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INSIDER TRADING AND DISCLOSURE UPDATE

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From the Editors

Welcome to the latest installment of the Insider Trading & Disclosure Update, Debevoise's periodical focusing on the intersection of legal, compliance, and enforcement developments in the areas of insider trading, managing material non-public information, and disclosure liability.

The SEC's enforcement results for FY 2024 showed a 26% decline in the number of reported enforcement actions from FY 2023—the lowest in the last 10 years. Although disgorgement and penalties reached a new high of $8.2 billion, more than half that figure was attributable to a single case—the SEC's enforcement action against the bankrupt Terraform Labs.

In its press release announcing its enforcement results, the SEC emphasized its focus on "emerging threats" presented by, among other things, misstatements regarding artificial intelligence and fraudsters using social media to perpetuate relationship scams, as well as "evergreen investor risks such as material misstatements, deficient internal controls, and major gatekeeper failures." The enforcement actions highlighted in this edition of the Insider Trading & Disclosure Update reflect the SEC's and DOJ's focus on many of these issues. While material misstatements and accounting fraud are perennial matters of regulatory focus, with now former Chair Gensler's departure and new leadership incoming at the Agency, as well as the likely shift in enforcement priorities at DOJ with the new administration in place, many observers believe that the SEC and DOJ are less likely to continue to pursue more controversial efforts like blockbuster recordkeeping penalties, an aggressive rulemaking agenda or crypto enforcement.

We hope that you find this issue useful and informative, and we look forward to bringing you further news and analysis in the future.

The Editorial Board

Insider Trading Enforcement and Litigation

Michael Shvartsman Is Sentenced to 28 Months in Prison and a $1 Million Fine for Trump-SPAC Insider Trading Scheme

In April 2024, Michael Shvartsman and his brother Gerald Shvartsman each pled guilty to one count of criminal securities fraud in connection with their involvement in an alleged insider trading scheme relating to the merger of Digital World Acquisition Corporation ("DWAC") with Trump Media & Technology Group ("Trump Media"), a media company founded by President Donald Trump.[1] The Department of Justice (the "Department" or "DOJ") alleged that in October 2021, Michael Shvartsman and Gerald Shvartsman together generated illegal profits of approximately $22 million by trading DWAC securities based on material, non-public information ("MNPI") about DWAC's planned, but not yet public, merger with Trump Media.

Specifically, the Department alleged that Michael Shvartsman, who led a venture investment firm called Rocket One, and Gerald Shvartsman were invited to invest in DWAC. After signing a non-disclosure agreement, the defendants were allegedly given access to confidential information about DWAC's business plans, including details about its potential merger with Trump Media. Under the terms of the non-disclosure agreement, the defendants were allegedly prohibited from sharing the confidential information they received or using it to trade securities on the open market.

The Department alleged that the defendants purchased shares of DWAC through the initial public offering process and subsequently placed several associates on DWAC's board of directors. Through these associates, the defendants allegedly continued to access MNPI regarding DWAC's planned merger with Trump Media, including specific details regarding the timing of the public merger announcement. While in possession of this MNPI in violation of the non-disclosure agreement and in contravention of their associates' duties and responsibilities as board members, the defendants allegedly bought a large volume of DWAC securities leading up to the public announcement of the merger between DWAC and Trump Media. The defendants allegedly made more than $22 million in illegal profits as a result of this conduct.

In October 2024, U.S. District Court Judge Lewis Liman of the Southern District of New York sentenced Shvartsman to 28 months in prison and imposed a $1 million fine and forfeiture of all ill-gotten gains.[2] Judge Liman noted at sentencing that "insider trading is a serious crime" and that due to the difficulty of prosecuting insider trading cases, "the few cases that are prosecuted successfully require deterrence to send a message."

This case highlights the Department's focus on insider trading activity surrounding high-profile mergers.

Robert Westbrook Charged by the SEC and DOJ With Multimillion-Dollar Hack-to-Trade Fraud Scheme

On September 27, 2024, the Securities and Exchange Commission (the "SEC") and DOJ announced civil and criminal charges against Robert B. Westbrook, a citizen of the United Kingdom, in connection with a scheme to unlawfully obtain MNPI by gaining unauthorized access to the computer systems of five U.S. public companies.[3] Westbrook allegedly generated $3.75 million in illicit profits by trading on the basis of that MNPI.[4]

Specifically, from January 2019 through May 2020, Westbrook allegedly executed a "hack-to-trade" scheme through which, on at least five occasions, he gained unauthorized access to the Office365 email accounts of executives at various U.S.-based companies. Once Westbrook gained access to the compromised email accounts, he identified emails containing MNPI, including draft earnings releases, press releases, and scripts. In certain cases, Westbrook implemented or attempted to implement email auto-forwarding rules designed to automatically forward emails containing MNPI from the compromised email accounts to email accounts he controlled. That allowed Westbrook to continuously monitor the compromised email accounts over a long period of time while remaining undetected.

In advance of the targeted companies' public earnings announcements, Westbrook established significant and risky options positions in each company's securities based on the MNPI that he unlawfully obtained. Westbrook often sold out of those positions shortly after the public earnings announcements, generating substantial profits. In the course of the scheme, Westbrook went to great lengths to conceal his identity, including using anonymous email accounts, VPN services, and utilizing bitcoin.[5]

The SEC charged Westbrook with violating the antifraud provisions of the Securities Exchange Act of 1934, as amended (the "Exchange Act"), seeking civil penalties, disgorgement, and an order enjoining Westbrook from committing future violations. In a parallel proceeding, the U.S. Attorney's Office for the District of New Jersey charged Westbrook with securities fraud, wire fraud, and five counts of computer fraud.[6] The securities fraud count carries a maximum potential penalty of up to 20 years in prison and a fine of up to $5 million. The wire fraud count carries a maximum penalty of up to 20 years in prison and a fine of either $250,000 or twice the gain or loss from the offense, whichever is greatest. Each computer fraud count carries a maximum potential penalty of five years in prison and a maximum fine of either $250,000 or twice the gain or loss from the offense, whichever is greatest.

The case highlights the need to protect the data of high-level executives and employees who may have access to MNPI. It also reflects the Commission's use of advanced data analytics and technology to overcome Westbrook's attempts to hide his activity. We expect "hack-to-trade" schemes to remain a focus for both the SEC and DOJ.

Bed Bath & Beyond Accuses GameStop CEO of Insider Trading

On August 1, 2024, the bankrupt big-box housewares retailer once known as Bed Bath & Beyond Inc. ("BBBY") sued GameStop CEO Ryan Cohen and his company RC Ventures LLC to recover $47 million of profits from alleged "short-swing" purchases and sales and insider trading in 2022.[7] The lawsuit highlights the risk of private litigation under the short-swing profit rule stemming from the purchase and sale of an issuer's securities by the issuer's directors, officers and 10% beneficial owners within a six-month period.

In the complaint filed in the U.S. District Court for the Southern District of New York, BBBY accused Cohen and RC Ventures of making dozens of profitable purchases and sales of BBBY stock from January through August 2022, mostly within a single period of less than six months.

