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# Quarterly Survey of SEC Rulemaking (June 27, 2014—September 30, 2014)

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*This issue's Survey focuses on the Securities and Exchange Commission's ("SEC") rulemaking activities and major federal appellate or other decisions relating to the Securities Act of 1933, as amended, (the "1933 Act"), the Securities Exchange Act of 1934, as amended, (the "1934 Act"), and other Federal Securities laws from June 27, 2014, through September 30, 2014.*

## SEC Adopts Final Rules Enhancing Disclosure with Respect to Registered Asset-Backed Securities

On August 27, 2014, the SEC adopted final Rules intended to better protect investors in registered asset-backed securities ("ABS") transactions **(See SEC Release No. 33-9638)**. Compliance with the final Rules is required for issuers to use a shelf-registration on Form S-3. The final Rules will not apply to unregistered ABS offerings executed pursuant to Rule 144A.

The final Rules require issuers to provide standardized asset-level information, in a tagged data format, for ABS backed by residential mortgages, commercial mortgages, auto loans, auto leases and debt securities. Such disclosure typically will include information pertaining to the (i) credit quality of the obligors, (ii) collateral related to each asset and (iii) cash flows related to a particular asset. The final Rules also afford investors more time to consider transaction-specific information which issuers using a shelf registration statement must file in a preliminary prospectus containing such information, at least three business days in advance of the first sale of securities pursuant to the offering.

The final Rules remove the investment grade rating requirement for ABS shelf registration eligibility and instead require the following:

- the chief executive officer of the depositor must provide a certification at the time of each offering made from a shelf registration statement regarding the disclosures contained in the prospectus and the structure of the securitization;

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- standardized asset-level disclosure requirements that convey information on the credit quality of all assets, and the overall risks in the pool underlying the ABS. Risk will be assessed using a variety of data-points including:
  - contractual terms, scheduled payment amounts, performance of each asset over time, and the basis for interest rate calculations; and
  - analysis of the collateral related to the asset, such as the geographic location of the property, and property valuation data;
- a dispute resolution provision in the underlying transaction documents; and
- disclosure of investors' requests to communicate with other investors.

In addition to amendments to prospectus disclosure requirements, the final Rules also make several amendments to Regulation AB. Regulation AB covers the registration, disclosure and reporting requirements of Asset-Backed Securities **(*See* 17 C.F.R. 229.1100 to 229.1123)**. These amendments include:

- the standardization of certain static pool disclosures. These standard disclosures would typically address potential risk factors for investors, such as in the case of a Residential Mortgage-Backed Security, whether there are a significant number of mortgages that deviate from accepted underwriting standards.
- the definition of "asset-backed security" under Regulation AB is amended to address the "discrete pool" exception, originally made to accommodate master trusts, prefunding periods and revolving periods. Previously, the exception allowed certain pools not sufficiently developed at the time of an offering to fall within the definition of the "discrete pool of assets" exception. As a result, the SEC amended "asset-backed security" to restrict these deviations. Traditionally, the term "asset-backed security" has been defined as a security that is backed by a discrete pool of assets that convert into cash without active pool management.
- specifying the disclosure that must be provided on an aggregate basis relating to the type and amount of assets that do not meet the underwriting criteria that is described in the prospectus.
- standardization of delinquency disclosures in Form 10-D to conform to Item 1100(b) of Regulation AB with respect to presenting delinquencies in 30- or 31- day increments.
- specifying material instances of noncompliance pursuant to Item 1122 of Regulation AB in the body of Form 10-K, if the noncompliance involved the servicing of assets backing the asset-backed securities covered in that particular 10-K; and

- amending Form 8-K to include a specific item number dedicated to the filing of static pool information.

The final Rules become effective 60 days after publication in the Federal Register. Issuers must comply with new rules, forms, and disclosures other than the asset-level disclosure requirements no later than one year after the final Rules are published in the Federal Register. Offerings of ABS backed by residential and commercial mortgages, auto loans, auto leases, and debt securities must comply with the asset-level disclosure requirements no later than two years after the final Rules are published in the Federal Register.

