



SEC Charges Corporate Insiders in Going-Privates for Failing to Update Schedule 13Ds

Mar 23, 2015

Reading Time : **1 min**

Exchange Act Rule 13d-101 (the “Rule”), which sets forth the specific items covered in a Schedule 13D filing, requires filers to disclose “the purpose or purposes of the acquisition of securities of the issuer” in the Item 4 disclosure. The Rule further provides a list of plans or proposals that a reporting person may have that would trigger an Item 4 reporting obligation, including purchasing additional securities; causing an extraordinary corporate transaction, such as a merger, reorganization or going-private; and causing a class of securities of the issuer to be delisted from a national securities exchange.

The SEC alleges that the respondents each took a series of significant steps—such as engaging in preliminary discussions with legal and financial advisors, determining the form of the transaction, informing management of their intention to take the company private or forming a buyer group consortium—that, when viewed together, resulted in a material change that triggered the obligation to file an amendment to their last Schedule 13D filing.

These cases should serve as a reminder for those involved in potential going-privates to pay close attention to their preannouncement activities and whether they may be viewed by the SEC as constituting a material change that will trigger the obligation to file an amendment to a Schedule 13D.

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