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# SEC Settles Charges Against Company, Former Executive For Failure to Disclose Perks

In June 2023, the Securities and Exchange Commission (“SEC”) announced a settlement of charges against Stanley Black & Decker, Inc. (“SBD”) for failure to make necessary disclosures of perquisites provided to certain members of its executive team and a director.<sup>1</sup> The SEC also announced a settlement of charges against a former executive of SBD for causing SBD to violate several sections of federal securities laws.<sup>2</sup>

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## I. Background

Item 402 of Regulation S-K requires that publicly-traded companies disclose certain perquisites and other personal benefits (“perks”) provided to certain employees. The total value of any perks provided to an executive officer named in the company’s executive compensation disclosure (a “named executive officer”) receiving at least \$10,000 of such items per year must be disclosed. In addition, public companies must identify all perks by type and quantify any perk provided to a named executive officer that individually exceeds the greater of \$25,000 per year and 10% of all perks provided to that officer in that year.

The SEC has previously provided guidance that an item does not qualify as a perk (and thus need not be reported) if it is “integrally and directly related to the performance of the executive’s duties.”<sup>3</sup> Otherwise, an item is a [perk] if it confers a direct or indirect benefit that has a personal aspect, without regard to whether it may be provided for some business reason or for the convenience of the company, unless it is generally available on a non-discriminatory basis to all employees.”<sup>4</sup> The guidance goes on to say that “the concept of a benefit that is ‘integrally and directly related’ to job performance is a narrow one,” which “draws a critical distinction between an item that a company provides because the executive needs it to do the job, making it integrally and directly related to the performance of duties, and an item provided for some other reason, even where that other reason can involve both company benefit and personal benefit.”<sup>5</sup>

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## II. SBD Case

The SEC found that “SBD’s system for identifying, tracking and calculating perquisites did not apply an integrally-and-directly-related standard when characterizing certain items as perquisites,” contrary to the

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<sup>1</sup> *In re Stanley Black & Decker Inc.*, [Exchange Act Release No. 97761](#), AP File No. 3-21497 (June 20, 2023).

<sup>2</sup> *In re Jeffrey D. Ansell*, [Exchange Act Release No. 97760](#), AP File No. 3-21498 (June 20, 2023)

<sup>3</sup> SEC [Release Nos. 33-8732A](#); 34-54302A; IC-27444A; File No. S7-03-06 “*Executive Compensation and Related Person Disclosure*” (August 29, 2006).

<sup>4</sup> *Id.*

<sup>5</sup> *Id.*

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requirements of Item 402.<sup>6</sup> Although SBD disclosed an average of approximately \$1,000,000 of perks to four of its named executive officers and one director for each year in the period from 2017 to 2020, the disclosures failed to include any perk, payment, or compensation to these individuals for use of SBD's corporate aircraft.

The executive officers and director benefited from the use of corporate aircraft worth at least \$1,300,000 per year that was not disclosed in the required "All Other Compensation" column of SBD's proxy statements. Even if corporate aircraft usage were included in the amounts that was disclosed, SBD would have underreported these perks by an annual average of at least \$325,000.<sup>7</sup> SBD's proxy statements included this inaccurate information for at least four years before March 2022, at which time SBD filed a revised disclosure addressing certain perks for these executives in 2019 and 2020.

These failures to make necessary disclosures violated Sections 13(a) and 14(a) of the Securities Exchange Act of 1934 (the "Exchange Act"), according to the SEC, as SBD did not properly apply the SEC compensation disclosure rules relating to these perks.

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### III. Ansell Case

Jeffrey D. Ansell ("Ansell") was an executive at SBD. Although SBD's proxy statements disclosed that Ansell had earned an annual average of approximately \$167,000 in "All Other Compensation" between 2017 and 2020, the correct amount was actually more the \$647,000. This portion of Ansell's annual compensation was underreported by an average of \$162,000 per year.<sup>8</sup>

In connection with preparing SBD's proxy statements each year, Ansell completed a Questionnaire for Executive Officers, which included a section on perks provided to him by SBD. He failed to report hundreds of thousands of dollars in perks, mostly related to car and driver services, car repairs, meal expenditures, travel expenses, and clothing. He further failed to report his company-approved use of corporate aircraft as well as other gifts, products, and services provided to him by SBD employees.

The SEC found that Ansell's failure to disclose these items caused SBD to violate federal securities laws pertaining to proxy solicitation and books and records. In early 2022, Ansell left SBD and reimbursed SBD for many of the above-mentioned personal expenses.

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### IV. Settlements

The SEC separately settled the proceedings against both SBD and Ansell. Ansell consented to an order requiring him to cease and desist from further violations of the proxy solicitation and books and records provisions of the Exchange Act. He further agreed to pay a \$75,000 civil penalty.

Without admitting or denying the SEC's allegations, SBD consented to an order requiring the company to cease and desist from further violations of the federal securities laws. Notably, the order imposes no financial penalty on SBD, in part due to its cooperation with the SEC and its self-reporting once it became aware of the potential violations.

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<sup>6</sup> *In re Stanley*, *supra*, footnote 1.

<sup>7</sup> *Id.* at page 3.

<sup>8</sup> *In re Ansell*, *supra*, footnote 2.

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The SEC took several mitigating factors into account in reaching a settlement with SBD. First, SBD promptly employed outside counsel to conduct an internal investigation, which was overseen by a special committee of independent directors. While the investigation was pending, SBD self-reported the potential violations to the SEC.

Furthermore, SBD cooperated with the SEC's investigation, including by making available information, documentation, data, and persons necessary for the investigation to proceed. Lastly, SBD put in place "remedial measures designed to ensure compliance with Item 402 of Regulation S-K and [SEC] guidance."<sup>9</sup> SBD also made disclosures in its 2021 annual report detailing its remediation.

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## V. Conclusion

In light of the SBD and Ansell settlements, it is vital that companies evaluate on an ongoing basis their internal controls for identifying, tracking, and calculating perquisites. Importantly, failure to disclose purchases, expenses, or benefits that may appear to be ordinary course of business expenses for other purposes may still violate these Item 402 requirements (if above the applicable thresholds). Strong controls that mitigate business risk and a continuing practice of robust disclosure remain among the best practices to comport with these requirements.

It is also noteworthy that the SEC chose not to impose a fine on SBD in light of the company's extensive cooperation and remediation. In announcing the settlements, Division of Enforcement Director Gurbir S. Grewal highlighted the SEC's commitment to "incentivizing self-reporting and cooperation when entities and individuals discover violations of the federal securities laws," as this "proactive compliance enhances public trust in our markets and benefits all participants, especially the investing public."<sup>10</sup>

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If you have any questions about the issues addressed in this memorandum, or if you would like a copy of any of the materials mentioned in it, please do not hesitate to call or email authors Geoffrey E. Liebmann (partner) at 212.701.3313 or [gliebmann@cahill.com](mailto:gliebmann@cahill.com); or David Fuchs (associate) at 212.701.3274 or [dfuchs@cahill.com](mailto:dfuchs@cahill.com); or email [publications@cahill.com](mailto:publications@cahill.com).

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<sup>9</sup> *In re Stanley*, *supra*, at page 4.

<sup>10</sup> [SEC Press Release 2023-111](#) "SEC Charges Stanley Black & Decker and Former Executive for Failures in Executive Perks Disclosure" (June 20, 2023)

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