## SEC Adopts Final Rules Governing Money Market Funds

On July 23, 2014, the SEC adopted final Rules with respect to the structure and operation of money market mutual funds to reduce their susceptibility to redemption. **(See SEC Release No. 33-9616)**

The final Rules eliminate the ability of institutional prime and tax-exempt money market funds to use the amortized cost method to value portfolio securities; instead of being able to transact at a $1 stable share price, such funds must value and transact in their shares at a floating net asset value (NAV) rounded to four decimal places. However, the final Rules permit government money market funds, defined as any money market fund that invests at least 99.5% of its total assets in cash, government securities and/or repurchase agreements that are collateralized solely by government securities or cash, and retail money market funds, defined as any money market fund that has policies and procedures reasonably designed to limit all beneficial owners of the money market fund to natural persons, to continue to use the amortized cost method to value portfolio securities.

The final Rules also enable the board of directors (the "Board") of a non-government money market fund to impose liquidity fees and temporarily suspend redemptions. Specifically, if such fund's weekly liquid assets falls below (i) 30% of its total assets, then the Board *may* (a) impose a liquidity fee of up to 2% on all redemptions and/or (b) impose a redemption gate for up to 10 business days in any 90-day period, or if below (ii) 10% of its total assets, then the Board *must* impose a liquidity fee of 1% on all redemptions, unless the Board determines that such a fee is not in the best interests of the fund. Government money market funds are not subject to the liquidity fee and redemption gate system, but such funds may voluntarily opt into the system.

Additionally, the final Rules include a myriad of disclosure requirements aimed towards improving transparency. For example, the final Rules require (i) daily website disclosure regarding daily and weekly liquid assets, net shareholder inflows or outflows, market-based NAVs per share, imposition of fees and gates and any use of affiliate sponsor support, (ii) prompt disclosure on new Form N-CR of certain events including the imposition or removal of liquidity fees or redemption gates and the primary considerations the Board took into account related to such fees or gates, (iii) disclosure in its Statement of Additional Information regarding any sponsor or affiliate support the fund received during the last 10 years (excluding support prior to April 14, 2016), (iv) the reporting of additional information on Form N-MFP and (v) large liquidity fund advisers to report substantially the same information on Form PF (which requires private fund advisers with at least $150 million in private fund assets under management to report information about certain private funds they advise) as registered money market funds report on Form N-MFP.

The compliance date for the final Rules is generally October 14, 2016, although some of the Rules, including those pertaining to the enhanced disclosure requirements, have earlier compliance dates.

## SEC Adopts Final Rules to Improve Credit Rating Quality and Increase Credit Rating Agency Accountability

On August 27, 2014, the SEC adopted final Rules to implement certain requirements under the Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank") with respect to credit rating agencies registered as nationally recognized statistical rating organizations ("NRSROs"). These adopted rules come in the form of both new rules and amendments to pre-existing rules. **(*See* SEC Release No. 34-72936)**

The final Rules require NRSROs to adopt and comply with significant reforms, in an effort to combat potential conflicts of interest between rating agencies and the issuers who compensate rating agencies. These include new Rules and amendments in:

**Internal Control Structures—**An NRSRO must supplement its annual submission of reports with an additional report concerning the internal control structure pursuant to 15E(c)(3)(A) of the 1934 Act. In addition, the CEO of an NRSRO must provide an annual certification attesting to the effectiveness of internal controls and that its credit ratings are not influenced by other business activities.

**Sales and Marketing Conflict of Interest—**An NRSRO is prohibited from issuing or maintaining a credit rating if a person within the NRSRO participates in the determination of a credit rating and is also (1) involved in the sales or marketing of an NRSRO product, or (2) influenced by sales or marketing concerns.

**"Look-back" Review—**An NRSRO must review and update, when necessary, policies and procedures concerning potential conflicts in issuing credit ratings.

**Disclosure of Information about Performance of Credit Rating—**An NRSRO must fully disclose information on the credit rating determined by the NRSRO for each type of obligor, security, and money market instrument. These disclosures must include performance information over a range of years concerning both (1) performance statistics and (2) rating histories.

**Credit Rating Methodologies—**An NRSRO must have and follow policies and procedures when determining credit ratings.

**Form and Certifications to Accompany Credit Ratings—**An NRSRO must publish a form after it takes certain rating actions. This form must explain the methodology used to determine the credit rating procedure. Under Section 15E(s)(2)(C) of the 1934 Act, the form shall be made readily available to users of credit ratings, either in electronic or paper format. This form shall accompany the publication of each credit rating.

**Third-Party Due Diligence for Asset-Backed Securities—**When a third-party due diligence service is used by an NRSRO, a certification written by the due-diligence service must be provided to the NRSRO. This certification shall be made publicly available by the NRSRO. The certification is meant to ensure that providers of diligence services have conducted a thorough review of the data. The commission shall establish the appropriate form and content for the written certifications.