According to the complaint, about a year before BBBY's Chapter 11 bankruptcy filing, Cohen began buying BBBY stock through open-market purchases and call options, acquiring 9,450,100 BBBY shares by March 2022 when the Cohen defendants disclosed their large stake in a Schedule 13D filing. BBBY claimed that, at the time, Cohen sent a letter to the company's board of directors criticizing its management of the company and offering four "suggestions," including a potential spin-off of a BBBY subsidiary. According to the complaint, the board responded by expanding its 11-member board to 14 and allowing Cohen to fill the three vacancies in exchange for the Cohen defendants refraining from waging a proxy contest or owning more than 19.9% of BBBY's common stock.

BBBY alleged that the Cohen defendants were statutory directors of BBBY for purposes of Section 16(b) since they deputized the Cohen appointees to serve as their representatives on BBBY's board. Although Cohen did not have a formal confidentiality agreement with BBBY, under their agreement, Cohen and his business were required to acknowledge that the U.S. securities laws "may" prohibit insider trading. BBBY claimed that in their roles as directors, the appointees secured the Cohen defendants' access to and influence over BBBY's management, and through the appointees, the defendants received significant material nonpublic information about BBBY. BBBY alleged that, although Cohen did not personally join BBBY's board, all three Cohen appointees urged the board to give Cohen more influence and access. For example, Cohen appointee Marjorie Brown allegedly pressed the BBBY board to provide Cohen with advance access to material nonpublic information about BBBY through a nondisclosure agreement. Moreover, Cohen appointee Ben Rosenzweig allegedly told BBBY management that he would "be representing [Cohen] as if [he] owned the 10%[himself]." The suit alleged that Cohen and his company used this influence and access to sell all of their BBBY shares on the market by August 2022.

Additionally, BBBY alleged that although Cohen claimed in the Schedule 13D filing to have held only 9.8% of BBBY's shares outstanding in March 2022, he calculated the 9.8% percentage based on a "stale" November 2021 share count predating the company's large and publicly disclosed share buyback, and the company's true March 2022 share count would have caused the Cohen defendants' beneficial ownership calculation to be above 10%.

On December 9, 2024, the defendants moved to dismiss the case arguing, among other things, that Section 16(b) does not apply since the Cohen defendants were only statutory insiders at the time of sale but not at the time of purchase.[8] The motion to dismiss remains pending before the court.

SEC Announces Settled Insider Trading Charges Against Public Company Officer and Sister-In-Law

On January 13, 2025, the SEC settled charges with Alfred Tobia, the former president and chief investment officer of one public company and board member of another public company, for insider trading violations. The SEC alleged that Tobias obtained material nonpublic information about corporate transactions in the course of his roles with these public companies and, in breach of his fiduciary duties, tipped his sister-in-law who then traded on the information. Tobia's sister-in-law, Elizabeth Lee, also settled charges for her involvement, which allegedly led to a total of approximately $428,000 in illegal gains.[9]

Tobia allegedly tipped Lee in 2021 about his company's plan to make an offer to acquire all of Spok Holdings Inc.'s ("Spok") outstanding shares. The SEC found that Lee promptly purchased stock in Spok after the tip. Shortly after Tobia's company announced its offer to Spok, the price of Spok's shares increased by approximately 26 percent, and Lee allegedly sold all of her Spok shares two days later, generating $262,000 in profit.

The SEC also alleged that while serving as a board member for another public company, Tobia learned material nonpublic information about PFSWeb, Inc's ("PFSWeb") sale of one of its business units. Tobia allegedly shared the information with Lee, prompting her to buy 60,000 shares of PFSWeb. Lee sold the shares shortly after PFSWeb's announcement, gaining $166,000 from the sale.

Without admitting or denying the SEC's allegations, Tobia and Lee agreed to pay civil penalties of $785,020 and $576,955, respectively. Tobia also agreed to be barred from serving as an officer or director of a public company for five years. This case serves as a reminder that the SEC is committed to pursuing corporate insiders who abuse their positions by sharing material nonpublic information, regardless of whether they do so to benefit themselves or others.

Disclosure Enforcement and Litigation

Fashion Retailer Cooperates With SEC and Settles Without Civil Penalty

On December 17, 2024, the SEC settled charges with fashion retailer Express, Inc. ("Express") for failing to disclose executive compensation that the company paid to its former CEO.[10] The SEC found that from 2019 to 2021, Express failed to disclose over $900,000 of perquisites (also known as perks) provided to its CEO, including use of the company-chartered aircraft for the CEO's personal purposes.

For SEC compensation disclosure purposes, a perquisite or personal benefit is defined as any item that "confers a direct or indirect benefit that has a personal aspect, without regard to whether it may be provided for some business reason, … unless it is generally available on a non-discriminatory basis to all employees."[11] According to the SEC's order, Express had a process to identify, track, and calculate perquisites, but the process incorrectly applied a standard that accepted any business purpose as sufficient to determine that certain items were not perquisites requiring disclosure. The SEC found that Express incorrectly viewed the CEO's business expenses to include expenses associated with the CEO's personal flights, including transportation, meals, and hotel. Express paid these expenses but did not disclose these expenses as perquisites.

While the company did disclose certain benefits under "All Other Compensation" for the CEO, the SEC found that Express's proxy statements failed to disclose $979,269 worth of perquisites over a three-year period. This caused an understatement to the "All Other Compensation" portion of Express's Named Executive Officers' compensation by an average of 94% over the three years.

The SEC's order found Express violated reporting and disclosure obligations under Sections 13(a) and 14(a) of the Exchange Act. Sanjay Wadhwa, acting director of the SEC's Division of Enforcement, emphasized that "[p]ublic companies have a duty to comply with their disclosure obligations regarding executive compensation, including perks and personal benefits, so that investors can make educated investment decisions."[12] However, this case is also a reminder that cooperation can significantly reduce penalties. The SEC declined to impose a civil penalty on Express based, in part, on the company's self-reporting, cooperation with the SEC's investigation, and remedial efforts.

SEC Settles Charges Against Flagstar for Misleading Investors About Cyber Breach

On December 16, 2024, the SEC settled charges against Flagstar Financial, Inc. ("Flagstar") based on its finding that Flagstar made materially misleading statements about a cybersecurity breach of the company's Citrix network in late 2021 (the "Citrix

Breach") and that it failed to maintain adequate cybersecurity-related disclosure controls and procedures.[13] The settlement follows a number of similar actions brought by the SEC relating to deficient cybersecurity disclosures and related controls, including the SEC's enforcement action against four technology companies that had been downstream victims of the 2020 SUNBURST cyber-attack.

According to the SEC order, the Citrix Breach was caused by a threat actor that obtained unauthorized access to Flagstar's platform that resulted in, among other things, the encryption of data, network disruptions, and the exfiltration of the personally identifiable information ("PII") of approximately 1.5 million individuals, including customers.

