

SEC Enforcement Case Summary

11 Institutional Investment Managers Charged with Failing to File Form 13F

On September 17, 2024, the SEC charged 11 institutional investment managers for failing to file Form 13F reports that they were required to file because they have discretion over more than \$100 million in securities included on the SEC's Official List of Section 13(f) Securities (the "**13(f) Securities List**"). Two of the entities were also charged with failing to file Forms 13H as required for large traders who transact in a significant amount of exchange-listed securities. All 11 firms agreed to settle the SEC's charges. Nine of the firms will pay more than \$3.4 million in combined civil penalties. Two firms were not ordered to pay any civil penalties because they self-reported the violations at issue and otherwise cooperated with the SEC's investigations, and another was not ordered to pay a civil penalty for its failure to file Forms 13H because it self-reported those violations and otherwise cooperated with the SEC's investigations.

The institutional investment managers charged and their respective penalties are:

- Ashton Thomas Private Wealth, LLC - \$375,000
- Azzad Asset Management, Inc. - \$225,000
- Bulltick Wealth Management, LLC - \$175,000
- Dixon Mitchell Investment Counsel, Inc. - no financial penalty
- Financial Synergies Wealth Advisors, Inc. - \$225,000
- Focus Financial Network, Inc. - \$475,000
- Mason Investment Advisory Services, Inc. - \$525,000
- Nationale-Nederlanden - no financial penalty
- NEPC, LLC - \$725,000
- TD Private Client Wealth, LLC - \$475,000
- Traphagen Investment Advisors, LLC - \$225,000

Section 13(f)(1) of the Securities Exchange Act and Rule 13f-1 thereunder require that "institutional investment managers" file Forms 13F with the SEC on a quarterly basis if they exercise investment discretion over "Section 13(f) Securities" having an aggregate fair market value of at least \$100 million. Section 13(f) securities primarily include U.S. exchange-traded stocks (e.g., NYSE, AMEX, NASDAQ), shares of closed-end investment companies, and shares of exchange-traded funds (ETFs). Certain convertible debt securities, equity options, and warrants are on the 13(f) Securities List. If an investment adviser or other party exercises investment discretion over at least \$100 million worth of Section 13(f) Securities as of the last trading day of any month in a calendar year, such institutional investment manager is obligated to file Form 13F with the SEC within 45 days following December 31 of that year and within 45 days after the end of Q1, Q2 and Q3 of the following year.

In each of these cases, the institutional investment managers did not promptly begin to file Form 13F upon surpassing \$100 million in Section 13(f) Securities. As noted, two firms identified and self-reported their failures to file Forms 13F to the SEC. Other firms apparently identified the deficiency themselves and began filing Form 13F on their own accord. Each of the firms filed multiple past-due Forms 13F after self-identifying its deficiencies or being contacted by SEC staff in connection with the investigation.

Section 13(h) of the Exchange Act and Rule 13h-1 thereunder apply to "large traders," defined as market participants that exercise investment discretion and effect transactions in a substantial amount of national market system ("**NMS**") securities, as measured by volume or market value. Persons whose transactions in NMS securities during any calendar day equal or exceed 2 million shares or \$20 million,

or whose transactions during any calendar month equal or exceed 20 million shares or \$200 million must self-identify to the SEC on Form 13H. Large traders are obligated to file an initial Form 13H promptly after first effecting transactions equal to or greater than the large trader threshold. Following an initial filing, large traders are required to submit an annual filing within 45 days of the end of each full calendar year and promptly after each quarter for material changes.

In the two cases involved Form 13H deficiencies, the firms did not promptly file Form 13H promptly after exceeding the trading thresholds. The cases noted that the firms continued to meet the larger trader thresholds in subsequent years but failed to make annual filings or any quarterly filings. Both of the firms identified the deficiency and self-reported to the SEC their failure to file Form 13H.

Form 13F filings are publicly available through the SEC's EDGAR system, while Form 13H filings are not publicly available. While a desire for privacy may lead some managers to not file Form 13F when required, the SEC does have a process for requesting confidential treatment of information in Form 13F filings. More likely, institutional managers simply are not aware of or actively monitoring the Form 13F or 13H filing thresholds or do not have legal counsel or compliance staff who focus on ensuring timely regulatory filings. In certain cases, a private equity fund or other manager that does not routinely hold or trade Section 13(f) or NMS securities may trigger the reporting thresholds inadvertently after an IPO of a public holding or after acquiring public securities as part of a transaction involving a private holding.

See Summary - <https://www.sec.gov/newsroom/press-releases/2024-135>