

In-House Corner: Section 16 Compliance Reminders – Part 2

Last week, we started a new feature of this blog – where our in-house readers share tips, anecdotes and thoughts about things that come up in their daily practice. We received so much feedback on that [first blog](#) about the practice of sending compliance reminders to insiders about their Section 16 obligations that we now have this Part II [feel free to ping me and join the group that shares their thoughts – they will be posted anonymously or with attribution, whichever you desire]: 1. "Use trading window communications — communicate with Section 16 officers and directors at the beginning of every open trading window (email works great for this). Consider including important reminders about Section 16 requirements, explaining the process for obtaining pre-approvals and the process for preparation, review and filing of Section 16 reports. Be patient and proactive — even with the best compliance training and reminders, many Section 16 officers and directors will need to be walked through the specific obligations and requirements. The key is making sure they reach out as far in advance as possible." – Jared Brandman

2. "I've always given new directors and officers a Section 16 memo and checklist with onboarding. These were drafted long ago (15 years+) by a law firm, and I've updated them every few years as I've changed companies. I just used it with a new director this week. Otherwise, once onboard, I have our Stock Admin team handle all of their filings and we stay in close contact with the broker, investment advisor, estate lawyer, etc. Can be painful if their estate is complex and they like complex instruments (GRATS!), but it helps ensure compliance." – John Saia

3. "Ah, Section 16 – the area of the law that I have been so unsuccessful in avoiding since 1990. Whenever I get away from it, it manages to find me again." – Rosalind Doe

4. "I have developed a training program that we give periodically to new Section 16 officers. The most valuable thing I impart, though, is to call me before you do anything. They may not remember the specific requirements, but if they can remember to call me, then most issues can be avoided or resolved." – Vicki Doe

5. - "Have a trading policy that requires all insiders to pre-clear all transactions. - Remind all insiders of the pre-clearance policy requirement when sending out quarterly earnings blackout alerts. - Try to have company shares in a "Company Account" that you have access to like Shareworks, or a broker provided by company. - Have Company Accounts locked to limit transactions that are not cleared yet by Legal. - Have Company Accounts set up to provide you with duplicate trade confirmations once they are cleared." – Gillian Doe

6. - "The corporate secretary should calendar at least an annual Section 16 compliance reminder. - The secretary may want to consider adding a periodic Section 16 reminder/update as an agenda item for a board meeting. - The secretary should be prepared to provide both a director on-boarding and a departure Section 16 compliance memo. - The secretary should calendar an annual check of the status of each director and Section 16 officer's SEC filing codes. - The secretary should carefully calendar and coordinate the necessary Section 16 SEC filings associated with the annual cycle for granting and vesting of equity grants. - The secretary should be prepared to advise directors and Section 16 officers regarding the filing obligations associated with transactions related to estate planning. - If the secretary is responsible for Section 16 SEC filings, particular care should be taken with respect to using the correct filing codes (e.g. the proper code for a transaction within a 401(k) plan) – an incorrect code can attract the unwanted attention of the Section 16 plaintiff's bar." – Eric Grimshaw

7. "I provide new directors and officers with a Section 16 memo describing their obligations, a copy of our

insider trading policy, and a POA as a part of their onboarding materials. From there, we provide quarterly blackout memos to Section 16 officers (different from the memo sent to our other designated associates subject to the blackout period) that not only explains the blackout period, but also reiterates the need to seek prior authorization before trading. We file Form 4s by POA (using information typically provided by brokers and HR), but request sign-off from the Section 16 director/officer before actually filing (which we get 95% of the time). The annual D&O questionnaire is another opportunity to remind them that they are Section 16 officers and remind them of their obligations." - Sondra Doe

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