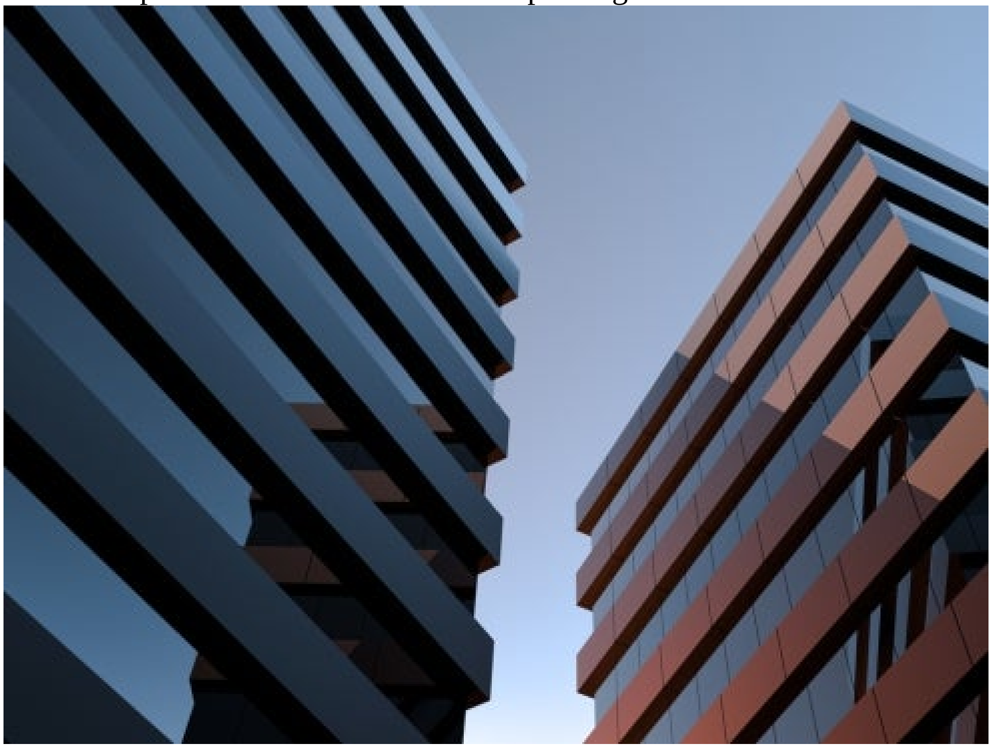
Blogs
October 16, 2024
SEC Sweep of Late Beneficial Ownership Filings



In late September, the SEC announced a sweep of settled charges for late beneficial ownership and insider transaction filings, including over $3.8 million in penalties against individuals and companies. This sweep was similar to one announced in late September 2023 and underscores the SEC's continued focus on compliance with beneficial ownership reporting obligations. The charges related to failures to file or late filings of Schedules 13D and 13G for beneficial owners of more than 5% of a company's stock; Forms 3, 4, and 5 for Section 16 reporting persons; and Form 13F for institutional investment managers.

Anyone who drafts proxy statements will be familiar with having to report late Section 16 beneficial ownership reports. These enforcement actions generally relate to much bigger issues than a late Form 4 or two. Here are three tips for public companies when it comes to beneficial ownership reporting requirements:

1. **Ensure Proper Controls Exist for Section 16 filings.** Two companies were charged with failing to make Section 16 filings after having volunteered to do so and also failing to report the delinquencies in annual company filings. The orders noted that "[a]lthough the Commission encourages the practice of many issuers to assist insiders in complying with Section 16(a) filing requirements, issuers who voluntarily accept certain responsibilities and then act negligently in the performance of those tasks may be liable as a cause of Section 16(a) violations by insiders." If your company files Section 16 reports for reporting persons, this sweep is a good reminder to make sure you have controls in place to adequately fulfill these obligations.
2. **Consider Filing Obligations for Equity Investments.** Many public companies make investments in startup companies for a wide range of reasons. If your company has such investments, be sure to plan for the possible eventual outcomes, including that the company may go public someday. You may end up with Schedule 13G or 13D, Section 16, and other ownership or reporting obligations with respect to those investments.
3. **Be Aware That the SEC Is Using Data Analytics.** The press release linked above notes that "SEC staff used data analytics to identify the charged individuals and entities as filing required reports late." The

release also notes the involvement of both the Division of Enforcement’s Office of Investigative & Market Analytics and the Division of Economic and Risk Analysis. The SEC staff have plenty of tools at their disposal, and individuals and companies that repeatedly miss filings or deadlines have a good chance of being identified in sweeps like these.

Authors