

# Client Alert

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## SEC Brings Series of Enforcement Actions for Form 8-K Deficiencies

Chair Mary Jo White of the Securities and Exchange Commission (SEC) has made a priority of a “broken windows” enforcement strategy in which, in her words, “even the smallest infractions” will be pursued. The latest series of enforcement cases under this initiative concerns ten micro-cap issuers announced on November 5, 2014. Each of the defendant companies failed to file one or more required periodic reports on Form 8-K, as required by SEC regulations.

Under Item 1.01 of Form 8-K, a public company must disclose its entry into a material definitive agreement that provides for obligations that are material to, and enforceable against, the company. Under Item 3.02 of Form 8-K, a public company that is a “smaller reporting company” must also disclose the unregistered sales of equity securities unless such sales, in aggregate since its last report filed under Item 3.02 or its last periodic report, whichever is more recent, constitute less than five percent of the number of shares outstanding of the class of equity securities sold. For both items, the public company must file within four business days of the date of the occurrence or when such agreement becomes enforceable against the company. In each of the cases here, the defendant companies entered into agreements with one or more financing companies pursuant to which they sold securities that ultimately exceeded the five percent threshold, but did not file the requisite Forms 8-K.

Each of the defendant companies settled with the SEC and agreed to cease and desist from engaging in future violations of the SEC’s public company reporting requirements arising under Sections 13(a) of the Securities Exchange Act of 1934 and Rule 13a-11 thereunder. Without explanation, three of the defendants also agreed to cease and desist from violating the antifraud provisions of Rule 12b-20 under the 1934 Act. Finally, each of the defendant companies agreed to pay civil monetary penalties of either \$25,000 or \$50,000 per company. Interestingly, the SEC did not charge any of the defendants with violating the registration and prospectus delivery requirements of Section 5 under the Securities Act of 1933. Nor did the SEC allege any violation of Rule 10b-5, the SEC’s primary anti-fraud provision.

It is rare for the SEC to bring stand-alone enforcement cases for failure to file Form 8-K. The typical SEC enforcement case involving periodic reports is usually accompanied by allegations of fraud or violations of the 1933 Act’s registration provisions. The nominal amounts of the civil monetary penalties levied against each defendant company also suggests that the violations were of a *de minimis* nature. Nonetheless, the cases again serve to remind all public companies that the SEC is monitoring disclosure filings and will not hesitate to bring a case even in the event of a seemingly minor infraction.

### Contact

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