**Standards of Training, Experience and Competence—**An NRSRO must maintain, enforce and document the standards of training, experience and competence required for individuals that analyze and determine credit ratings. This new Rule requires an NRSRO to design and administer these standards.

**Universal Rating Symbols—**An NRSRO must have standard policies for the symbols, numbers or scores used to denote credit ratings. The Universal Rating Symbols must be clearly defined after the presentation of any Transition/Default Matrices that use each symbol, number or score.

The final Rules become effective November 14, 2014, although some of the Rules, including those pertaining to diligence and disclosure requirements, have a later compliance date.

## SEC Proposes Rule Exempting Certain Security-Based Swap Communications from Constituting an Offer

On September 8, 2014, the SEC proposed a new rule that would exempt the publication or distribution of price quotes concerning security-based swaps ("SBS") from constituting an offer under Section 5 of the 1933 Act. The price quotes must involve security-based swaps that may be purchased only by eligible contract participants. The proposed rule seeks to further the goal of Title VII of the Dodd Frank Act by eliminating the concern that price quotes on eligible trading platforms would trigger the registration requirements of Section 5 of the 1933 Act. **(*See* SEC Release No. 33-9643)**

Under the proposed rule, the publication or distribution of SBS price quotes will not be deemed to constitute an offer, an offer to sell, or a solicitation of an offer to sell or purchase such security-based swaps, or any guarantees of such security-based swaps that are securities for purposes of Section 5 of the 1933 Act.

The proposed rule would cover not only the initial publication of the SBS price quotes on an eligible trading platform, but also any subsequent re-publication of the price quotes under a different medium such as "online information services." Eligible trading platforms are defined as security-based swap execution facilities or a national securities exchange. Eligible contract participants are defined in Section 5(e) of the 1933 Act and include, among others, financial institutions and broker/dealers.

Comments concerning the proposal should be made on or before November 10, 2014.

## Appellate and Other Decisions of Note

### Eleventh Circuit Vacates Class Certification and Remands for District Court to Consider Price Impact Evidence under *Halliburton*

On August 6, 2014, the U.S. Court of Appeals for the Eleventh Circuit vacated the certification of a plaintiff shareholder class and directed the Northern District of Alabama on remand to both alter the end date of the class period and to determine whether, under the recent Supreme Court decision of *Halliburton Co. v. Erica P. John Fund, Inc.*, 134 S. Ct. 2398, 189 L. Ed. 2d 339, Fed. Sec. L. Rep. (CCH) ¶ 98003, 88 Fed. R. Serv. 3d 1472 (2014), the defendant-appellant bank presented sufficient evidence to rebut the presumption of class-wide reliance as applicable under *Basic Inc. v. Levinson*, 485 U.S. 224, 108 S. Ct. 978, 99 L. Ed. 2d 194, Fed. Sec. L. Rep. (CCH) ¶ 93645, 24 Fed. R. Evid. Serv. 961, 10 Fed. R. Serv. 3d 308 (1988).

In their class action suit, plaintiffs claimed that on February 27, 2008, the defendant filed a form 10-K for fiscal year 2007 which failed to disclose significant losses and, in effect, the defendant knowingly misrepresented the value of its assets and financial stability. Plaintiffs alleged these misrepresentations caused artificially high stock prices. Before the market opened on January 20, 2009, the defendant released a substantial corrective disclosure and reported $5.6 billion in losses. Between February 27, 2008, and January 20, 2009, defendant's stock dropped by 80% from $23 to $4.60 per share. Plaintiffs moved to certify a class of "all investors who purchased [defendant's] stock from [February 27, 2008], when [defendant] filed its first allegedly misleading financial disclosure, through [January 19, 2009], the last trading day before the corrective disclosure."

The District Court certified the class under Fed. R. Civ. P. 23(b)(3) "for the period from February 27, 2008 to January 20, 2009." In doing so, the District Court found common questions of law or fact predominated individual questions based on the *Basic* fraud-on-the-market presumption as reaffirmed by *Halliburton*. The fraud-on-the-market presumption allows for class-wide reliance to be presumed on the theory that "the market price of shares traded on well-developed markets reflects all publicly available information, and hence, any material misrepresentations." In order for a plaintiff class to use the *Basic* presumption they must show the misrepresentations were publicly known, "the stock was traded in an efficient market, and that the relevant transaction took place between the time the misrepresentations were made and the time the truth was revealed." On appeal, the defendant argued that the lower court erroneously invoked the *Basic* presumption to grant class certification because (1) it used the wrong market efficiency analysis, (2) it should have required the plaintiffs to present evidence showing that the misrepresentation caused an immediate change in the stock price, and (3) there is no *per se* rule that being on a national stock exchange means an efficient market exists.

