



## SEC Charges 34 Insiders, Shareholders and Public Companies with Delinquencies in Reporting Stock Holdings and Trades

September 22, 2014

In an unprecedented enforcement initiative, the Securities and Exchange Commission (“SEC”) announced on September 10, 2014 that it charged a total of 34 officers, directors, major shareholders and public companies with violating federal securities laws by failing to timely file reports required by Sections 16(a), 13(d) and/or 13(g) of the Securities Exchange Act of 1934, as amended (the “Exchange Act”) and the rules promulgated thereunder.<sup>1</sup>

Under Section 16(a) and the rules promulgated thereunder, each “beneficial owner of more than 10 percent of any class of any equity security (other than an exempted security) which is registered pursuant to Section 12” of the Exchange Act and each director or officer of the issuer of such a security must file Form 4 reports disclosing a change in beneficial ownership within two business days of the execution of the transaction resulting in this change.<sup>2</sup> Sections 13(d) and 13(g) and the rules promulgated thereunder generally provide that any person who directly or indirectly acquires the beneficial ownership of more than 5% of any class of a voting equity security registered under Section 12 of the Exchange Act must file a Schedule 13D or 13G with the SEC within ten days after such acquisition, disclosing certain information pertaining to the beneficial ownership.<sup>3</sup>

According to the charges brought by the SEC, 28 officers, directors and major shareholders were repeatedly delinquent in filing reports or amendments required by Sections 16(a), 13(d) and/or 13(g). The SEC, which had identified these repeated late filers through “quantitative data sources and ranking algorithms,” noted that some of the filings “were delayed by weeks, months, or even years.” The SEC also brought charges against six publicly-traded companies, in each case alleging recurring violations. Some of these companies allegedly contributed to their insiders’ Section 16(a) violations by neglecting to perform certain tasks they voluntarily agreed to perform in connection with the filing of Section 16(a) reports on behalf of their insiders. Moreover, some of the companies charged failed to disclose Section 16(a) reporting violations by insiders, as required by Item 405 of Regulation S-K.

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<sup>1</sup> See U.S. Securities and Exchange Commission, [“SEC Announces Charges Against Corporate Insiders for Violating Law Requiring Prompt Reporting of Transactions and Holdings”](#) (Sept. 10, 2014).

<sup>2</sup> Section 16(a) of the Exchange Act, 15 U.S.C. § 78p(a).

<sup>3</sup> Certain Schedules 13G may be filed within 45 days after the end of the calendar year or at other specified times.

## IMPLICATIONS OF THE SEC'S CHARGES

The SEC's charges highlight the importance of complying with the filing provisions of Sections 16(a), 13(d) and 13(g) and the relevant rules promulgated thereunder. Notably, there is no state of mind requirement for violations of Section 16(a) or Section 13(d)/13(g) or the rules thereunder. As Andrew J. Ceresney, Director of the SEC's Division of Enforcement, advised, officers, directors, major shareholders and issuers should "take note" that "inadvertence is no defense to filing violations" and that the SEC "will vigorously police these sorts of violations through streamlined actions."<sup>4</sup> Public companies should, therefore, make certain that they have robust processes and procedures in place to reasonably ensure both that directors and officers are reminded of the Section 16(a) filing obligations and that the registrants (1) perform on a timely basis any tasks they had agreed to perform with respect to their insiders' Section 16(a) reports and (2) timely disclose in annual proxy and information statements or annual reports information pertaining to known delinquent Section 16(a) filings by their insiders. In addition, public companies should conduct reasonable inquiries into whether any of their insiders' Section 16(a) filings were late; this investigative process could include requiring certifications from directors and officers and reviewing the EDGAR filing system to determine whether reports were filed on a timely basis.

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If you have any questions or would like additional information, please do not hesitate to contact [Frank Marinelli](mailto:fmarinelli@stblaw.com) at (212) 455-2661 or [fmarinelli@stblaw.com](mailto:fmarinelli@stblaw.com); [Jennifer L. Nadborny](mailto:jnadborny@stblaw.com) at (212) 455-2814 or [jnadborny@stblaw.com](mailto:jnadborny@stblaw.com); [James I. Rapp](mailto:james.rapp@stblaw.com) at (212) 455-2208 or [james.rapp@stblaw.com](mailto:james.rapp@stblaw.com); [Yafit Cohn](mailto:yafit.cohn@stblaw.com) at (212) 455-3815 or [yafit.cohn@stblaw.com](mailto:yafit.cohn@stblaw.com); or any other member of the Firm's Public Company Advisory Practice.

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<sup>4</sup> Securities and Exchange Commission, *supra* note 1.

**UNITED STATES****New York**

425 Lexington Avenue  
New York, NY 10017-3954  
+1-212-455-2000

**Los Angeles**

1999 Avenue of the Stars  
Los Angeles, CA 90067  
+1-310-407-7500

**Palo Alto**

2475 Hanover Street  
Palo Alto, CA 94304  
+1-650-251-5000

**Washington, D.C.**

1155 F Street, N.W.  
Washington, D.C. 20004  
+1-202-636-5500

**Houston**

2 Houston Center  
909 Fannin Street  
Houston, TX 77010  
+1-713-821-5650

**EUROPE****London**

CityPoint  
One Ropemaker Street  
London EC2Y 9HU  
England  
+44-(0)20-7275-6500

**ASIA****Beijing**

3919 China World Tower One  
1 Jian Guo Men Wai Avenue  
Beijing 100004  
China  
+86-10-5965-2999

**Hong Kong**

ICBC Tower  
3 Garden Road, Central  
Hong Kong  
+852-2514-7600

**Seoul**

West Tower, Mirae Asset Center 1  
26 Eulji-ro 5-gil, Jung-gu  
Seoul 100-210  
Korea  
+82-2-6030-3800

**Tokyo**

Ark Hills Sengokuyama Mori Tower  
9-10, Roppongi 1-Chome  
Minato-Ku, Tokyo 106-0032  
Japan  
+81-3-5562-6200

**SOUTH AMERICA****São Paulo**

Av. Presidente Juscelino Kubitschek, 1455  
São Paulo, SP 04543-011  
Brazil  
+55-11-3546-1000