



## Client Alert: SEC Charges Corporate Insiders for Repeat Violations of Routine Reporting Requirements

By: [William P. Hubbard](#)

October 7, 2023

On September 27, 2023, the Securities and Exchange Commission (“SEC”) announced that it had brought charges against a number of reporting persons and issuers for failing to timely report information about the reporting persons’ holdings and transactions in issuer securities, in violation of Sections 13(d) and (g) and Section 16 of the Securities Exchange Act of 1934 (the “Exchange Act”).

As a reminder to our clients which are public companies, Sections 13(d) and (g) of the Exchange Act impose reporting requirements on persons or groups who own or acquire beneficial ownership of more than 5% of certain classes of equity securities of an SEC reporting company. A person who acquires more than 5% of a reporting company’s stock must file a Schedule 13D within ten days of such acquisition. Thereafter, such beneficial owner must promptly file an amendment to their Schedule 13D if any material change occurs to the information reported in the previously filed Schedule 13D (for example: acquiring or disposing of an amount equal to 1% or more of the issuer’s stock). The SEC has not defined “promptly” with specificity in this context. Certain “passive investors” who otherwise meet these criteria are eligible to file a Schedule 13G instead, which is a shorter form.

Section 16 requires the “insiders” of a reporting company – which include directors, executive officers, or owners of 10% or more of the reporting company’s stock – to report any transactions involving the reporting company’s securities. These reports are typically filed using a Form 4. A Form 4 must be filed within two business days of an insider’s acquisition or disposition of issuer securities.

In the present case, the SEC targeted offenders who repeatedly filed these forms late. The filings in question were delinquent by weeks, months or even years. Notably, the SEC charged not only the insiders subject to these reporting requirements, but also, in some cases, the issuer for contributing to the filing failures or failing to report the delinquencies. As another reminder, Item 405 of Regulation S-K requires an issuer to identify in its annual report on Form 10-K each insider who was delinquent during the year and to disclose, for each delinquent insider, the number of reports filed late, the number of transactions reported late, and any known failure to file a required report.



The recent enforcement actions by the SEC highlight the importance of timely filing these ownership reports. While missing one deadline by a day or two may seem immaterial, such delinquencies can add up. The SEC is sending a message that repeatedly failing to comply with these requirements will result in penalties to both insiders and issuers. Here, offenders were penalized with civil fines of up to \$200,000.

It is imperative that our public company clients be mindful of these requirements, have effective processes in place for making these disclosures, and keep TroyGould informed as to any recent or anticipated transactions involving insiders. If you would like assistance in reviewing or updating your company's policies with respect to these reporting requirements, please reach out to a member of your TroyGould team.

Please find the SEC's press release on this matter [linked here](#).

### **About TroyGould**

Celebrating over 50 years of success as one of Southern California's leading business law firms, TroyGould is recognized in the U.S. and abroad for its success in helping both U.S. and non-U.S. entities and individuals achieve their business goals. The firm's transactional and litigation clients range from emerging companies to middle-market and Fortune 500 companies across a diverse set of industries including life sciences, technology, entertainment/media, manufacturing, food and beverage, real estate, consumer products and health care. For more information, visit [TroyGould.com](http://TroyGould.com).