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SEC Announces Charges for Schedule 13D, Schedule 13G and Section 16 Reporting Violations

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On September 27, 2023, the Securities and Exchange Commission (SEC) issued a press release announcing charges against officers, directors and large investors in public companies for failure to timely make Section 16, Schedule 13D and Schedule 13G filings.[1] Specifically, the SEC brought charges resulting in civil monetary penalties against (1) six officers, directors and large shareholders of public companies for failing to timely report information about their holdings and transactions in company stock, and (2) five publicly-traded companies for "contributing" to their Section 16 insiders' disclosure violations. The SEC also charged three of the issuers with violating the proxy and 10-K disclosure requirements by failing to disclose insiders' violations under Item 405 of Regulation S-K.

The SEC's charges result from an enforcement initiative using data analytics focused on Form 4 filings and Schedules 13D and 13G reports disclosing beneficial ownership of and transactions in company stock.

- **Form 4** filings are required under Section 16(a) of the Securities Exchange Act of 1934, as amended (the "Exchange Act"). Specifically, officers, directors and beneficial owners of greater than 10% of any class of equity securities registered under Section 12 of the Exchange Act are required to file Forms 4 to disclose most transactions resulting in a change of beneficial ownership within two business days following the transactions.
- **Schedules 13D and 13G** are required under Section 13(d) of the Exchange Act. Specifically, an investor who has acquired beneficial ownership of more than 5% of any class of equity security registered under Section 12 of the Exchange Act, including members in a "group" collectively beneficially owning more than 5%, may be required to disclose that position within 10 days of crossing the 5% threshold. The report, known as a Schedule 13D, requires disclosure of, among other things, the identity of the beneficial owners, the amount of beneficial ownership, and the investor's plans or proposals regarding the issuer. Certain passive investors are permitted to file a short-form statement on Schedule 13G in lieu of a Schedule 13D. The deadline to file a Schedule 13G is also within 10 days of acquiring more than 5% beneficial ownership, but certain institutional investors may be permitted to defer disclosing their passive holdings on Schedule 13G until 45 days after the end of the calendar year.

The SEC's press release notes that the investigation into timeliness of Forms 4 and Schedules 13D and 13G filings is "ongoing," so more charges may be coming. With the SEC currently considering proposed changes to the Section 13(d) beneficial ownership rules, including tighter deadlines for filings, the SEC may be putting additional emphasis on enforcement in this area.[2] As a result, it is imperative that officers, directors and investors understand and comply with their reporting requirements in a timely manner. In addition, the SEC's charges against issuers for their insiders' violations reflect companies' need to effectively oversee their officers' and directors' filing obligations, especially when such issuers take on the responsibility to make filings on their insiders' behalf.

If you need assistance or have questions regarding this alert, please contact your Akin relationship attorney or one of the authors.

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[1] *SEC Charges Corporate Insiders for Failing to Timely Report Transactions and Holding*, U.S. SECURITIES AND EXCHANGE COMMISSION, available at **https://www.sec.gov/news/press-release/2023-201?utm_medium=email&utm_source=govdelivery** (Sept. 27, 2023).

[2] *See* SEC Proposes Rule Amendments to Modernize Beneficial Ownership Reporting, U.S. SECURITIES AND EXCHANGE COMMISSION, available at **https://www.sec.gov/news/press-release/2022-22** (Feb. 10, 2022).