The SEC found that in the aftermath of the Citrix Breach, Flagstar negligently made materially misleading statements when it stated in its Form 10-K that cybersecurity attacks "may interrupt our business or compromise the sensitive data of our customers," without any reference to the Citrix Breach or any other cyberattacks the company had experienced. The SEC also found that Flagstar made materially misleading statements concerning the scope of the Citrix Breach in a June 17, 2022 notice to customers posted on its website and in its Form 10-Q for Q2 2022, wherein Flagstar disclosed that there was unauthorized "access" to its network and customer data, despite being aware that the breach had disrupted several of its network systems and that customer PII was exfiltrated from its network. Finally, the SEC found that Flagstar failed to maintain adequate disclosure controls and procedures for cybersecurity incidents that would ensure that relevant information to assess materiality was considered by disclosure decision makers to allow timely decisions regarding potentially required disclosure. In particular, the order highlighted the SEC's finding that, while Flagstar's disclosure decision makers received regular updates on the incident, "Flagstar's cybersecurity procedures and controls lacked guidance on what factors to consider in assessing materiality for purposes of disclosure, which disclosure decision makers were responsible for making the materiality assessment, and how that assessment was to be documented and/or communicated to management."

According to the SEC's order, Flagstar's conduct violated Section 17(a)(2) of the Securities Act and Section 13(a) of the Exchange Act, and various rules thereunder. Without an admission or denial of the findings in the order, Flagstar agreed to cease and desist from committing or causing any violations of these provisions and to pay a $3.55 million civil money penalty.[14]

The settlement is a reminder that companies should regularly review and revise risk factors to reflect emerging risks and actual incidents. In particular, companies should avoid hypothetical descriptions of risks that have, in fact, materialized. Companies should also assess disclosure controls and procedures to ensure that lines of communication between technical and legal personnel, and disclosure decision makers, are established—and that there are clear guidelines for the assessment and documentation of materiality.

For additional information on cybersecurity disclosure and other data security and strategy matters, subscribe to our Data Blog here.

Kiromic BioPharma Avoids Civil Penalties for Misleading Statements Through Cooperation and Remediation Efforts

On December 3, 2024, the SEC filed settled enforcement actions against clinical-stage biotherapeutics company Kiromic BioPharma, Inc. ("Kiromic") and the company's former CEO, Maurizio Chiriva-Internati, and former CFO, Tony

Tontat, arising from alleged misrepresentations made by the company and its officers concerning the FDA status of certain pharmaceutical products the company was developing.[15]

In May 2021, Kiromic submitted "novel Investigational New Drug" FDA applications ("IND") for two cancer drugs – ALEXIS-PRO-1 and ALEXIS-ISO-1 (the "ALEXIS applications").[16] Kiromic anticipated receiving FDA feedback within 30 days and starting the clinical trial process in the third quarter of 2021. However, according to the SEC, Kiromic received notice on June 16, 2021 that the FDA had placed a "clinical hold" on ALEXIS-PRO-1, delaying the clinical investigation due to Kiromic's "grossly deficient" submission. Kiromic received notice on June 17, 2021 that the FDA had also placed ALEXIS-ISO-1 on clinical hold. Kiromic's Chief Medical Officer ("CMO") informed Chiriva-Internati about the clinical holds on June 16 and June 17 and recommended that Kiromic disclose the holds to investors. Chiriva-Internati replied to the CMO, acknowledging his agreement.

Kiromic's Board of Directors met on June 22, 2021 to discuss the FDA's communications concerning the ALEXIS applications. Chiriva-Internati informed the Board of Directors that the FDA requested 30 additional days to conduct a "secondary review" of the applications and that the applications were "on halt" until Kiromic received additional questions from the FDA. The SEC found that Chiriva-Internati's communications to the board were imprecise, potentially because Chiriva-Internati is not a native English speaker, and that some who attended the meeting may not have fully understood the hold status of the ALEXIS applications.

The SEC also found that during due diligence for a potential public offering of company stock, Kiromic executives, including Chiriva-Internati and Tontat, made multiple misstatements regarding the status of the ALEXIS applications to underwriters, lawyers, and auditors conducting due diligence, and to investors during roadshow presentations. The SEC found that Chiriva-Internati and Tontat made these misstatements despite understanding that the FDA's response to the ALEXIS applications and the subsequent clinical trial timelines were material.

Kiromic filed a Form S-1 on June 25, 2021 in connection with the public offering of company stock and filed a related final prospectus on June 30, 2021. According to the SEC, Kiromic failed to disclose, in either these filings or during due diligence calls, that the ALEXIS applications had been placed on hold. Instead, the Company disclosed a hypothetical risk that if the FDA was to impose "a clinical hold, trials may not recommence without FDA authorization and then only under terms authorized by the FDA." The Company's disclosures further indicated that the company "cannot be sure that submission of an IND will result in the FDA allowing clinical trials to begin, or that, once begun, issues will not arise that suspend or terminate such trials," and they reiterated that Kiromic expected the clinical trial phase for both drugs to start in the third quarter of 2021.

On July 13, 2021, Kiromic received letters from the FDA providing additional details on the clinical holds. On July 16, 2021, the company issued a press release stating that the FDA had "returned with comments" on the ALEXIS applications but did not specifically mention the "clinical holds." The SEC found that Kiromic's Q2 2021 Form 10-Q, filed on August 13, 2021, also failed to disclose the clinical holds, although in a Form 8-K filed the same day, Kiromic mentioned that it had applied for a meeting with the FDA to "address the clinical hold issues."

In August 2021, Kiromic received two anonymous complaints concerning the clinical hold disclosures. Kiromic's Board of Directors formed a Special Committee, engaged outside counsel to investigate, and voluntarily self-reported the issues to the SEC. The investigation determined that Kiromic had knowledge of the clinical holds as of June 16 and 17, 2021 and failed to disclose that information before making the stock offering or filing its Form 10-Q. Based on the results of the investigation, Kiromic undertook remedial measures including appointing an interim CEO, establishing a Disclosure Committee, and appointing two new independent directors. Kiromic also terminated Chiriva-Internati for cause.

The SEC found that Kiromic violated Sections 17(a)(2) and 17(a)(3) of the Securities Act, and Section 13(a) of the Exchange Act and various rules thereunder. However, based on Kiromic's self-reporting, cooperation, and remediation efforts throughout the investigation, the SEC settled the charges without requiring Kiromic to pay a civil penalty.[17] Kiromic cooperated, in part, by providing sworn declarations and the testimony of foreign-based witnesses.[18]

Separately, the SEC charged Tontat and Chiriva-Internati with violating Section 13(a) and 17(a) of the Exchange Act and various rules thereunder for the material misstatements and omissions in Kiromic' S-1 filing, roadshow presentation and its Form 10-Q.[19] Chiriva-Internati and Tontat agreed to pay civil penalties of $125,000 and $20,000, respectively, to settle the charges. Chiriva-Internati also agreed to be barred for three years from serving as an officer or director of a public company.

