PUBLICATION

SEC Steps Up Enforcement of Beneficial Ownership Reporting

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The SEC recently announced an enforcement initiative beginning with charges against 28 officers, directors and major shareholders for violating beneficial ownership reporting requirements under Sections 16(a) and 13(d) and (g) of the Securities Exchange Act. The SEC also brought charges against six public companies for contributing to their insiders' filing failures or failing to report their insiders' filing delinquencies. This new area of focus for SEC enforcement is driven by SEC Chair Mary Jo White's "broken window" enforcement strategy, which is named after New York City's policing tactic of reducing serious crime by pursuing even the most minor violations. In light of this strategy, reporting companies should review their Section 16 and Section 13 compliance policies to ensure they are reporting insider transactions in a timely manner.

Section 16(a) requires a reporting company's officers, directors and 10 percent shareholders to file with the SEC reports of their beneficial ownership of and transactions in the company's equity securities on Forms 3, 4 and 5. Section 13(d) and (g) require a reporting company's 5 percent shareholders to file beneficial ownership reports on either Schedule 13D or Schedule 13G. While companies are not required to ensure their insiders' timely reporting, reporting companies are required to disclose in their annual proxy statement any failure by their insiders to timely file Section 16 reports. Additionally, the SEC has made clear that companies that accept responsibility for their insiders' reporting obligations are liable under Section 16 if they act negligently in the performance of such responsibilities.

The announcement was significant because the SEC has not historically taken enforcement action against delinquent Section 16 and Section 13 filers or their related companies. Using "qualitative data sources and ranking algorithms," the SEC identified insiders and companies with repeated delinquencies. All but one of the parties charged agreed to settle with the SEC, with settlements ranging from $25,000 to $150,000.

In light of this new enforcement activity, companies should review the effectiveness of their reporting programs, especially considering the SEC's statement that it will not consider "inadvertence" as a defense to reporting violations. The SEC has sent a strong signal that insiders and their companies can no longer afford to treat Section 16 and Section 13 compliance as a trivial technicality.

If you have questions about beneficial ownership reporting, please contact your Baker Donelson attorney or a member of our Securities and Corporate Governance Group.