

In-House Corner: Section 16 Compliance Reminders

Welcome to 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. Feel free to ping me and join the group that shares their thoughts – they will be posted anonymously or with attribution, whichever you desire. This particular batch of thoughts is about the practice of sending compliance reminders to insiders about their Section 16 obligations: 1. "Section 16 is a small group, so we are all over them. When they become a Section 16, it is important to sit down and educate them what Section 16 (and other things) mean as a Section 16 person. And there is a memo. But perhaps the most important thing for Section 16 and Board members: pre-clearance. A periodic reminder on the incidents that can trip you up is not bad: family members and rouge investment managers who rebalance and forget they cannot buy/sell your stock." – Peggy Foran

2. "Whenever we onboard a new Section 16 officer or director, we review with them their compliance obligations. However, since we handle all Section 16 filings on their behalf and all are subject to pre-clearance procedures for any transactions in our stock, we haven't seen the need to send ongoing reminders to folks." – Joey Doe

3. "For new Section 16 Officers, cover Section 16 risks and obligations when you do their 'Public Company Bootcamp' training. (Yes, you should be doing 'Public Company Bootcamp' training.) Annually, remind Section 16 Officers that you are there to help. Before they or anyone in their household even thinks about doing anything with company securities, talk to you! And, remind them, albeit gently, that Section 16 risks and obligations are personal to them." – Sally Doe

4. "I love Section 16 compliance. Compliance reminders provide an opportunity to crack the whip on other executives and directors. The Board should annually appoint Section 16 officers (and acknowledge that directors are also subject to Section 16). Immediately following this Board action, a Section 16 compliance memo should be circulated to the Section 16 officers and directors. I like to add in any recent or significant SEC actions against Section 16 violators or relating to short swing profit liability to really get people to focus on the importance of compliance. Lastly, and this could be a biggie, make sure that if your trading policy or Section 16 procedures requires any notice or proof of delivery or receipt, that you keep a record that the company has complied with such notice, delivery or receipt. For example, if the Section 16 policy states that periodic trading or blackout windows will be announced, then the company needs to not only comply with such obligation, but keep records to prove compliance. At the end of the day, Section 16 compliance falls on the individual executives and directors – but those same individuals are relying on their trusted lawyers to protect them from themselves." – Roland Kelly

5. "All of our filings are handled by POA. We send an email the night before to the senior management team, PR and IR that we are filing Form 4s at market close the following day to reflect [whatever the event is] [and a list of officers]. Notify us if you would like a copy. To date, no one has taken us up on the offer." – Alfred Doe

6. "Include the reminder in the annual D&O questionnaire, and, if performed, any quarterly questionnaire bringdowns used to comply with Auditing Standard 18 (now AS 2410)." – Jeff Taylor

7. "Section 16 has been sort of unkind to me." – Kendra Doe

8. "I have generally found reminders about Section 16 obligations helpful to bundle with periodic reminders

regarding insider trading policies, given the overlap. Insiders often have a good handle on classic Section 16 triggers but triggers driven by estate planning and similar matters are easier to overlook; in my experience, these periodic reminders are an easy way to address that and avoid surprises being reported in the D&O questionnaire at year-end." – Bella Doe

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