

- Please provide a list of all outside entities from whom you obtain information referring or relating to your proxy voting advice, and descriptions of any evaluations that are performed to ensure such information is accurate and that the information provider does not have a conflict of interest with the company with respect to which the information is being provided.

Finally, we are interested in whether you disclose two other types of conflicts of interest. The first of these two conflicts involves cross-ownership, where owners or executives of your firm may have a significant ownership interest in, or serve on the board of directors of, entities that have proposals on which the firm is offering vote recommendations. The second conflict involves other financial interests by your owners, the Ontario Teachers' Pension Plan Board and the Alberta Investment Management Corporation.

- Are you disclosing these financial or business relationships when they involve or include a proponent or an active supporter of matters in which you are making voting recommendations?

We appreciate your prompt completion of this task.

SEC/SRO UPDATE:

By Peter H. Schwartz & Laura Pflumm Cerezo

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SEC Awards Whistleblower More Than \$2.1 Million; Altaba, Formerly Known as Yahoo!, Charged with Failing to Disclose Massive Cybersecurity Breach, Agrees to Pay \$35 Million; SEC Launches “SALI”—A New Investor Protection Search Tool; SEC Proposes Amendments to the “Loan Rule”

SEC Awards Whistleblower More Than \$2.1 Million

On April 12, the Securities and Exchange Commission (SEC) announced a whistleblower award of more than \$2.1 million to a former company insider whose information led to multiple enforcement actions.¹ Whistleblowers may be eligible for an award when they voluntarily provide the SEC with original, timely, and credible information that leads to an SEC enforcement action with monetary sanctions exceeding \$1 million. If those criteria are met, the whistleblower may apply for an award, which can range from between 10% to 30% of the amounts collected in the case.²

Since the whistleblower program's inception in 2011, SEC enforcement actions based on information received from whistleblowers have resulted in nearly \$1.5 billion in monetary sanctions. In total, the SEC has awarded more than \$266 million to 55 individuals, \$90 million of which was paid to whistleblowers within the past month. “As these awards demonstrate, we continue to receive high-quality information from whistleblowers, which we use to detect and prosecute securities violations and safeguard investors,” said Jane Norberg, Chief of the SEC's Office of the Whistleblower.

All whistleblower awards are paid out of an investor protection fund established by Congress and

financed by monetary sanctions paid to the SEC by securities law violators.

Altaba, Formerly Known as Yahoo!, Charged with Failing to Disclose Massive Cybersecurity Breach, Agrees to Pay \$35 Million

On April 24, the SEC announced that the entity formerly known as Yahoo! Inc. agreed to pay a \$35 million penalty to settle charges that it misled investors by failing to disclose a December 2014 data breach affecting hundreds of millions of user accounts.³ According to the SEC's Order Instituting Cease and Desist Proceedings, within days of the breach, Yahoo's information security team learned that hackers had stolen what the security team referred to internally as the company's "crown jewels," including usernames, email addresses, telephone numbers, birth dates, encrypted passwords and security questions and answers.

Although information relating to the breach was reported to Yahoo's senior management and legal teams, the Order found that Yahoo failed to:

1. properly investigate the circumstances of the breach and did not share information regarding the breach with its auditors or outside counsel to adequately determine whether the breach needed to be disclosed to investors;
2. maintain disclosure controls and procedures designed to ensure that reports from Yahoo's information security team concerning cyber-breaches, or the risk of such breaches, were properly and timely assessed for potential disclosure; and
3. include disclosures regarding the breach in its annual and quarterly reports during the two-year period following the breach or the potential business impact and legal implications of such breach. Yahoo's filings instead suggested that the company only faced the risk of data breaches

and any negative effects that might flow from future data breaches.⁴

It was not until in 2016 when Yahoo was in the process of being acquired by Verizon Communications, Inc. that the breach was disclosed to investors. As a result of Yahoo's conduct, the Order found that the company violated Sections 17(a)(2) and 17(a)(3) of the Securities Act of 1933; Section 13(a) of the Securities Exchange Act of 1934; and Rules 12b-20, 13a-1, 13a-11, 13a-13, and 13a-15 thereunder. Yahoo did not admit or deny the SEC's findings.

The SEC continues to emphasize the importance of cybersecurity data breach disclosures. In addition to the \$35 million settlement with Yahoo, the SEC voted unanimously to approve a statement and interpretive guidance to assist public companies in preparing disclosures about cybersecurity risks and incidents earlier this year.⁵

SEC Launches "SALI"—A New Investor Protection Search Tool

On May 2, the SEC announced a new online search tool—*SEC Action Lookup for Individuals* (SALI)—that "enables investors to research whether the person trying to sell them investments has a judgment or order entered against them in [an SEC] enforcement action."⁶ The new tool seeks to assist the public in making informed investment decisions and avoiding financial fraud.

Unlike many existing online search functions, the new tool's results disclose not only registered investment professionals, but also unregistered ones. According to the press release, the SALI database includes "individuals who have settled, defaulted, or contested an enforcement action brought by the SEC, provided that a final judgment or order was entered against them in a federal court or an administrative proceeding."

In its initial phase, SALI search results will include

parties from SEC actions filed between October 1, 2014 and March 31, 2018. The SEC indicated that it will update the search feature periodically to add parties from newly-filed actions and actions filed prior to October 1, 2014.

SEC Proposes Amendments to the “Loan Rule”

On May 2, the SEC proposed amendments to its auditor independence rules to “refocus the analysis that must be conducted to determine whether an auditor is independent when the auditor has a lending relationship with certain shareholders of an audit client at any time during an audit or professional engagement period.”⁷

The proposed amendments, if adopted, would:

- focus the analysis solely on beneficial ownership rather than on both record and beneficial ownership;
- replace the existing 10% bright-line shareholder ownership test with a “significant influence” test;
- add a “known through reasonable inquiry” standard with respect to identifying beneficial owners of the audit client’s equity securities; and
- amend the definition of “audit client” for a fund under audit to exclude funds that otherwise would be considered affiliates of the audit client.

The Commission also requested comments on certain other potential amendments to its auditor independence rules. Comments are due on or before July 9.

ENDNOTES:

¹See SEC Press Rel. No. 2018-64 (Apr. 12, 2018), available at <https://www.sec.gov/news/press-release/2018-64>.

²White, Mary Jo (Apr. 30, 2015). *The SEC as the Whistleblower’s Advocate*. Speech presented at the Ray Garrett, Jr. Corporate and Securities Law Institute- Northwestern University School of Law, Chicago, Illinois. See <https://www.sec.gov/news/speech/chair-white-remarks-at-garrett-institute.html>.

³See SEC Press Rel. No. 2018-71 (Apr. 24, 2018), available at <https://www.sec.gov/news/press-release/2018-71>.

⁴See SEC Lit. Rel. No. 34-1045 (Apr. 24, 2018), available at <https://www.sec.gov/litigation/admin/2018/33-10485.pdf> (order: Altaba Inc., f/d/b/a Yahoo! Inc.).

⁵See “Commission Statement and Guidance on Public Company Cybersecurity Disclosures” (Feb. 21, 2018), available at <https://www.sec.gov/rules/interp/2018/33-10459.pdf>.

⁶See SEC Press Rel. No. 2018-78 (May 2, 2018), available at <https://www.sec.gov/news/press-release/2018-78>.

⁷See SEC Rel. No. 33-10491 (May 2, 2018), available at <https://www.sec.gov/rules/proposed/2018/33-10491.pdf>.