The Eleventh Circuit rejected the defendant's arguments and agreed with the District Court that the *Basic* presumption applies. The Court stated that in determining whether an efficient market exists, district courts should consider the totality of circumstances on a case-by-case basis. However, the Court observed that "some features of an efficient market [include]: "high-volume trading activity facilitated by people who analyze information about the stock or who make trades based upon that information." Next, the Court found that since the defendant made "confirmatory misrepresentations," which merely " 'confirm' existing information about a stock, rather than release new and different information that might bring about a negative change in the stock's price," the plaintiffs were not required to show an immediate change in the stock price. Lastly, while the Court declined to invoke a *per se* rule of market efficiency for all stocks traded on a national exchange, it found the evidence presented in this case "supports a finding of market efficiency."

Despite agreeing with the District Court in its application of the *Basic* presumption, the Eleventh Circuit vacated the class certification for two reasons. First, the Eleventh Circuit reasoned that the Supreme Court in *Halliburton* added an extra step to the *Basic* analysis. Now, at the class certification stage, "defendants may introduce price impact evidence both to undermine the plaintiff's case for market efficiency and to rebut the Basic presumption once it has been established." Accordingly, the Eleventh Circuit remanded the case to the District Court for consideration of the price impact evidence presented by the defendant. In doing so, the Court emphasized that the *Halliburton* decision "by no means holds that in every case in which such evidence is present, the presumption will always be rebutted." Second, the Eleventh Circuit directed the class to close on January 19, 2009, and not January 20, 2009, since the defendant issued the corrective disclosure before the market opened on January 20, 2009.

*Local 703, I.B. of T. Grocery & Food Employees Welfare Fund v. Regions Financial Corp.*, 762 F.3d 1248, Fed. Sec. L. Rep. (CCH) ¶ 98132 (11th Cir. 2014).

## District Court Approves SEC Settlement with Citigroup, Implements New Standard of Review Set by the Second Circuit

On August 5, 2014, the U.S. District Court for the Southern District of New York approved a $285 million settlement between the SEC and Citigroup Global Markets, Inc. ("Citigroup").

As previously reported, in *S.E.C. v. Citigroup Global Markets, Inc.*, 752 F.3d 285, Fed. Sec. L. Rep. (CCH) ¶ 97983 (2d Cir. 2014), the SEC filed a complaint alleging that Citigroup negligently misrepresented its role and economic interest in structuring and marketing a billion-dollar fund and violated Sections 17(a)(2) and (3) of the 1933 Act. Thereafter, the SEC filed a proposed consent judgment, calling for Citigroup to pay disgorged profits, interest, and civil penalties totaling $285 million. However, the consent decree did not include a stipulation of facts or Citigroup's admission of guilt.

District Judge Jed S. Rakoff initially rejected the consent decree as "neither fair, nor reasonable, nor adequate, nor in the public interest" due its lack of a sufficient evidentiary record. On appeal, the Second Circuit overturned the lower court's ruling finding the proper standard for reviewing a consent decree is whether it is "fair and reasonable [and] that the public interest would not be disserved." The Court also removed the "adequacy" requirement and held that "[a]bsent a substantial basis in the record for concluding that the proposed decree does not meet the requirements, the District Court is required to enter the order."

On remand, Judge Rakoff held "the Court cannot say that the proposed Consent Judgment is procedurally improper or in any material respect fails to comport with the very modest standard imposed by the Court of Appeals" and approved the settlement. In the opinion, Judge Rakoff expressed concern about whether the new standard set by the Second Circuit subjects the SEC "to no meaningful oversight whatsoever" and leaves courts "with nothing but sour grapes."

*S.E.C. v. Citigroup Global Markets Inc.*, 2014 WL 3827497 (S.D. N.Y. 2014).

## First Circuit Holds SLUSA Does Not Preclude State Law Class Actions Where the Alleged Misrepresentation is Too Tangentially Connected to a Covered Security

On July 9, 2014, the U.S. Court of Appeals for the First Circuit held the Securities Litigation Uniform Standards Act ("SLUSA") did not preclude a class action brought against the Puerto Rico & Global Income Target Maturity Fund (the "Fund") for violations of Puerto Rican law because the connection between the alleged misrepresentations and any covered security included in the Fund was "too tangential."