Keurig Settles With SEC in Greenwashing Action

On September 10, 2024, the SEC charged Keurig Dr Pepper Inc. ("Keurig") with making inaccurate statements in the company's 2019 and 2020 annual reports concerning the recyclability of its single-use coffee pods.[20]

In 2016, Keurig began testing the curbside recyclability of its coffee pods. During the testing process, Keurig used tracking chips to follow pods through the recycling process at multiple recycling facilities in the United States and Canada. Tests indicated that the pods could be successfully separated from other recyclable materials, a key step in order for the pods to be processed for reuse. However, according to the SEC, during the testing process, two large recycling companies representing over one-third of U.S. facilities expressed concern about the actual feasibility of recycling the Keurig pod materials and indicated that they would not accept the pods at their facilities.

Despite this negative feedback, Keurig stated in its 2019 Form 10-K that the company had "conducted extensive testing with municipal recycling facilities to validate that [pods] can be effectively recycled."[21] Keurig also included this language in its 2020 Form 10-K, where the company added, "[w]e continue to engage with municipalities and recycling facilities to advance the quantity and quality of recycled polypropylene and have committed $10 million toward the advancement of polypropylene recycling in the US."[22]

The SEC found Keurig's statements regarding the recyclability of its coffee pods to be incomplete and inaccurate, as they did not mention the negative feedback Keurig received concerning the actual feasibility of recycling the pods.[23] The SEC charged Keurig with violating Section 13(a) of the Exchange Act and Rule 13a-1 thereunder and ordered Keurig to pay a civil money penalty of $1.5 million, highlighting the SEC's recent focus on "greenwashing"[24] cases, an enforcement area that may be deemphasized in the Trump administration.[25]

Second Circuit *Macquarie* Suit Moves Forward Notwithstanding Supreme Court Decision

As discussed in the July 2024 issue of this Update, on April 12, 2024, the Supreme Court in *Macquarie Infrastructure Corp v. Moab Partners, L.P.*[26] held that pure omissions are not actionable under Rule 10b-5(b). The case centered around Moab Partners, L.P.'s claims under Rule 10b-5(b) alleging that Macquarie Infrastructure Corporation failed to disclose the impact of IMO 2020, a United Nations regulation capping the sulfur content of fuel oil used in shipping, on one of its top performing subsidiaries that operated liquid storage terminals for commodities and other oil products.

The Court held in *Macquarie* that Rule 10b-5(b) does not support a "pure omissions" theory based on an alleged failure to disclose material information required by Item 303 of SEC Regulation S-K (Management's discussion and analysis of financial condition and results of operations, or "MD&A"). Instead, a "*failure to disclose information required by [MD&A] can support a Rule 10b-5(b) claim only if the omission renders affirmative statements made misleading*." The Court's decision does not foreclose future plaintiffs from bringing omissions-oriented private litigation claims concerning Item 303 of Regulation S-K under a "halftruths" theory—i.e., that the information omitted from MD&A renders other affirmative statements misleading. Further, pure omissions-based private litigation claims remain viable under Section 11 of the Securities Act, and, of course, issuers remain subject to SEC enforcement activity tied to alleged omissions from MD&A, as well as to SEC review of and comment on public disclosures.

On remand, on October 1, 2024, the Court of Appeals for the Second Circuit found that the Supreme Court's decision in *Macquarie* holding that "pure omissions" are not actionable under Rule 10b-5(b) required reconsideration of count one of Moab's claims, which alleged violations of Section 10(b) of the Exchange Act and Rule 10b-5(b) thereunder for failing to disclose the impact of IMO 2020. Regarding count one, the Second Circuit concluded that *Macquarie* (1) did not disturb its analysis regarding claims under Rule 10b-5(b) using the "half-truths" theory and (2) required dismissal of the claims under Rule 10b-5(b) relying on a "pure omissions" theory. The Second Circuit also concluded that *Macquarie* did not disturb its previous analysis with respect to the remaining five counts which alleged violations that did not include Section 10(b) of the Exchange Act or Rule 10b-5(b) thereunder. While we continue to monitor litigation in the wake of *Macquarie*, other federal courts have cited to *Macquarie*[27] in their opinions, with varying outcomes, and the Second Circuit has relied on *Macquarie* in dismissal of a putative class action.[28]

For further discussion, see our Debevoise Update here.

Accounting Enforcement

Former WWE CEO Settles SEC Charges for Hiding Agreements Entered on Behalf of the Company

Former Executive Chairman and CEO of World Wrestling Entertainment, Inc. ("WWE"), Vince McMahon, settled charges with the SEC in January 2025 for circumventing WWE's system of internal accounting controls and causing material misstatements in WWE's 2018 and 2021 financial statements by failing to disclose two settlement agreements to the company.[29]

The SEC found that McMahon signed two settlement agreements, one in 2019 and one in 2022, on behalf of himself and the WWE, without disclosing the agreements to the WWE's Board of Directors, legal department, accountants, financial reporting personnel or auditor. According to the SEC's order, each agreement involved McMahon making payments with his own personal funds to individuals in exchange for their release of potential claims against McMahon and WWE. The first agreement involved a $3 million payment in exchange for a former employee's silence regarding her relationship with McMahon. The second agreement provided an independent contractor $7.5 million in exchange for her silence involving allegations against McMahon. The SEC found that WWE never evaluated the disclosure implications or appropriate accounting for these transactions in their financial statements because McMahon failed to disclose the agreements to WWE.

According to the SEC, WWE's failure to record these payments from McMahon's personal funds in 2019 and 2022 caused WWE to overstate its net income by 8 percent in 2018 and by 1.7 percent in 2021.[30] Further, the SEC noted that these payments were never disclosed as related party transactions nor were they disclosed to the company's auditors despite McMahon's signature on management representation letters stating, among other representations, that "relevant information regarding financial interests and contractual arrangements, if any, with related parties" had been made available to the auditors.[31] As a result, the SEC found that McMahon violated the Exchange Act and caused WWE's violations of the reporting and books and records provisions of the Exchange Act.[32] McMahon agreed to pay a $400,000 civil penalty and reimburse WWE $1.3 million pursuant to Section 304(a) of the Sarbanes-Oxley Act.

This case is a reminder that executives who withhold information about, or make false statements regarding, material agreements entered into on behalf of a company are circumventing internal accounting controls—putting themselves and their companies at risk of SEC enforcement, civil litigation and significant penalties. These risks exist even if the agreement is also entered into by the individual for personal reasons and involves only personal funds.

