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Skechers' Recent Run-In with the SEC Signals the Importance of Transparent Disclosures of Related Person Transactions

Despite the extensive selection of footwear offered by Skechers USA Inc. (Skechers), it seems there is no shoe that can outrun the Securities and Exchange Commission (SEC).

On March 7, 2024, the SEC announced that Skechers had agreed to pay a civil penalty of $1.25 million in settlement of the SEC's charges that the company failed to disclose related person transactions in its Annual Reports on Form 10-K and definitive proxy statements for the fiscal years of 2018 – 2021.

Among the many disclosures that public companies are required to include when filing a Form 10-K or proxy statement, Item 404 of Regulation S-K requires a description of any transaction(s) since the start of the last fiscal year that exceeds $120,000 in which such company was a participant and any "related person had or will have a direct or indirect material interest."

Pursuant to the instructions to Item 404(a), the definition of a "related person" includes any director or executive officer of the company and any immediate family member (including any child, stepchild, parent, stepparent, spouse, sibling, mother-in-law, father-in-law, son-in-law, daughter-in-law, brother-in-law, or sister-in-law of such director or executive officer) and any individual sharing the household of director or executive officer (other than a tenant or employee).

Generally, if a related person transaction arises or is currently proposed within the applicable period, a company is required to disclose: (i) the name of the related person and the basis on which they are considered to be a related person; (ii) the related person's interest in the transaction; and (iii) the approximate dollar amount of the related person's interest in the transaction.

The Order Instituting Cease-and-Desist Proceedings Pursuant to Section 21C of the Securities Exchange Act of 1934, Making Findings, and Imposing a Cease-and-Desist Order (Order) against Skechers included multiple allegations of Skechers failing to properly disclose an aggregate of approximately $1.3 million in compensation paid out to several related persons over 2018 through 2021. Additionally, the SEC further alleged that Skechers failed to disclose that two of its executives owed in excess of $120,000 to the company, relating to personal expenses that had yet to be reimbursed by the executives.

Based on Skechers' alleged conduct, the SEC asserted numerous violations of the Securities Exchange Act of 1934, as amended (Exchange Act), including violations of Section 14(a) of the Exchange Act and Rule 14a-3, prohibiting the solicitation of a proxy without furnishing information specified by Schedule 14A. Without admitting or denying the SEC's findings in the Order, Skechers ultimately agreed to a settlement payment of $1.25 million and to cease and desist from any future violations of Sections 13(a) and 14(a) of the Exchange Act and Rules 13a-1 and 14a-3.

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Skechers' recent settlement with the SEC is a reminder of the importance of transparency and accurate reporting of related person transactions to investors. Companies should consistently review their relationships with directors, officers, and other related persons to ensure compliance with disclosure requirements and to avoid standing in Skechers' shoes.

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