The complaint alleged that the Fund issued a prospectus to solicit investors. The prospectus "promised that the Fund would invest at least 75% of its assets in notes with 'equally weighted exposure to both European and North American investment grade corporate bond indices' " and "would invest no more than 25% of its assets in securities issued by a single issuer." The Fund may have broken these promises in May of 2008 when it "invested more than 75% of its assets in notes sold by a single issuer, Lehman Brothers." When these notes declined in value, "the Fund was forced to adopt a plan of liquidation." Plaintiffs then filed a class action in Puerto Rico asserting claims under Puerto Rican law. The defendants then removed to Federal court under SLUSA. SLUSA disallows covered class actions based on state law alleging fraud or misrepresentation in connection with the purchase or sale of a covered security. After plaintiffs' motions to remand and for certification for interlocutory appeal were denied, the District Court granted defendants' motion to dismiss based on SLUSA preclusion.

The First Circuit found SLUSA did not preclude plaintiffs' action and vacated the District Court's dismissal, reversed the denial of plaintiffs' motion to remand, and remitted the case to the District Court with direction to return to the Puerto Rico court.

At issue in this case was whether the misrepresentations were made "in connection with" a covered securities transaction. The Supreme Court in *Chadbourne & Parke LLP v. Troice*, 134 S. Ct. 1058, 188 L. Ed. 2d 88, Blue Sky L. Rep. (CCH) ¶ 75066, Fed. Sec. L.

Rep. (CCH) ¶ 97832 (2014), interpreted "in connection with" to require that the misrepresentation was "material to a decision by one or more individuals to buy or sell covered securities." The *Troice* decision placed the focus on whether the victim acquired or sold, or attempted to acquire or sell, an "ownership interest in financial instruments that fall within the relevant statutory definition." In *Troice*, the Court held SLUSA does not apply where the victims of the misrepresentations only intended to acquire an ownership interest in uncovered securities. On the opposite end of the spectrum, the Second Circuit in *In re Herald*, 753 F.3d 110, Fed. Sec. L. Rep. (CCH) ¶ 97979 (2d Cir. 2014), held SLUSA applies where the victims only intended to purchase covered securities despite never actually acquiring ownership.

Here, plaintiffs argue SLUSA should apply because while the shares in the Fund itself constituted uncovered securities, the Fund intended to purchase some covered securities, although promising they would be no more than 25% of the Fund's total assets. The Court directed that in this situation "[t]he relevant questions include (but are not limited to) what the [F]und represents its primary purpose to be in soliciting investors and whether covered securities predominate in the promised mix of investments." Finding that the plaintiffs here intended to predominantly invest in uncovered securities, the Court held the connection between the alleged misrepresentations and the covered securities was too attenuated for SLUSA to apply.

*Hidalgo-Velez v. San Juan Asset Management, Inc.*, 758 F.3d 98, Fed. Sec. L. Rep. (CCH) ¶ 98020 (1st Cir. 2014).

## Second Circuit Holds Non-Citizens Employed Abroad are not Protected by Dodd Frank's Anti-Retaliation Provision for Events Occurring Outside the U.S.

On August 14, 2014, the U.S. Court of Appeals for the Second Circuit held the anti-retaliation protections of the Dodd-Frank Act, contained in 15 U.S.C. § 78u-6(h), do not apply to non-citizens who are employed abroad by a foreign company when all relevant events occurred extraterritorially.

Plaintiff, Liu Meng-Lin, a Taiwanese citizen, was employed outside of the United States by Siemens China Ltd. ("Siemens"), a Chinese corporation. Liu filed an internal report with Siemens alleging Siemens employees were making improper payments to North Korean and Chinese officials in violation of anti-corruption laws. Liu alleged that in response to his internal report he was demoted and then fired. None of the aforementioned events were alleged to have occurred within the United States. Two months after he was fired, Liu reported the misconduct to the SEC and filed this suit against Siemens alleging violation of the anti-retaliation provision of the Dodd-Frank Act.

The District Court granted Siemens' motion to dismiss and held (1) the anti-retaliation provision of the Dodd-Frank Act does not have "extraterritorial reach" and (2) "that Liu's complaint failed to establish that he made a disclosure to the SEC that was 'required or protected' by any of the specific statutes enumerated in 15 U.S.C. § 78u-6(h)(1)(A)(iii)."

