

SEC Issues Sanctions for Inadequate Perk Disclosure

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On July 2, 2018, the SEC issued an [order](#) criticizing an issuer's disclosure of executive perquisites and requiring the issuer to take measures to ensure that its future disclosures comply with SEC standards. The SEC staff alleged that, over the course of 2013 to 2016, annual proxy statements issued by The Dow Chemical Company omitted disclosure of about \$3 million worth of perquisites, including the use of the company aircraft and other expenses, which, according to the staff, should have been disclosed as "other compensation" to its named executive officers in the Compensation Discussion & Analysis (CD&A).

In a surprisingly strong response, the company was ordered by the SEC to retain an independent consultant for a period of one year to review the company's policies, procedures, controls and training relating to the characterization and disclosure of expense reimbursements and other payments as perks, and to adopt recommendations made by the consultant to ensure compliance with the SEC's rules governing perk disclosure. The company was also fined \$1.75 million and charged with violating Rule 14a-9, which prohibits materially false or misleading information in proxy statements. This proceeding, especially the terms of the settlement, serves as a loud reminder that the SEC takes executive compensation disclosure seriously, and will not hesitate to impose sanctions when it finds problems with a company's disclosure practices.

If you have any questions regarding the matters covered in this publication, please reach out to any of the lawyers listed below or your usual Davis Polk contact.

Beverly Fanger Chase

+1 212 450 4383
beverly.chase@davispolk.com

Ning Chiu

+1 212 450 4908
ning.chiu@davispolk.com

Jeffrey P. Crandall

+1 212 450 4880
jeffrey.crandall@davispolk.com

Edmond T. FitzGerald

+1 212 450 4644
edmond.fitzgerald@davispolk.com

Joseph A. Hall

+1 212 450 4565
joseph.hall@davispolk.com

Kyoko Takahashi Lin

+1 212 450 4706
kyoko.lin@davispolk.com

Linda Chatman Thomsen

+1 202 962 7125
linda.thomsen@davispolk.com

Veronica M. Wissel

+1 212 450 4794
veronica.wissel@davispolk.com

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