

Meridian Client Update

Recent SEC Action Signals Agency's Close Scrutiny of Company Perk Disclosures

The Securities Exchange Commission (SEC) recently assessed a \$900,000 fine against Argo Group International Holdings due to the company's failure to fully disclose CEO perquisites over a five-year period. This enforcement action represents one of a series of actions on perquisite disclosures and related matters that the SEC has undertaken against public companies over the last several years.

Generally, perquisites and personal benefits constitute a relatively small portion of a named executive officer's total compensation. Nonetheless, perquisites and personal benefits can draw significant scrutiny by investors and the media, especially in cases of unusual or outsized perquisites. Therefore, companies generally are sensitive to external optics related to such disclosures. In recent years, the spotlight on these disclosures has become even brighter, as the SEC continues to evaluate the adequacy of public companies' disclosure of executive officer perquisites and personal benefits.

The SEC's evaluation of company perquisite disclosures has led to enforcement actions, including a significant enforcement action against The Dow Chemical Company. In 2018, the SEC imposed a \$1.75 million civil penalty on The Dow Chemical Company due to the company's failure to disclose \$3 million in perquisites provided to its Chief Executive Officer. Most recently, on June 4, 2020, the SEC imposed a \$900,000 civil penalty on Argo Group International Holdings ("Argo") due to the company's failure to disclose in its definitive proxy statements for fiscal years 2015 through 2019 over \$5.3 million of perquisites and personal benefits provided to its former CEO and Board Chair, Mark E. Watson III. Following an internal investigation, Mr. Watson agreed to reimburse Argo for certain perquisites and personal expenses and ultimately resigned.

In addition to its failure to comply with the proxy rules related to the disclosure of perquisites, Argo reportedly had other violations of federal securities laws. The SEC's Cease-and-Desist Order ("Order") issued to Argo detailed the following facts underlying each of these violations.

- **Nondisclosure of perquisites and personal benefits.** Items that Argo paid for on Watson's behalf, **but did not disclose**, included expenses associated with personal use of corporate aircraft, rent and other housing costs, personal use of corporate automobiles, helicopter trips, other personal travel costs, use of a car service by family members, club and concierge service memberships, tickets and transportation to sporting, fashion or other entertainment events, personal services provided by Argo employees and watercraft-related costs.

- **Inclusion of erroneous disclosures in annual report.** From fiscal years 2015 through 2019, Argo incorporated, by reference, its definitive proxy statements (that included the erroneous disclosure of the CEO's perquisites) into its annual reports.
- **Erroneous accounting for perquisites as business expenses and not compensation.** From fiscal years 2014 through 2018, Argo incorrectly recorded payments for the benefit of, and reimbursements to, Watson as business expenses, and not compensation. As a result, its books, records, and accounts did not, in reasonable detail, accurately and fairly reflect its disposition of assets.
- **Inadequate internal controls.** Argo failed to devise and maintain internal accounting controls. These failures included, for instance, a practice of providing expense reimbursements to Watson without requiring an adequate explanation of a business purpose for the expense, allowing Watson to approve his own expense reimbursements, and a lack of a mechanism to ensure Watson paid for personal usage of corporate aircraft.

The SEC could increase the \$900,000 civil penalty if Argo fails to cooperate with the SEC in its investigation and related enforcement action or knowingly provided materially false or misleading information or materials to the SEC.

Meridian comment. The Argo and The Dow Chemical Company cases do not represent isolated enforcement actions concerning the adequacy of perquisite disclosures and compliance with related SEC requirements. Since 2011, the SEC has taken such enforcement actions against 10 public companies, with the five most recent enforcement actions shown in the below table.

Company	Date of Enforcement Action	Issue and Outcome
Argo Group International Holdings	6/2020	<ul style="list-style-type: none"> ▪ Nondisclosure of CEO perquisites ▪ \$900,000 civil penalty
Energy XXI Ltd.	7/2018	<ul style="list-style-type: none"> ▪ Nondisclosure of perquisites ▪ \$180,000 civil penalty paid by CEO
The Dow Chemical Company	7/2018	<ul style="list-style-type: none"> ▪ Nondisclosure of CEO perquisites ▪ \$1,750,000 civil penalty
Provectus Biopharmaceuticals, Inc.	12/2017	<ul style="list-style-type: none"> ▪ Nondisclosure of perquisites ▪ Accounting control violations ▪ \$1,275,000 civil penalties imposed against the company and certain former officers ▪ Former CEO agreed to repay \$1,200,000 to the company for improper expenses
MDC Partners Inc.	5/2017	<ul style="list-style-type: none"> ▪ Nondisclosure of former CEO perquisites ▪ \$1,500,000 civil penalty paid by the company and \$5,500,000 paid by the CEO ▪ CEO repaid to the company \$21,800,000 for previously received compensation and perquisites

These SEC enforcement actions serve as a reminder that the agency closely scrutinizes the appropriateness of public company perquisite and personal benefit disclosure for named executive officers. Given the SEC's enforcement actions, public companies should consider evaluating the adequacy of the following items:

- Policies on executive perquisites and personal benefits, personal use of corporate aircraft, corporate charitable contributions and travel and expense reimbursements;
- Process for identifying perquisites, calculating each perquisite's incremental cost and determining the appropriate disclosure; and
- Internal controls related to the: (i) approval of executive expense reimbursements, (ii) approval of perquisites and personal benefits, and (iii) the disclosure of any such perquisites and personal benefits.

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The *Client Update* is prepared by Meridian Compensation Partners, LLC. Questions regarding this Client Update may be directed to Donald Kalfen at dkalfen@meridiancp.com.

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