The Second Circuit affirmed on the first ground, finding that "there is absolutely nothing in the text of the provision, set forth above, or in the legislative history of the Dodd-Frank Act, that suggests Congress intended the anti-retaliation provision to regulate the relationships between foreign employers and their foreign employees working outside the United States." The Court also found that the sole fact that a company's stock is traded on a domestic stock exchange does not overcome extraterritoriality. The Court declined to address whether internal reporting is protected by Dodd-Frank's anti-retaliation provision.

*Liu Meng-Lin v. Siemens AG*, 763 F.3d 175, 38 I.E.R. Cas. (BNA) 1640, Fed. Sec. L. Rep. (CCH) ¶ 98147 (2d Cir. 2014).

## Second Circuit Affirms Dismissal of Short-Swing Suit Involving Prepaid Forward Contracts

On July 11, 2014, the U.S. Court of Appeals for the Second Circuit held that retaining pledged, but not delivered, shares under a prepaid variable forward contract ("PVFC") is not a purchase under Section 16(b) of the 1934 Act. Accordingly, the Court affirmed the dismissal of the "short-swing" suit against two executives of Apollo Group, Inc. ("Apollo").

In 2006 and 2007, John and Peter Sperling, Apollo executives, entered into PVFCs to liquidate some of their Apollo shares. The PVFCs stated that on a set "Payment Date," the bank would issue cash to the defendants in exchange for a promise by the defendants to deliver a set amount of shares on the "Settlement Date." The number of shares to be delivered on the Settlement Date was to be determined by a formula set out in the PVFC that was dependent on the stock price three days before the Settlement Date. On the Payment Date, defendants were also obliged to deliver a set amount of shares to the bank as collateral but retained their voting and dividend rights. Within six months of the Settlement Date, defendants sold Apollo shares on the open market. Plaintiffs filed a claim against defendants alleging these transactions constituted a short-swing sale in violation of Section 16(b). Specifically, plaintiff argued that the defendants "sold" the shares delivered as collateral on the Payment Date and then "repurchased" the shares that remained undelivered on the Settlement Date. The District Court disagreed and held that a purchase under Section 16(b) did not occur on the Settlement Date because the defendants' rights became fixed upon entering the PVFC.

The Second Circuit affirmed, holding that defendants' retention of pledged, but not ultimately delivered, shares under a PVFC did not constitute a purchase within Section 16(b). The Court found that on the Settlement Date, the banks merely executed a call option created by the PVFC. The rights under this PVFC were "bought and sold at the time of contract" because it contained a fixed, despite unknown, price and fixed exercise date. The Court wrote that unlike with hybrid derivatives, there was no opportunity here for insider trading. Further, the Court reasoned that the proper matching dates to determine whether Section 16(b) was violated are the Payment Date and the Settlement Date. Thus, because there was no purchase and sale within a six month period, the Court found the defendants did not violate Section 16(b).

*Chechele v. Sperling*, 758 F.3d 463, Fed. Sec. L. Rep. (CCH) ¶ 98022 (2d Cir. 2014).

## SEC Settles with Schedule 13D/13G and Form 4 Late Filers; Announces New Aggressive Enforcement Initiative

On September 10, 2014, the SEC issued a press release announcing it had reached a $2.6 million settlement with 33 delinquent Form 4 and Schedule 13D and 13G filers it had identified through a new aggressive enforcement initiative.

Under the new initiative, charges were brought against 28 officers, directors, and significant shareholders for violating Federal securities laws stemming from their failure to timely file Forms 4 and Schedules 13D and 13G with the SEC. In addition, six publicly-traded companies were charged with contributing to these filing violations. The new initiative "used quantitative data sources and ranking algorithms to identify these insiders as repeatedly filing late." A total of 33 of the 34 individuals and companies charged agreed to settle the charges and pay civil penalties aggregating $2.6 million (with settlement amounts ranging from $25,000 to $100,000 for individuals and $60,000 to $150,000 for public companies and investment firms).

The SEC made clear in its announcement that it views late reporting as an area that warrants increased focus and resources. The Director of the SEC's Division of Enforcement, stated that the SEC brought "these actions together to send a clear message about the importance of these filing provisions" and that, in the future, the SEC intends to "vigorously police these sorts of violations through streamlined actions."

SEC Press Release 2014-190 (Sept. 10, 2014), *available at* http://

www.sec.gov/?News/?PressRelease/?Detail/?PressRelease/?1370542904678.