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SEC CHARGES ANDEAVOR LLC WITH STOCK BUYBACK CONTROLS VIOLATIONS

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On October 15, 2020, the Securities and Exchange Commission ("SEC") announced settled charges against U.S. refiner Andeavor LLC ("Andeavor") for inadequate controls related to a stock buyback plan it executed while it was in talks to be acquired by Marathon Petroleum Corp. in 2018. Without admitting the SEC's findings, Andeavor agreed to pay a $20 million penalty to settle the charges.

According to the SEC, in March of 2017 Andeavor's then-Chairman and CEO began confidential discussion with Marathon's Chairman and CEO about a potential business combination. After months of analysis regarding the potential synergies that a combined company would produce, the CEOs agreed to suspend their discussions. Then in February 2018, just two days before a meeting to resume talks about a potential deal, Andeavor's CEO directed its then-CFO to initiate a share buyback to repurchase $250 million of shares. The SEC found that Andeavor's internal accounting controls failed to ensure the buyback adhered to the company's securities trading policy, a policy that prohibited repurchases while the company was in possession of material non-public information.

Andeavor used an abbreviated and informal process to evaluate whether the requirements for the buyback were satisfied. That process did not require conferring with persons reasonably likely to have material non-public information about corporate developments prior to approval of the share repurchase. As a result, no one involved in Andeavor's process discussed with Andeavor's CEO the prospects that Andeavor and Marathon would agree to a deal. Because they did not do so, the company failed to appreciate that the probability of Andeavor's acquisition by Marathon was sufficiently high at the time as to be material to investors. In February and March 2018, Andeavor repurchased 2.6 million shares of its stock from investors at an average price of $97 per share. About one month after completing the buyback, Andeavor publicly announced that it would be acquired by Marathon in a deal valuing Andeavor at over $150 per share.

The SEC charged Andeavor with violating the internal controls provisions of Section 13(b)(2)(B) of the Securities Exchange Act of 1934, which requires all reporting companies to devise and maintain a system of internal accounting controls sufficient to provide reasonable assurances that transactions are executed in accordance with management's general or specific authorizations, and access to assets is permitted only in accordance with management's general or specific authorization.

The SEC's order underscores the importance for companies to have effective controls in place when contemplating transactions with shareholders. BCLP's Securities & Corporate Governance Team regularly advises both public and private companies on securities law compliance.

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