

SEC Charges Carl Icahn and Icahn Enterprises L.P. for Failing to Disclose Pledges of Securities

August 21, 2024

On August 19, 2024, the U.S. Securities and Exchange Commission (the “SEC”) announced settled charges against Carl C. Icahn and his publicly traded company, Icahn Enterprises L.P. (“IEP”), for failing to disclose information relating to Mr. Icahn’s pledges of IEP securities as collateral to secure personal margin loans. Specifically, the SEC’s orders (the “Orders”) found that Mr. Icahn violated Section 13(d)(2) of the Securities Exchange Act of 1934, as amended (the “Exchange Act”) and Rule 13d-2(a) thereunder, and that IEP violated Section 13(a) of the Exchange Act and Rule 13a-1 thereunder. The Orders require IEP and Icahn to pay \$1.5 million and \$500,000 in penalties, respectively, and evidence the SEC’s continued focus on beneficial ownership disclosures by institutional investors, as well as the need for issuers to establish and maintain robust disclosure controls and procedures.¹

Background. Mr. Icahn is IEP’s founder and controlling shareholder and also serves as chairman of the board of directors of IEP’s general partner. Mr. Icahn and his wholly-owned entities also own approximately 60% of certain affiliated funds (the “IEP Funds”), with the remaining 40% owned by IEP.

According to the Orders, from December 2018 to December 2022, Mr. Icahn was a party to multiple margin loan agreements with various lenders with an aggregate outstanding principal amount ranging from \$4.6 billion to \$5.1 billion. To guarantee the obligations in the margin loan agreements, Mr. Icahn pledged IEP depositary units in amounts that ranged between 51% and 65% of all outstanding IEP units, as well as his interests in the IEP Funds. In addition, in July 2023, Mr. Icahn entered into an amended and consolidated margin loan agreement for a total outstanding principal amount of approximately \$3.7 billion, which resulted in his pledge of approximately 320 million IEP depositary units (or approximately 75% of the outstanding IEP units) and \$2 billion of his interests in the IEP Funds as collateral pursuant to an omnibus guaranty and security agreement.

¹ To read more on the SEC’s recent focus on Section 13 compliance, please see our Debevoise updates [here](#) and [here](#).

Analysis. Under Section 13(d) of the Exchange Act, a person (or group) who has acquired beneficial ownership of more than 5% of a registered class of equity securities must file a Schedule 13D within five business days after the acquisition and amend the filing within two business days of any material change to the disclosures included in the Schedule 13D. Item 6 of Schedule 13D requires a description of any contracts or other arrangements between the person filing the Schedule 13D and any person with respect to any securities of the issuer, including, among other things, “for any of the securities that are pledged.” Item 7 of Schedule 13D requires that copies of written agreements relating to the guarantees of loans disclosed in Item 6, among other types of agreements, be filed as exhibits to Schedule 13D.

Mr. Icahn and certain of his wholly-owned entities filed an initial Schedule 13D in respect of IEP on September 24, 1990. In 1995, 2003, and 2005, Mr. Icahn filed amendments to the Schedule 13D that generally disclosed that he and his affiliates had pledged certain IEP depositary units as collateral for personal margin loans, but failed to disclose the number of units pledged or describe the terms of the margin loan agreements. Notwithstanding that Mr. Icahn had pledged IEP depositary units as collateral for dozens of margin loans, the margin loan agreements were not disclosed in Item 6 until an amendment to the Schedule 13D filed on July 10, 2023 and the agreements were not filed as exhibits under Item 7 until an amendment to the Schedule 13D filed on July 5, 2024 that attached the omnibus guaranty and security agreement.

As a result, according to the Orders, Mr. Icahn violated Section 13(d)(2) of the Exchange Act and Rule 13d-2(a) thereunder by failing to file amendments to Schedule 13(d) to (i) reflect material changes to the facts reported under Item 6 in respect of his personal margin loan agreements that pledged IEP securities until July 2023 and (ii) include as exhibits under Item 7 the guaranty agreements relating to the margin loans.

In addition, Section 403(b) of Regulation S-K requires public companies to disclose information about the security ownership of its officers and directors in Form 10-K, including the amount of securities pledged by such individuals.

Given that Mr. Icahn was a director of the general partner of IEP and an executive officer of IEP, IEP was required to disclose the amount of IEP depositary units that Mr. Icahn pledged as collateral for personal indebtedness pursuant to Item 403(b). However, IEP failed to disclose Mr. Icahn’s various pledges of IEP securities until February 25, 2022, at which time it disclosed the pledged securities in its annual report on Form 10-K for the fiscal year ended December 31, 2021.

Takeaways. These enforcement actions demonstrate that the SEC continues to closely monitor compliance of Section 13(d) of the Exchange Act by institutional shareholders. In particular, the Orders reflect a focus on technical adherence to the line-item

requirements of Schedule 13D and reinforce the importance of evaluating whether amendments are required in light of changes in facts. The Orders also make clear that reliance by Section 13(d) reporting persons on disclosure of arrangements to their outside advisors does not excuse filing violations.

The Orders also serve as a reminder for issuers to recognize the importance of implementing and adhering to robust procedures and controls relating to disclosure obligations. Issuers and their counsel should ensure that information is solicited and collected from officers and directors on a regular basis (including through annual questionnaires) and then assessed in respect of the issuer's disclosure obligations.

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Please do not hesitate to contact us with any questions.



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