

## SEC announces enforcement sweep targeting late beneficial ownership and insider transaction reports

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In its latest enforcement sweep with the help of data analytics, the SEC settled charges with 23 stockholders and two public companies for reporting failures under Sections 13 and 16 of the Exchange Act.

### Background

On September 25, 2024, the SEC [announced](#) a “sweep” of enforcement actions against 23 entities and individuals for failing to timely file reports on their holdings and transactions in violation of Section 13 and Section 16 of the Securities Exchange Act of 1934 (Exchange Act). Additionally, two public companies settled claims for contributing to their officers’ and directors’ filing failures and for not disclosing their insiders’ filing delinquencies as required by SEC rules. The penalties ranged from \$10,000 to \$200,000 for individuals and \$40,000 to \$750,000 for public companies.

This is the second year in a row that the SEC has announced a series of Section 13 and Section 16 settlements on the eve of the end of its fiscal year, which runs through September 30. Last year, the SEC announced similar charges against six public company insiders and five public companies (see our prior client update [here](#)). The sweep is part of an ongoing enforcement initiative, launched in 2014, that focuses on these reporting requirements and habitual late filers in particular. The latest sweep is one of the largest to date in terms of the number of individuals and entities. In announcing the settlements, the SEC once again highlighted its use of data analytics to identify individuals and entities who filed late reports.

### Overview of reporting requirements

Section 16(a) of the Exchange Act requires “insiders” — i.e., officers and directors of a public company (other than a foreign private issuer), as well as beneficial owners of more than 10% of the company’s registered equity securities — to file statements of their beneficial ownership of the company’s equity securities, including any changes to their beneficial ownership.

Under Section 16(a), insiders must generally report their initial holdings on Form 3 within 10 calendar days of when the person becomes an insider. In addition, insiders must report most equity transactions (including purchases and sales, gifts and compensation-related transactions such as equity compensation grants) on Form 4 within two business days of the transaction. They also must report certain previously unreported transactions on Form 5 within 45 days after the end of the fiscal year.

Sections 13(d) and 13(f) of the Exchange Act have reporting obligations for individuals and institutional investors that acquire or manage significant equity holdings of any public company, including foreign private issuers. Any person or group that acquires beneficial ownership of more than 5% of a company’s equity securities must file a Schedule 13D within 5 business days of the acquisition, and must file amendments to reflect any material changes within two business

days. Investors with passive or limited investment intent may file the shorter Schedule 13G in lieu of Schedule 13D, subject to specific conditions. Institutional investment managers exercising discretion over accounts with equity securities valued at \$100 million or greater must submit quarterly reports on Form 13F.

## Latest enforcement actions

### Companies

The SEC brought enforcement actions against two issuers for contributing to filing failures by its insiders and failing to report delinquencies as required by Item 405 of Regulation S-K. The two issuers agreed to assist their insiders regarding the preparation and filing of Section 16(a) reports, including Form 4s, and the SEC found the issuers to have acted negligently when the insiders failed to timely file Form 4s. For example, in the three-year period between July 2019 and July 2022, one issuer's insiders filed more than 200 untimely Form 4s to report transactions related to, among other things, open-market stock sales and award grants of stock and options to officers and directors. In particular, the SEC noted that the issuer had disclosed the number of late Form 4s and the insiders involved, but failed to also disclose the number of late transactions in the issuer's SEC filings in violation of Item 405, which requires the disclosure of any late filing or known failure by an insider to file a report required by Section 16(a).

In addition to the issuers, thirteen companies settled violations of the beneficial ownership reporting requirements related to their ownership of other public companies. The SEC found the companies were frequently late in their Section 16(a) filings. Most of the late filings involved open-market sales or purchases, but a few involved trust conversion transactions. The SEC also cited entities for failure to comply with disclosure obligations to timely file a Schedule 13D after acquiring beneficial ownership of over 5% in a company.

The number of delinquent filings for which the SEC held the entities responsible for failing to file Form 4s on time ranged from 11 to 70. A majority of the actions involved transactions that were substantially late, ranging from several months to years, and involved a large number of violations. But one of the proceedings addressed filings that were only two weeks late. The SEC alleged reporting failures dating back to 2018 and 2019, a reminder that the SEC is prepared to pursue technical violations involving aged conduct in the context of a broader enforcement sweep.

### Insiders

The SEC filed settled proceedings against ten insiders, consisting of officers, directors and more than 10% beneficial owners of public companies. The alleged violations ranged from a single late filing to repeated delinquent filers with up to 121 late filings. The delinquent transactions involved open-market and private purchases and sales (including pursuant to Rule 10b5-1 trading plans), equity award grants, stock option exercises and other derivatives transactions. The length of the delinquencies ranged from less than one week to eight months.

## Recent history of Section 13 and Section 16 enforcement actions

The SEC's current sweep is the latest iteration in an enforcement initiative dating back ten years:

- In 2014, the SEC filed similar settlements against 34 insiders and companies based on violations of Section 13 and Section 16 reporting requirements.
- In 2015, the SEC asserted claims against eight insiders who were Schedule 13D filers, alleging the failure to timely amend their Item 4 disclosures to report "significant steps" they had taken in connection with a going-private transaction.
- In 2020, the SEC alleged violations by two insiders of the Section 16 reporting requirements.
- In September 2023, the SEC alleged violations by six public company insiders for not filing reports on time under Section 16, and three of these insiders also faced charges under Section 13.
- Additionally, five public companies were penalized for contributing to these filing failures or not disclosing the delinquencies in their proxy statements.

# Key takeaways

The latest sweep reflects the SEC's continuing focus on timely Sections 13 and 16 reporting by insiders and companies alike. Although the primary focus appears to be serial offenders with multiple late filings or reporting deficiencies, the SEC demonstrated that it will scrutinize reporting failures regardless of the number of untimely filings or the time period of the delinquency. The SEC also continues to tout its use of data analytics to identify reporting violations. Public companies and their insiders should consider the enforcement actions as a reminder that the SEC continues to review compliance with these requirements.

Public companies should closely monitor their compliance with the Section 13 and Section 16 reporting requirements, particularly in situations where they have agreed to assist their insiders with making timely filings. As we noted before, some steps companies could consider include:

1. Educating first-time insiders about the obligations and restrictions imposed on them by Section 16.
2. Confirming that the legal or compliance team is well supported and knowledgeable about Section 13 and Section 16 reporting requirements.
3. Reviewing and confirming information regarding brokers, financial advisors and estate planning advisors who may assist the insiders in their transactions involving company securities. Some of these professionals may be unfamiliar with these requirements.
4. Reviewing and confirming insiders' beneficial ownership holdings. D&O questionnaires should include detailed requests to help assist insiders provide comprehensive information regarding equity security ownership, including in estate planning vehicles.
5. Advising that companies who have insiders execute a power of attorney to permit the company to file Section 16 reports on their behalf should have multiple employees listed as having delegated authority in case an individual is unavailable.
6. Tracking insiders' Section 16(a) triggering events through a calendar of reporting events, such as future grant dates or vesting/settlement dates.
7. Closely tracking delinquent filings to ensure compliance with Item 405 disclosure requirements. If there are multiple delinquent filings, consider more proactively discussing the issue with those who are responsible for making such filings.

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