SEC Settles Accounting and Disclosure Fraud Charges Against Acreage

On January 10, 2025, the SEC settled charges against cannabis company Acreage Holdings, Inc. ("Acreage") for books and records violations based on its temporary transfer of funds into the company's year-end accounts for the sole purpose of inflating year-end cash.[33]

The SEC found that, in late December 2019 and early January 2020, Acreage engaged in a round-trip transfer of cash with an affiliated but unconsolidated entity ("Entity A"), which temporarily inflated Acreage's year-end 2019 cash balance in its internal accounting records. The SEC found that on or about December 24, 2019, Acreage officers directed Entity A's CEO to send all of Entity A's cash to Acreage with an assurance that Acreage would return the money in early January 2020. Shortly before Acreage's fiscal year-end on December 31, 2019 ("FY 2019"), Entity A transferred essentially all of its cash, approximately $4.2 million, to Acreage's bank account, increasing Acreage's existing cash balance as of December 31, 2019 by approximately 15%, with the understanding that Acreage would return the money in early January 2020. The SEC also found that Acreage subsequently created false records that mischaracterized the round-trip transfer, first as repayment of debt and later as a short-term loan. After employees raised concerns about the round-trip nature of the transaction to Acreage's board, Acreage recorded an additional journal entry that effectively reversed the transaction from an accounting perspective, and the money that Acreage had received from Entity A was not included in Acreage's publicly reported financial statements for FY 2019. The SEC found that the cash transfer was not a bona fide repayment of debt that Entity A owned Acreage, as both parties understood that the money would be in Acreage's bank account for just a few days.

Furthermore, the SEC found that during the audit of Acreage's FY 2019 financial statements, Acreage created and provided written documents to the company's auditors that misrepresented and omitted material facts about the round-trip cash transfer. The SEC found that an Acreage officer falsely stated in an email that the cash transfer that Acreage received from Entity A in December 2019 was "for repayment of an outstanding loan and management fee" but that the transfer was "determined to be an incorrect cash payment made at the [Entity A] level," and the "money was returned to [Entity A] on January 2, 2020 once the error was identified." Additionally, Acreage then provided the audit firm with a management representation letter in connection with the FY 2019 audit, which referenced the Acreage officer's earlier email and stated "[e]xcept as discussed in a memo provided to you on May 28, 2020, we have not received any communications, nor do we have knowledge of any fraud, allegations of fraud or suspected fraud affecting Acreage involving" management, employees who have a significant role in internal control or others. The SEC found both the email and letter to be materially false and misleading.

As a result of these findings, the SEC charged Acreage with violating Section 13(b)(2)(A) of the Exchange Act. Without an admission or denial of the findings in the order, Acreage agreed to cease and desist from committing or causing any violations of these provisions and to pay a $225,000 civil money penalty.

This case is a reminder of the SEC's commitment to pursuing violations of the record keeping provisions of the Exchange Act, even when such violations do not have an impact on SEC filings.

Energy Company Settles Internal Control Charges With SEC

On December 20, 2024, the SEC announced settled charges against Entergy Corporation ("Entergy") alleging that for six years the company failed to maintain adequate internal accounting controls to ensure that its surplus materials and supplies were accurately recorded.[34] According to the SEC's complaint, since at least 2018, Entergy knowingly recorded materials and supplies as assets on its balance sheet at their average cost and ignored employees and consultants who identified a substantial portion of the assets as aged materials and supplies that exceeded the company's future use or maximum stocking levels and therefore should have been expensed in accordance with U.S. generally accepted accounting principles ("GAAP").[35]

GAAP requires that materials and supplies be evaluated for remeasurement where evidence indicates surplus or limited-service potential. The SEC alleged that Entergy failed to establish a process to identify surplus, remeasure it, and record any differences between its average cost and remeasured cost as an expense, despite having information that the asset was "slow-moving, aged, and potentially in excess of its business needs."

In 2021, to address its slow-moving and aged materials and supplies, Entergy established a reserve for an anticipated write-down of surplus and obsolete materials and supplies. However, the SEC alleged that the reserved amounts were not derived from an analysis of the potential surplus that had been identified by the company's consultants, and that company employees suggested a significantly larger reserve for disposing of the potential surplus. The SEC alleged that Entergy's process for evaluating its recorded materials and supplies was inadequate because it failed to provide reasonable assurance that surplus was timely identified, measured, and reported in accordance with GAAP.

The SEC's complaint alleged violations of the internal accounting controls and books and records provisions of Section 13(b)(2)(A) and 13(b)(2)(B) of the Exchange Act. Without admitting or denying the allegations in the SEC's complaint, Entergy consented to the entry of a final judgement and agreed to pay a $12 million civil penalty.[36] This action highlights the obligation public companies have to develop and maintain comprehensive control processes that rely on data analysis and address all relevant inputs to provide adequate assurance of compliance with GAAP.

UPS Settles Charges For Failing to Impair Goodwill

In November 2024, the SEC announced settled charges against United Parcel Service, Inc. ("UPS") for materially misrepresenting its earnings based on the SEC's finding that the company failed to take an appropriate goodwill impairment charge for its UPS Freight unit, which was responsible for transporting "less-than-truckload" shipments.[37] In 2019, UPS conducted an analysis to determine whether the company should sell the UPS Freight unit and found the unit would likely sell for no more than approximately $650 million. The SEC found that UPS's analysis should have prompted UPS to recognize an impairment of approximately $500 million of goodwill associated with UPS Freight and to record a material change to income.[38] However, UPS did not record any impairment following the analysis.

In preparation for its annual goodwill impairment testing, prior to 2019, UPS hired an external consultant to prepare valuation estimates for UPS Freight. The SEC found the consultant's valuation estimates were based on methods that did not accurately reflect UPS Freight's fair value because it used financial information and assumptions provided or approved by UPS that market participants, such as a prospective buyer, would not use. The SEC alleged that UPS gave the consultant "aggressive assumptions about revenue and future profit growth." The consultant valued UPS Freight at $2 billion and UPS determined that UPS Freight's goodwill was not impaired and continued to carry UPS Freight on its balance sheet at $1.4 billion. In 2021, UPS sold UPS Freight to TFI International for $800 million.

The SEC charged UPS for violating Sections 17(a)(2) and (3) of the Securities Act, the reporting, book and records, internal accounting controls, and disclosure controls provisions of the Exchange Act, and various related rules. Commenting on the settlement, the SEC staff emphasized that "it is essential for companies to prepare reliable fair value estimates and impair goodwill when required" because "goodwill balances provide investors with valuable insight into whether companies are successfully operating the businesses they own."[39] UPS agreed to pay a $45 million civil penalty, to adopt training requirements for certain officers, directors and employees, and to retain an independent compliance consultant to review the company's policies, procedures, and controls relating to fair value estimates, goodwill impairment testing and public disclosure obligations.

The case is a reminder that companies must maintain robust internal controls and procedures that provide reasonable assurances that they are appropriately considering reliable indicia of a business unit's fair value. The SEC noted that impairment loss "can have a significant impact on an entity's financial results," and this case demonstrates the potentially stiff consequences of being charged with alleged failures relating to fair value measurements.[40]

Furniture Retailer, CFO and Controller Charged in Scheme to Conceal Shipping Expenses

On October 29, 2024, the SEC announced charges against furniture retailer, The Lovesac Company ("Lovesac"), Lovesac's former CFO, Donna Dellomo, and Lovesac's former controller, Yoon Um, related to the company's alleged failure to appropriately accrue and record certain shipping expenses.[41]

According to the SEC's complaint, in April 2023, Lovesac employees discovered that approximately $2.2 million of last-mile shipping expenses incurred during fiscal year 2023[42] had been improperly recorded in the first quarter of fiscal year 2024.[43] On April 23, 2023, Dellomo emailed several Lovesac accounting and finance personnel acknowledging that the $2.2 million in shipping expenses would cause Lovesac's first quarter gross margin to be lower than previously disclosed expectations. Dellomo further discussed the issue with Lovesac finance and accounting personnel, including Um, on April 25, 2023.

