

# SEC Enforcement Sweep Shows It Takes Reporting Failures Seriously

**B** [news.bloomberglaw.com/us-law-week/sec-enforcement-sweep-shows-it-takes-reporting-failures-seriously](https://news.bloomberglaw.com/us-law-week/sec-enforcement-sweep-shows-it-takes-reporting-failures-seriously)

John Moon, Kenneth Silverman



The Securities and Exchange Commission's settlement of charges against 11 institutional investment managers last month strongly suggests the beginning of a concerted enforcement initiative for Form 13F violations.

SEC regional director Jason Burt noted that the simultaneous institution and settlement of the proceedings show “how seriously the Commission takes non-compliance as well as the benefits a firm may derive from self-reporting its non-compliance.”

We get that message from the simultaneous filing of 11 cases in one day.

The charges, which include failing to file required reports on Forms 13F and 13H, resulted in \$3.4 million in civil penalties for nine cases; the remaining two didn't have any monetary penalty because managers self-reported their deficiencies and cooperated with the SEC's subsequent investigation.

The investment managers caught in the sweep are both foreign and domestic. Regardless where an investor and their broker-dealer are physically located, the SEC maintains jurisdiction if they invest in US capital markets, and enforces US reporting requirements, such as those of the Securities Exchange Act of 1934.

Obligations that trigger Form 13F appear less well-known among these reporting requirements. The SEC created the Form 13F requirement in 1975, based on the idea that significant investment in capital markets by large institutional investors creates the need for

heightened SEC oversight and increased investor access to information. An institutional investment manager that exercises investment discretion over \$100 million or more in Section 13(f) securities must file a Form 13F quarterly.

The SEC introduced Form 13H in 2011 in response to the 2008 financial crisis. This reporting obligation allowed the SEC to increase supervision of “large traders” and their trading activity. Through 13H reporting, large traders must identify themselves to the SEC. This allows the agency to obtain information about large trader activity in US markets, reconstruct trading activity following periods of unusual market volatility, and analyze significant market events for regulatory purposes.

Generally, a large trader is a natural or legal person whose transactions in US exchange-listed equity securities and standardized options—equal or exceed either two million shares or \$20 million during any calendar day, or 20 million shares or \$200 million during any calendar month.

All 11 cases appear to have been investigated in recent weeks or months. Conversely, none were based on a failure to report a control position—historic fodder for the Division of Enforcement.

The SEC’s focused activity is clearly related to its review of multiple delinquent filings submitted by the majority of the respondents between March and August 2024. TD Private Client Wealth LLC, for example, filed 18 delinquent Forms 13F in August. Failing to submit a self-report to the SEC prior to making these filings, TD received a financial civil penalty of \$475,000. Another domestic investment adviser, Mason Investment Advisory Services, Inc., submitted 19 overdue Forms 13F in August. Similarly, following its investigation, the SEC imposed a penalty of \$525,000.

Entities that avoided financial penalty self-reported to the SEC prior to filing past-due forms 13F and 13H. For example, NEPC LLC evaded financial punishment for its Form 13H violations by self-reporting. However, NEPC received a monetary fine of \$725,000 after it filed 16 Forms 13F in March 2024. It appears not to have self-reported its Form 13F violations to the SEC.

The SEC has reached across international boundaries in its sweep. Dixon Mitchell Investment Counsel Inc., a foreign investment adviser, is one of the respondents. However, the SEC considered Dixon’s proactive self-report of its Form 13F violation in its decision not to impose a monetary penalty.

The decision not to impose monetary penalties on self-reporters sends a message more resounding than Burt’s statement on behalf of the SEC.

*This article does not necessarily reflect the opinion of Bloomberg Industry Group, Inc., the publisher of Bloomberg Law and Bloomberg Tax, or its owners.*

## Author Information

---

John G. Moon is a former SEC branch chief and enforcement attorney and partner at Olshan Frome Wolosky.

Kenneth M. Silverman is corporate partner at Olshan Frome Wolosky.

Reproduced with permission. Copyright October 7th, 2024 by Bloomberg Industry Group, Inc. (800-372-1033) <http://www.bloombergindustry.com>