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SEC Sanctions Delays in Beneficial Ownership Reporting

The Securities and Exchange Commission ("SEC") recently sanctioned a number of corporate insiders and public companies for failing to timely report securities holdings and transactions in company stock. The list of respondents included CEOs, board members, investment firms and other major shareholders who failed to timely report their own transactions and holdings, as well as publicly traded companies that contributed to, or failed to report, filing delays by insiders. Because these are strict liability provisions, the SEC may impose such sanctions even if the failure to file was inadvertent, unintentional or unknowing. Indeed, the obligation to make such filings applies irrespective of whether the filer made any profit or the filer's reasons for engaging in a reportable transaction. The SEC's actions in these cases are a reminder to all market participants of the importance of the reporting requirements under Section 16(a) and Sections 13(d) and (g) of the Securities Exchange Act of 1934.

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Under Section 16(a), directors, officers and greater-than-10% beneficial owners of a registered class of equity security are required to file reports of their beneficial ownership and transactions on Forms 3, 4 and 5. Transactions reported on Form 4 must be filed within two business days of the transaction. Additionally, pursuant to Item 405 of Regulation S-K, registrants are required to disclose in their proxy statement any late filings made by those insiders subject to Section 16(a). Sections 13(d) and 13(g) of the Exchange Act require beneficial owners of over 5% of a class of equity securities to report their ownership on Schedule 13D or, if eligible, Schedule 13G.

The actions represent the continued trend by the SEC to use streamlined investigations to target potential violations of securities laws, even the more technical, non-fraud violations that are not traditionally the focus of the SEC's Division of Enforcement.

They also represent the SEC's increased use of sophisticated data analytics to identify potential violations of securities laws. According to the SEC press release, the staff used quantitative data sources and ranking algorithms to identify individuals and companies with particularly high rates of filing delinquencies. In past years, the SEC's use of such initiatives was limited to more serious enforcement actions, such as ones targeting insider trading, Ponzi schemes and financial reporting and accounting fraud.

Finally, the actions are emblematic of Chair Mary Jo White's "broken windows" enforcement strategy. As outlined in Chair White's remarks at the Securities Enforcement Forum last fall, "minor violations [the so-called broken windows] that are overlooked or ignored can feed bigger ones, and, perhaps more importantly, can

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foster a culture where laws are increasingly treated as toothless guidelines. And so, I believe it is important to pursue even the smallest infractions."

All market participants should be reminded of the value of a robust culture of compliance and necessity of strict adherence to even the most routine of filing and reporting requirements.

The Division of Enforcement will continue to identify new enforcement priorities and leverage new investigative techniques in an effort to identify and prosecute new areas of misconduct and investor harm. This latest example should not only reinforce the importance of timely reporting of stock transactions and holdings required under Sections 13 and 16, but also should remind all market participants of the value of a robust culture of compliance and necessity of strict adherence to even the most routine of filing and reporting requirements. Publicly traded companies may wish to review their policies and procedures to ensure that they are reasonably designed to facilitate compliance with Sections 13 and 16 requirements.

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