That same day, Um stated in a Microsoft Teams chat to another Lovesac employee that she could not justify reversing the shipping expenses. Um discussed the issue with multiple other Lovesac accounting personnel, one of which told Um that reversing the shipping expenses would be a "giant black eye for the auditors to pick out." Yet, despite these hesitations, on April 26, 2023, Dellomo and Um allegedly agreed to capitalize the shipping expenses over the last three quarters in fiscal year 2024. Um then communicated with a Lovesac FP&A employee to confirm that this accounting treatment would allow the company to meet its first quarter gross margin projections.

Lovesac filed its Q1 2024 Form 10-Q on June 9, 2023, reporting a gross margin of 50.1% as originally projected.[44]

On June 13, 2023, a Lovesac employee reported the issue to the company's external auditor, and Lovesac opened an internal investigation.[45] On August 16, 2023, Lovesac filed a Form 8-K stating that its 2023 financial statements and its Q1 2024 Form 10-Q could no longer be relied upon, and the company subsequently restated its financials for these periods.

According to the SEC's complaint, Lovesac's 2023 Form 10-K, Form 8-K announcing the 2023 financial results, Q1 2024 Form 10-Q, and Form 8-K announcing the Q1 2024 financial results were materially misstated as a result of Dellomo and Um's misconduct. Additionally, the SEC alleges that Dellomo falsely certified Lovesac's Q1 2024 Form 10-Q and misled Lovesac's outside auditors by failing to provide information on the shipping expenses issue and by making false statements in the management representation letter.

As a result of the conduct above, the SEC charged Lovesac with fraud in the offer or sale of securities, material misstatements or omissions in periodic or other reports, and books and records and internal accounting control violations. Lovesac agreed to pay $1.5 million to settle these charges with the SEC without admitting or denying the SEC's allegations.[46]

Furthermore, the SEC charged Dellomo and Um with fraud in the offer, purchase or sale of securities, books and records and internal accounting control violations, and aiding and abetting Lovesac's material misstatements or omissions in its current and periodic reports.

Lovesac announced via a Form 8-K filed on June 7, 2023, that Dellomo would be retiring from her position as CFO, effective June 30, 2023. However, Dellomo remained working as a strategic consultant for Lovesac until June 2024.[47] Um agreed to resign from Lovesac in July 2023. The SEC's case against Dellomo and Um is currently ongoing.

SEC Settles With Government Contractor Over Revenue Recognition Violations

An Alabama-based shipbuilder, Austal USA, and its Australia-based parent company, Austal Limited, settled accounting fraud charges with the SEC and DOJ in August 2024.[48] The complaint alleged that, from January 2013 to July 2016, Austal USA misled Austal Limited's shareholders, auditors, and the public by engaging in a scheme to artificially reduce by tens of millions of dollars the estimated cost to complete certain shipbuilding projects for the U.S. Navy to meet the company's revenue projections.

The SEC alleged that Austal USA lowered shipbuilding cost estimates arbitrarily, despite knowing its costs were rising and higher than planned. Specifically, the SEC alleged Austal USA artificially suppressed the "estimate at completion" ("EAC") metric in relation to Littoral Combat Ships that Austal USA was building for the Navy.[49] According to the SEC, the EAC was manipulated by using "program challenges," which were false numbers created to hide growing shipbuilding costs.

The SEC alleged that suppressing the EACs caused Austal USA to overstate its profitability related to the shipbuilding and Austal Limited's earnings reported in its public financial statements. The SEC noted that Austal Limited's premature revenue recognition helped the company meet or exceed analyst estimates of earnings before interest and tax (EBIT).[50] When the higher costs were eventually disclosed to the market, the SEC alleged that Austal Limited wrote down over $100 million, which had a significant negative impact on the company.[51]

The SEC's complaint charged Austal Limited and Austal USA with violations of the antifraud provisions of the Exchange Act.[52] Each entity consented to permanent injunctions, and Austal USA agreed to pay a $24 million civil penalty.[53] The Department of Defense remarked that this action is meant to "send a clear message to DoD contractors of our unwavering resolve to investigate and prosecute" wrongdoing.[54]

SEC Charges Ideanomics and Executives With Accounting and Disclosure Fraud

On August 9, 2024, the SEC announced settled charges against Ideanomics, Inc., its current CEO Alfred Poor and former CFO Federico Tovar, as well as its former Chairman and CEO Zheng Wu, in connection with misleading public statements about Ideanomics' financial performance between 2017 and 2019. According to the orders, Ideanomics, Wu, Poor, and Tavor violated the antifraud, reporting, internal control and books and records provisions of the federal securities laws.

In November 2017, Ideanomics issued a press release reiterating its March, May, and August 2017 statements regarding the company's fiscal year 2017 revenue guidance of $300 million. Wu reiterated the $300 million figure on a conference call with investors the same day. The vast majority of the Ideanomics' fiscal year 2017 revenue was projected to come from (1) an electronics components trading business through one of Ideanomics' subsidiaries, Amer Global Technology Ltd. ("Amer"), and (2) a newly established crude oil trading joint venture with a Singapore company. The SEC charged that at the time of making those statements, Wu and Ideanomics were "aware of material adverse facts" relating to both of these revenue sources that would prevent the company from achieving the $300 million revenue guidance.

Specifically, Wu was aware that Amer's bank accounts in Hong Kong and China were frozen by governmental authorities, significantly limiting Ideanomics' ability to generate revenue from the business, and that there were significant delays in setting up the entity for the crude oil joint venture such that the entity had not generated any revenue as of mid-November 2017. Moreover, senior personnel with concerns about the revenue guidance advised Wu that they did not believe the Company should issue the guidance, which Wu subsequently ignored. When Ideanomics announced on February 23, 2018, that it expected it would miss the revenue guidance by a wide margin, Ideanomics' stock price fell 39%.

In addition to the misleading revenue guidance charges, the SEC put forth a number of other charges, including failing to disclose related-party transactions; overstating the value of an acquired interest in a joint venture; misstating financial statements by failing to take appropriate impairment charges and improperly recognizing $260 million of oil trading revenue on a gross basis when it should have reported $0 net revenue on the transaction.

The SEC also charged Poor and Tovar with violations related to their involvement in some of Ideanomics' fraudulent activity. For example, the SEC alleged that, although Poor believed that Ideanomics's record-keeping "was not appropriate for a public company," he nevertheless "signed Ideanomics's 2018 Form 10-K," based solely on his belief that the Tovar and the Company's audit committee had performed an evaluation of ICFR.

