

Dealing with Disclosure in the Face of a Corporate Crisis

WRITTEN BY

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The recent settled SEC enforcement action, and related criminal proceeding resolved with a deferred prosecution agreement, against Lumber Liquidators is a reminder of the need for accurate and complete disclosure even when responding to adverse publicity that can harm the company.^[1]

Lumber Liquidators, a seller of discount hardwood flooring, was faced with a CBS 60 Minutes report that its products from a Chinese supplier exceeded regulatory limits for formaldehyde. This caused the company's stock price to fall 20% before the markets opened the next day. The company responded in a press release denying the 60 Minutes report and touting its compliance efforts. In fact, according to the admitted facts, the company previously decided to discontinue its Chinese supplier because of management's concerns but was continuing to sell products from the supplier until a replacement could be found. Thus, according to the SEC and the Department of Justice, the statements in the press release were false and misleading.

It is understandable that when a company is faced with a corporate crisis its first priority is to respond to that crisis. However, in doing so, it is important to remember the importance of being forthright in the company's public statements. Involving professionals experienced in securities disclosure requirements in the crisis management team will help in ensuring legal compliance and avoiding the kind of regulatory problems Lumber Liquidators faced.

^[1] *In the Matter of Lumber Liquidators Holdings, Inc.*, Release No. 34-85291 (March 12, 2019).

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