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A Reminder About Corporate Crisis Communications

In a case that should serve as a cautionary tale for all public companies responding to a public relations crisis, the [DOJ](#) and [SEC](#) today announced securities fraud settlements with Lumber Liquidators Holdings, Inc., alleging that the company had made false and misleading statements in response to a damaging report about the company's products aired on the "60 Minutes" television program. The company entered into a Deferred Prosecution Agreement ("DPA") with the DOJ, which included an agreed statement of facts, as well as a cease-and-desist order with the SEC. Lumber Liquidators will pay a total of \$33 million in criminal fines, forfeiture and disgorgement.

Lumber Liquidators sells hardwood flooring, which is subject to emissions regulations and testing requirements established by the California Air Resources Board ("CARB"). The company purchased certain of these products from suppliers located in China. The 60 Minutes report alleged that Chinese laminated products sold by Lumber Liquidators contained levels of formaldehyde exceeding CARB standards. The company's share price dropped 20% before the market opened the following day. Lumber Liquidators responded with a press release in which it denied the allegations in the 60 Minutes report and made various affirmative assertions about its compliance efforts. According to the DPA, these statements were false and misleading because the company had recently determined to discontinue using its largest Chinese supplier based on findings by its management that were inconsistent with the public denials. The company was also continuing to sell products from this supplier while seeking a replacement.

This case dramatically illustrates the stakes at issue when companies respond to a crisis. A crisis focused on product issues or other business matters can quickly turn into a securities law problem – and can bring criminal exposure – if public statements are not carefully vetted for accuracy and completeness. These criminal and regulatory dispositions also provide a reminder that all public statements issued in the midst of a corporate crisis will be fly-specked by prosecutors and enforcement attorneys, and the discovery of material errors or omissions will only deepen the company's problems. A thoughtful approach will allow for a rapid and effective response without taking steps that will compound the crisis.

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