Without admitting or denying the SEC's findings, all respondents settled the matter by agreeing to cease and desist from future violations of the charged provisions. In addition to a ten-year officer and director bar, Wu agreed to pay more than $3.3 million in disgorgement and prejudgment interest for the net profits from his violations and a $200,000 penalty. Tovar and Poor each agreed to pay a $75,000 penalty. Ideanomics agreed to pay a $1.4 million penalty and to retain an independent compliance consultant to review and make recommendations regarding the company's internal accounting controls.[55]

Notes

1 *See* Department of Justice Office of Public Affairs Press Release, *Two Individuals Plead Guilty To Participating In Insider Trading Scheme Based On SPAC Merger With Trump Media & Technology Group* (Apr. 3, 2024), https://www.justice.gov/usao-sdny/pr/two-individuals-plead-guilty-participating-insider-trading-scheme-based-spac-merger.

2 Emily Saul, *'A Serious Crime': Venture Capitalist Sentenced to Prison for Trump-SPAC Insider Trading,* LAW.COM (Oct. 17, 2024), https://www.law.com/newyorklawjournal/2024/10/17/a-serious-crime-venture-capitalist-sentenced-to-prison-for-trump-spac-insider-trading/.

3 *See* SEC Complaint, *SEC v. Robert B. Westbrook*, 2:24-cv-09497, ¶¶ 2-5 (D.N.J. Sept. 27, 2024) https://www.sec.gov/files/litigation/complaints/2024/comp-pr2024-153.pdf [hereinafter the "Westbrook Complaint"]; DOJ Press Release, U.K. National Charged with Multimillion-Dollar Hack-to-Trade Fraud Scheme (Sept. 27, 2024), https://www.justice.gov/usao-nj/pr/uk-national-charged-multimillion-dollar-hack-trade-fraud-scheme.

4 Westbrook Complaint at ¶¶ 2-5.

5 SEC Press Release No. 2024-153, SEC Charges U.K. Citizen in Hacking and Trading Scheme Involving Five U.S. Public Companies (Sept. 27, 2024), https://www.sec.gov/newsroom/press-releases/2024-153.

6 DOJ Press Release, U.K. National Charged with Multimillion-Dollar Hack-to-Trade Fraud Scheme (Sept. 27, 2024), https://www.justice.gov/usao-nj/pr/uk-national-charged-multimillion-dollar-hack-trade-fraud-scheme.

7 *See* Compl. at ¶ 1, *20230930-DK-Butterfly-1, Inc., f/k/a Bed Bath & Beyond Inc. v. Ryan Cohen & RC Ventures LLC*, 24-CV-5874 (S.D.N.Y. August 1, 2024).

[8] *See* Defendants Ryan Cohen and RC Ventures LLC's Memorandum of Law in Support of their Motion to Dismiss, *20230930-DK-Butterfly-1, Inc., f/k/a Bed Bath & Beyond Inc. v. Ryan Cohen & RC Ventures LLC*, 24-CV-5874 (S.D.N.Y. Dec. 9, 2024).

[9] *See* SEC Press Release No. 2025-4, *SEC Charges Former Public Company Officer and His Sister-In-Law with Insider Trading* (Jan. 13, 2025), https://www.sec.gov/newsroom/press-releases/2025-4; *see also* SEC Complaint, *SEC v. Alfred V Tobia, JR and Elizabeth Lee*, 25-cv-00280, ¶ 1 (S.D.N.Y. Jan. 13, 2025), https://www.sec.gov/files/litigation/complaints/2025/comp-pr2025-4.pdf.

[10] *See* SEC Press Release No. 2024-203, *SEC Charges Express, Inc. with Failing to Disclose Nearly $1 Million in Perks Provided to Former CEO* (Dec. 17, 2024), https://www.sec.gov/newsroom/press-releases/2024-203.

[11] *In the Matter of Express, Inc.*, Exchange Act Rel. No. 101934, at ¶ 4 (Dec. 17, 2024) https://www.sec.gov/files/litigation/admin/2024/34-101934.pdf.

[12] *See* SEC Press Release No. 2024-203, *SEC Charges Express, Inc. with Failing to Disclose Nearly $1 Million in Perks Provided to Former CEO* (Dec. 17, 2024), https://www.sec.gov/newsroom/press-releases/2024-203.

[13] *See* Order at ¶ 1, *In the Matter of Flagstar Bancorp, Inc., now known as "Flagstar Financial, Inc."*, Exchange Act Release No. 101928 (Dec. 16, 2024) https://www.sec.gov/files/litigation/admin/2024/33-11343.pdf.

[14] SEC Admin. Proceeding, File No. 3-22360, *SEC Charges Flagstar for Misleading Investors About Cyber Breach* (December 16, 2024), https://www.sec.gov/enforcement-litigation/administrative-proceedings/33-11343-s.

[15] SEC Press Release No. 2024-189, *SEC Charges Kiromic BioPharma and Two Former C-Suite Executives with Misleading Investors about Status of FDA Reviews* (Dec. 3, 2024), https://www.sec.gov/newsroom/press-releases/2024-189.

[16] *In the Matter of Kiromic Biopharma, Inc.*, Securities Act Rel. No. 11332, at ¶ 3 (Dec. 3, 2024), https://www.sec.gov/files/litigation/admin/2024/33-11332.pdf [hereinafter "Kiromic Complaint"].

[17] SEC Press Release No. 2024-189 (Dec. 3, 2024), https://www.sec.gov/newsroom/press-releases/2024-189.

[18] Kiromic Complaint at ¶ 35.

[19] *In the Matter of Tony Tontat,* Securities Exchange Act Rel. No. 101796 (Dec. 3, 2024), https://www.sec.gov/files/litigation/admin/2024/34-101796.pdf; SEC Complaint, *SEC v. Maurizio Chirivi-Internati*, 24-cv-4729 (S.D. Tex Dec. 3, 2024), https://www.sec.gov/files/litigation/complaints/2024/comp-pr2024-189.pdf; *In the Matter of Tony Tontat*, Exchange Act Rel. No. 101796 (Dec. 3, 2024), https://www.sec.gov/files/litigation/admin/2024/34-101796.pdf.

[20] *In the Matter of Keurig Dr Pepper Inc.*, Exchange Act Rel. No. 100983, at 1 (Sept. 10, 2024), https://www.sec.gov/files/litigation/admin/2024/34-100983.pdf.

[21] *See* Keurig Dr Pepper Inc. Form 10-K for the year ending Dec. 31, 2019 at 7.

[22] *See* Keurig Dr Pepper Inc. Form 10-K for the year ending Dec. 31, 2020 at 9.

[23] *In the Matter of Keurig Dr Pepper Inc.*, Exchange Act Rel. No. 100983, at ¶ 14.

[24] "Greenwashing" refers to the practice of making false or exaggerated claims about the positive impact a company's policies and practices may have on the environment.

[25] *In the Matter of Keurig Dr Pepper Inc.*, Exchange Act Rel. No. 100983, at ¶ 16.

[26] *Macquarie Infrastructure Corp. v. Moab Partners*, 601 U.S. 257 (2024).

