

CLIENT MEMORANDUM

SEC Announces Enforcement Actions for Failures to File Timely Reports under Sections 16(a) and 13(d) and (g) of the Exchange Act

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On September 10, 2014, the Securities and Exchange Commission (SEC) announced enforcement actions¹ against directors, officers and significant shareholders for failures to make timely filings under Sections 16(a) and 13(d) and (g) under the Securities Exchange Act of 1934. In addition, the SEC charged a number of publicly traded companies with contributing to the filing failures of their corporate insiders.

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. Under Section 13(d) and (g), the beneficial owners of more than 5% of a registered class of voting equity security are required to file beneficial ownership reports on Schedule 13D or, if eligible, Schedule 13G.

Using quantitative analytics, the SEC focused its enforcement efforts on individuals and companies with high rates of filing deficiencies in order to send a message about the importance of these filings. The SEC charged 34 individuals and companies, including 13 officers and directors, five individual shareholders, 10 investment firms and six public companies. All but one of those charged chose to settle with the SEC by agreeing to cease and desist orders and paying fines ranging

¹ [SEC Press Release 2014-190](#).

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from \$25,000 to \$150,000. The SEC's Division of Enforcement will pursue the charges against the lone holdout in an administrative proceeding.

The SEC's announcement should serve as a reminder of the importance of the timely filing of beneficial ownership reports under Sections 16(a) and 13(d) and (g). In its announcement and orders settling these charges, the SEC made clear that inadvertent failures to file or to file timely are no excuse and that serial violators of the disclosure rules are especially at risk. In charging the public companies whose insiders had repeatedly failed to make timely filings, the SEC noted that the companies had voluntarily undertaken to assist their insiders with their filing obligations and that the companies also had failed to report in their proxy statements, as required by Item 405 of Regulation S-K, multiple filing delinquencies by their insiders that were known or should have been known by the companies.

If you have any questions concerning the matters described in this memorandum, please contact Michael A. Schwartz (212-728-8267, mschwartz@willkie.com) or the Willkie attorney with whom you regularly work.

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