failing to timely file reports of beneficial ownership. The SEC used computer algorithms and quantitative data sources to identify delinquent filers of Section 16(a) reports (Forms 3, 4 and 5) and Schedules 13D and 13G. The SEC charged 14 individuals serving as public-company directors and/or executive officers, five individual beneficial owners of publicly traded securities, ten investment firms and seven public companies. Thirty-five out of the 36 persons and entities charged agreed to settle (without admitting fault) and paid penalties ranging from \$25,000 to \$375,000. While the SEC's actions targeted individuals and companies "with especially high rates of filing deficiencies," the SEC warned that "[o]fficers, 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 SEC warned that "[o]fficers, 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."

Directors and Officers

In the cases of the sanctioned directors and officers, many had dozens of unreported or late-reported transactions spanning time periods, in some cases, of over two years. The late-reported transactions included open-market sales or purchases, and for some insiders, their sales represented significant amounts in terms of the dollar value received from the sales or as a percentage of the subject company's total common stock outstanding. In certain cases, the failure to timely file masked gains that were subject to short-swing profit recovery under Section 16(b). The SEC emphasized that the ultimate legal responsibility for filing beneficial-ownership reports rests with the individual. Directors and officers were not excused from their violations simply because the company where they serve as officer or director failed to make timely filings on their behalf or because brokers failed to provide timely notices of the insiders' market purchases or sales.

Public Companies

While the SEC encourages companies to assist their insiders with their Section 16(a) reporting obligations, companies that do so may become liable for causing violations by their insiders where the companies act negligently in the performance of those tasks. In addition, companies may become liable for inaccurate proxy statement disclosure. Companies were charged by the SEC in circumstances in which:

- the company received timely notice of information necessary to make Form 4 filings on an insider's behalf but failed on multiple occasions to do so; and/or
- the company incorrectly reported in its proxy statements, under Item 405 of Regulation S-K, that all Section 16(a) reports by officers and directors were timely filed, when in fact a review of those reports over the prior year would have revealed a number of late filings made by insiders.

Significant Shareholders

Individuals, asset managers, investment firms and other beneficial holders of over 5% of a publicly traded security were also charged by the SEC for failing to make timely reports of beneficial ownership. The types of violations varied, from failing to make any Section 16(a) filings after becoming a 10% holder, to failing to report multiple transactions or file required amendments to their Schedule 13D or 13G. None of the charges suggested that the filers sought to avoid disclosing extraordinary transactions or other plans or proposals identified in Item 4 of Schedule 13D. Instead, the SEC acted based simply on these individuals' and firms' repeated failure to timely file.

What's the Lesson?

The SEC's recent focus on delinquent reporting of beneficial ownership represents a new enforcement initiative, and the SEC has indicated that it will continue to police Section 13(d) and Section 16(a) violations. Directors and executive officers should be taking adequate and effective steps to ensure that their reports are timely prepared and filed, even when relying on company personnel or other parties to make filings on their behalf. Similarly, significant stockholders must remain aware of their Schedule 13D/G filing obligations, including circumstances that may trigger amendments. The SEC's recent enforcement actions also demonstrate that the SEC will hold accountable companies that have taken responsibility for their insiders' Section 16(a) compliance. These actions should prompt all public companies to review and strengthen, where necessary, their internal Section 16 compliance programs and procedures.

If you have any questions about this topic, please contact a member of our Securities & Capital Markets group or your Vedder Price attorney.

Securities & Capital Markets Group Principal Members

John T. Blatchford, <i>Co-Chair</i>	+1 (312) 609 7605	James W. Morrissey	+1 (312) 609 7717
Jennifer Durham King, <i>Co-Chair</i>	+1 (312) 609 7835	Andrew M. Tucker.....	+1 (202) 312 3335
Steven R. Berger.....	+1 (212) 407 7714	Christopher G. Barrett	+1 (312) 609 7557
Thomas P. Desmond	+1 (312) 609 7647	Joshua B. Bergmann.....	+1 (312) 609 7634
Marc L. Klyman.....	+1 (312) 609 7773	Adelaida M. Hernandez.....	+1 (312) 609 7629

Securities & Capital Markets Group

The Securities & Capital Markets group at Vedder Price provides comprehensive and responsive securities law and capital markets counseling in today's rapidly changing financial, business and regulatory environments. We represent clients in all aspects of the capital formation process, from private placements to public offerings, as well as in a broad array of corporate finance transactions. With extensive combined securities law experience across a wide range of industries, our capital markets attorneys provide seasoned, innovative service aimed at achieving our clients'

objectives in a time-responsive and cost-effective manner.

About Vedder Price

Vedder Price is a thriving general-practice law firm with a proud tradition of maintaining long-term relationships with our clients, many of whom have been with us since our founding in 1952. With approximately 300 attorneys and growing, we serve clients of all sizes and in virtually all industries from our offices in Chicago, New York, Washington, DC, London, San Francisco and Los Angeles.

This communication is published periodically by the law firm of Vedder Price. It is intended to keep our

clients and other interested parties generally informed about developments in this area of law. It is not a substitute for professional advice. For purposes of the New York State Bar Rules, this communication may be considered ATTORNEY ADVERTISING. Prior results do not guarantee a similar outcome.

Vedder Price P.C. is affiliated with Vedder Price LLP, which operates in England and Wales, and with Vedder Price (CA), LLP, which operates in California.

© 2014 Vedder Price. Reproduction of this content is permitted only with credit to Vedder Price.

Chicago

222 North LaSalle Street
Chicago, IL 60601
T: +1 (312) 609 7500

New York

1633 Broadway, 47th Floor
New York, NY 10019
T: +1 (212) 407 7700

Washington, DC

1401 I Street NW, Suite 1100
Washington, DC 20005
T: +1 (202) 312 3320

London

4 Coleman Street
London EC2R 5AR
T: +44 (0)20 3667 2900

San Francisco

275 Battery Street, Suite 2464
San Francisco, CA 94111
T: +1 (415) 749 9500

Los Angeles

1925 Century Park East, Suite 1900
Los Angeles, CA 90067
T: +1 (424) 204 7700