[27] *Alcarez v. Akorn, Inc.*, 99 F.4th 368, 373 (7th Cir. 2024) (citing *Macquarie* and noting that "class actions seeking more disclosure but not contending that any of the existing disclosures [are] false or materially misleading . . . is problematic under federal securities law"); *Appvion, Inc. Ret. Sav. & Emp. Stock Ownership Plan By & Through Lyon v. Buth*, 99 F.4th 928, 942 (7th Cir. 2024) (citing *Macquarie* and noting that "fraudulent concealment requires 'positive acts'").

[28] *Maso Capital Investments Ltd. et al. v. E-House (China) Holdings Ltd. et al.*, No. 22-355, 2024 WL 2890968 (2d Cir. June 10, 2024) (citing *Macquarie*'s holding that "'pure omissions' are no longer 'actionable under Rule 10b-5'").

[29] *See* SEC Press Release No. 2025-1, *Vince McMahon, Former CEO of WWE, Charged for Failure to Disclose to WWE Two Settlement Agreements He Executed on Behalf of WWE* (Jan. 10, 2025), https://www.sec.gov/newsroom/press-releases/2025-1?utm_medium=email&utm_source=govdelivery.

[30] *In the Matter of Vincent Kennedy* McMahon, Securities Exchange Act Release No. 102143 (January 10, 2025), ¶ 3 https://www.sec.gov/files/litigation/admin/2025/34-102143.pdf.

[31] *Id.*

[32] *See* SEC Press Release No. 2025-1, *Vince McMahon, Former CEO of WWE, Charged for Failure to Disclose to WWE Two Settlement Agreements He Executed on Behalf of WWE* (Jan. 10, 2025), https://www.sec.gov/newsroom/press-releases/2025-1?utm_medium=email&utm_source=govdelivery.

[33] *See* Order at ¶ 1, *In the Matter of Acreage Holdings, Inc.*, Exchange Act Release No. 102141 (Jan. 10, 2025)

[34] *See* SEC Press Release No. 2024-206, *SEC Charges Utility Company Entergy Corp. with Internal Accounting Controls Violations* (Dec. 20, 2024), https://www.sec.gov/newsroom/press-releases/2024-206?utm_medium=email&utm_source=govdelivery.

[35] *See* SEC Complaint, *SEC v. Entergy Corporation*, 24-cv-03554, ¶¶ 3-5 (D.D.C. Dec. 20, 2024) https://www.sec.gov/files/litigation/complaints/2024/comp-pr2024-206.pdf.

[36] *See* SEC Press Release No. 2024-206, *SEC Charges Utility Company Entergy Corp. with Internal Accounting Controls Violations* (Dec. 20, 2024), https://www.sec.gov/newsroom/press-releases/2024-206?utm_medium=email&utm_source=govdelivery.

[37] *See* SEC Press Release No. 2024-184, *UPS to Pay $45 Million Penalty for Improperly Valuing Business Unit* (Nov. 22, 2024), https://www.sec.gov/newsroom/press-releases/2024-184?utm_medium=email&utm_source=govdelivery.

[38] *In the Matter of United Parcel Service, Inc.*, Securities Act Rel. No 11328 at ¶ 11 (Nov. 22, 2024) https://www.sec.gov/files/litigation/admin/2024/33-11328.pdf

[39] *See* SEC Press Release No. 2024-184, *UPS to Pay $45 Million Penalty for Improperly Valuing Business Unit* (Nov. 22, 2024), https://www.sec.gov/newsroom/press-releases/2024-184?utm_medium=email&utm_source=govdelivery.

[40] *In the Matter of United Parcel Service, Inc.*, Securities Act Rel. No 11328 at ¶13 (Nov. 22, 2024) https://www.sec.gov/files/litigation/admin/2024/33-11328.pdf.

[41] *See* SEC Litigation Release No. 26166, *SEC Charges Furniture Company and Two Former Executives with Accounting Violations* (Oct. 29, 2024), https://www.sec.gov/enforcement-litigation/litigation-releases/lr-26166.

[42] Lovesac's fiscal year 2023 ended on January 29, 2023.

[43] *See* SEC Complaint, *SEC v. Donna Dellomo, Yoon Um, and The Lovesac Company*, 24-cv-1727, ¶¶ 28-30 (D. Conn. Oct. 29, 2024) https://www.sec.gov/files/litigation/complaints/2024/comp26166.pdf [hereinafter the "Lovesac Complaint"].

[44] *See* The Lovesac Company Q1 2024 Form 10-Q at 19.

[45] Lovesac Complaint at ¶ 54.

[46] *See* SEC Litigation Release No. 26166, *SEC Charges Furniture Company and Two Former Executives with Accounting Violations* (Oct. 29, 2024), https://www.sec.gov/enforcement-litigation/litigation-releases/lr-26166.

[47] Lovesac Complaint at ¶ 10.

[48] *See* SEC Press Release No. 2024-108, *SEC Charges U.S. Navy Shipbuilder Austal USA with Accounting Fraud* (Aug. 27, 2024), https://www.sec.gov/newsroom/press-releases/2024-108.

[49] *See* Department of Justice Office of Public Affairs Press Release, *U.S. Navy Shipbuilder Pleads Guilty to Financial Accounting Fraud Scheme and Obstructing a Defense Department Audit* (Aug. 27, 2024), https://www.justice.gov/opa/pr/us-navy-shipbuilder-pleads-guilty-financial-accounting-fraud-scheme-and-obstructing-defense.

[50] *See* SEC Press Release No. 2024-108, *SEC Charges U.S. Navy Shipbuilder Austal USA with Accounting Fraud* (Aug. 27, 2024), https://www.sec.gov/newsroom/press-releases/2024-108.

[51] *See* Department of Justice Office of Public Affairs Press Release, *U.S. Navy Shipbuilder Pleads Guilty to Financial Accounting Fraud Scheme and Obstructing a Defense Department Audit* (Aug. 27, 2024), https://www.justice.gov/opa/pr/us-navy-shipbuilder-pleads-guilty-financial-accounting-fraud-scheme-and-obstructing-defense.

[52] *See* SEC Complaint, *SEC v. Austal Limited and Austal USA, LLC*, 24-cv-00307, ¶ 6 (S.D. Ala. Aug. 26, 2024).

[53] *See* SEC Press Release No. 2024-108, *SEC Charges U.S. Navy Shipbuilder Austal USA with Accounting Fraud* (Aug. 27, 2024), https://www.sec.gov/newsroom/press-releases/2024-108.

[54] *See* Department of Justice Office of Public Affairs Press Release, *U.S. Navy Shipbuilder Pleads Guilty to Financial Accounting Fraud Scheme and Obstructing a Defense Department Audit* (Aug. 27, 2024), https://www.justice.gov/opa/pr/us-navy-shipbuilder-pleads-guilty-financial-accounting-fraud-scheme-and-obstructing-defense.

[55] SEC Press Release, *SEC Charges Ideanomics and Three Senior Executives with Accounting and Disclosure Fraud* (Aug. 9, 2024), https://www.sec.gov/newsroom/press-releases/2024-94?utm_medium=email&utm_source=govdelivery.

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