

## SEC Enforcement Action on Perks Disclosure Reminds Issuers to Be Mindful of the Standard

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*A new SEC decision on the executive perks disclosure at a large US-based company reminds issuers to thoroughly review items to ensure compliance with applicable authority.*

Earlier this month, the SEC published a settled [Order](#) from an enforcement action concerning a large chemical company's insufficient disclosure of executive perquisites between 2011 and 2015. The action has broader implications for any public company that grants perquisites to their executives.

The SEC reiterated in the Order its guidance from the 2006 Adopting Release, which indicated that although a company may determine that an expense is ordinary and necessary for tax purposes, the rule for SEC reporting purposes is different and narrower in scope.

In considering whether a perk is a disclosable expense for purposes of Item 402, companies must consider whether the expense is truly "integrally and directly related to the performance of the executive's duties." If it's a close call, this latest enforcement action reinforces that the SEC will interpret that concept narrowly.

With the case in question, the SEC alleged that from 2011 through 2015, the company did not ensure that approximately \$3 million in executive perquisites— including travel on the company-owned aircraft to board meetings, sporting events, personal activities, club memberships, use of personal assistant office time and membership fees to sit on the board of a charitable organization— were adequately evaluated and disclosed as "other compensation" in the Compensation Discussion & Analysis (CD&A) section of the proxy statement.

The problem with the disclosure, the SEC asserts, is that the company applied a 'business purpose' standard, which treats an expense as non-disclosable if it's related to an executive's duties. With the company in question, the SEC determined that the expenses were a "direct or indirect benefit that has a personal aspect." This rendered the expenses to be personal benefits that require disclosure unless they are integrally related to the executive's job. However, the SEC concluded that the company did not consider whether the expense was "integrally and directly" related to the executives' duties. Therefore, the company's approach to disclosure was improper.

The company was fined \$1.75 million and ordered to retain an independent consultant for one year to review the company's policies, procedures, controls and training relating to the characterization and disclosure of expense

reimbursements and other payments as perks, and to adopt recommendations made by the consultant to ensure compliance with the SEC's rules governing perk disclosure.

The Aon Governance team is well-versed in the application of the SEC's rules and guidance in this area and can help with the application of such authority to particular facts and circumstances. To speak with a member of our compensation consulting group about this topic or other executive compensation matters, please write to [consulting@radford.com](mailto:consulting@radford.com).

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