Blogs

In a **rare enforcement action** of what may be a new indication of focus by the SEC, the Commission entered a settlement with a large broker-dealer in recently for Rule 13h-1 violations for large trader reporting failures. Although this enforcement action targeted a broker-dealer issue, it's worth noting for public companies because individual executives sometimes trip over the 13H thresholds because their brokers aren't paying attention. If executives and their financial advisors are aware of the thresholds, they can usually easily avoid triggering a 13H filing.

The SEC established Rule 13h-1 under the Exchange Act and Form 13H in 2011 to establish a large trader reporting system. Rule 13h-1 requires entities and individuals to self-identify to the SEC on Form 13H if their transactions in NMS securities (i.e., securities that are exchange-listed) meet or exceed specified daily or monthly thresholds. Rule 13h-1 also requires certain recordkeeping, reporting, and monitoring responsibilities for broker-dealers.

The SEC has brought select enforcement actions against large traders and broker-dealers for violations of Rule 13h-1 since the Rule's adoption in 2011. In this new action, the SEC alleged that the broker-dealer violated Rule 13h-1 by:

- Failing to file Forms 13H for itself on an annual or quarterly basis when required, or filing incomplete Forms 13H. The SEC noted further that the broker-dealer filed an initial Form 13H in 2011 and did not file any annual Forms 13H for the subsequent ten years.

- Failing to identify and not maintaining records for persons that it had reason to know met the definition of a "large trader." Further, the broker-dealer allegedly failed to conduct daily and monthly reviews of large trader activity.

- Failing to report to the SEC information required reports for large traders.

This enforcement action follows a **2020 Risk Alert** from the SEC's Office of Compliance Inspections and Examinations (now Division of Examinations) relating to Rule 13h-1 and Form 13H compliance in which OCIE highlighted the same potential compliance issues as alleged in the most recent enforcement action: (1) recordkeeping; (2) monitoring; and (3) reporting.

The broker-dealer in the recent enforcement action agreed to pay a civil penalty of $1.4 million for alleged violations occurring over the course of approximately six years. Meanwhile, the combined attention towards Rule 13h-1 of the SEC's Divisions of Enforcement and EXAMs stands as a warning call to broker-dealers and large traders alike.

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