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SEC Settlement Shows Commission's Willingness to Waive Penalties for Investigatory Targets Focusing on Corrective Action

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On January 28, the Securities and Exchange Commission (SEC or Commission) issued a press release, announcing the settlement of various fraud charges against a private technology company in light of their "significant remedial efforts" made during the course of an internal investigation into alleged misconduct by the firm's former CEO. A demonstration of regulatory pragmatism, this matter is indicative of the Commission's willingness to credit investigatory targets that take holistic, corrective action.

At issue in this case were violations of antifraud provisions of the federal securities laws, specifically Section 10(b) of the Exchange Act and Rule 10b-5, as well as Section 17(a) of the Securities Act. The SEC's complaint, which was filed in the U.S. District Court for the Northern District of California, alleged that from 2018-2020, the company's former CEO fraudulently inflated financial metrics and internal records for the purposes of reaching an augmented valuation of over $1 billion. The CEO was fired upon discovery of his fraudulent scheme, and as a result of additional remedial measures undertaken by the company, the SEC ultimately decided not to impose any civil money penalties. Subject to court approval, the settlement permanently enjoins the company from future violations of the federal securities laws.

SEC Division of Enforcement Director Gurbir S. Grewal credited the company's internal investigation, revised valuation, expansion of its board, hiring of new senior management, repayment to harmed investors, and general improvements to corporate governance as the basis for waiving penalties in this case. Mr. Grewal went so far as to state that this matter is an "excellent example" of "what types of remedial actions and cooperation might be credited by the Commission after a company uncovers fraud."

If you have any questions regarding antifraud provisions of the federal securities laws, internal investigations, corporate governance and compliance, SEC enforcement actions, your company's policies and procedures, or questions otherwise relating to the above alert, please contact any of the Troutman Pepper attorneys listed on this advisory.

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