

Corporate and Financial Weekly Digest

Business/Financial News in Brief

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SEC/Corporate

CFA Centre for Financial Market Integrity Calls on SEC to Enhance Executive Compensation Disclosure Requirements to Deal with Post-Dating of Equity Awards

Ongoing disclosures concerning the post-dating of equity-based compensation and other measures allowing executive employees to time the pricing of such awards are causing certain interest groups to look at the Securities and Exchange Commission's proposed executive compensation disclosure rules in a new light. The CFA Centre for Financial Market Integrity, a global, non-profit professional association, sent a letter to the SEC on May 31 calling for modification of the proposed rules to improve disclosures relating to equity-based awards in four ways by requiring disclosure of:

- Dates for all prior-year compensation committee meetings in the annual proxy statement;
- Dates on which compensation committees approve share-based awards on an on-going basis through 8-K filings and, by reference, in the annual proxy statement;
- Effective grant dates for all share-based awards if different than the approval dates above, on an on-going basis through 8-K filings and, by reference, in the annual proxy statement; and
- Compensation committee determination of whether any effective grant dates were selected to take advantage of pending release of material information about the company, and whether executives are permitted to select or recommend grant dates for their options.

The CFA Centre also reiterated its support for appropriate civil sanctions against executives and directors who have post-dated options awards and criminal prosecution for egregious cases of manipulation.

http://www.cfainstitute.org/pressroom/06releases/20060530_01.html

For more information, contact:

Robert L. Kohl (212) 940-6380 at or e-mail robert.kohl@kattenlaw.com,

Mark A. Conley at (310) 788-4690 or e-mail mark.conley@kattenlaw.com, or

Michael H. Williams at (212) 940-6669 or e-mail michael.williams@kattenlaw.com

Broker Dealer

NYSE Proposes to Change Rule 312 Regarding Changes Within Member Organizations

The New York Stock Exchange LLC filed a proposed change to Rule 312(f) (Rule) with the Securities and Exchange Commission that would, among other things, permit member firms to recommend purchases and sales of shares of the member firm and its affiliates (other than Material Associated Persons, as defined in SEC Rule 17h-1T (MAPs)) subject to customer disclosure of the relationship between the member firm and the company being recommended. Rule 312 was adopted when public ownership of member corporations was first permitted to address what were perceived to be potential conflicts in certain transactions. The Rule, in pertinent part, currently prohibits a member organization from soliciting transactions in its own publicly traded securities and from making any recommendations with respect to its publicly traded securities and those of its affiliates without prior NYSE approval. The proposed rule change would codify the current interpretation that the Rule applies only to non-investment grade debt and equity securities. The Rule would also broaden the application to all securities including privately placed issues. The Rule would clarify that a recommendation includes solicitations, issuance of research or market letters and use of “active” market making, i.e., buying and selling the subject stock through a firm’s proprietary account as opposed to passively standing ready to buy or sell. The issue of Rule 312(f) exemptions arises where a third party could designate members of a member firm’s or affiliate of a member firm’s board because of a capital infusion or other investment in a member firm or affiliated entity (defined as ownership of 25% or more of a member firm’s or affiliate’s voting stock). The NYSE believes that disclosure is adequate to address certain conflicts of interest that could arise with respect to a member’s recommendation to buy or sell securities of many affiliated entities. However, it believes that it is appropriate to retain the prohibition on the recommendation of purchases in the securities of the member organization, any controlling organization or a MAP, given the greater potential for a conflict of interest inherent in such relationships.

<http://a257.g.akamaitech.net/7/257/2422/01jan20061800/edocket.access.gpo.gov/2006/pdf/E6-8096.pdf>

NASD Notice to Members on Margin Requirements

On April 3, the NASD filed a rule change to amend NASD Rules 2520 and 2522 with the Securities and Exchange Commission. These amendments revise the margin requirements to recognize specific additional complex option spread strategies for purposes of determining required margin, and amended the provisions relating to “permitted offsets” for certain listed option transactions. The amendments to Rules 2520 and 2522 are consistent with recent margin rule amendments approved by the SEC filed by the New York Stock Exchange and the Chicago Board Options Exchange. The purpose of the amendments is to set levels of margin that more precisely represent actual net risk of the option positions in the account and enable customers to implement certain spread strategies more efficiently. Prior to these amendments, the rule limited permitted offsets for these parties to options series that are “in or at the money,” which was defined to mean “the current market price of the underlying security is not more than two standard exercise intervals below (with respect to a call option) or above (with respect to a put option) the exercise price of the option.” The amendments to Rule 2520 and corresponding definitions in Rule 2522 recognize specific additional complex option spread strategies, and set margin requirements commensurate with the risk of such spread strategies.

http://www.nasd.com/web/groups/rules_regs/documents/notice_to_members/nasdw_016682.pdf

For more information, contact:

James D. Van De Graaff at (312) 902-5227 or e-mail james.vandegraaff@kattenlaw.com, Daren R. Domina at (212) 940-6517 or e-mail daren.domina@kattenlaw.com, Michael T. Foley at (312) 902-5494 or e-mail michael.foley@kattenlaw.com, Patricia L. Levy at (312) 902 5322 or e-mail patricia.levy@kattenlaw.com, or Morris N. Simkin at (212) 940-8654 or e-mail morris.simkin@kattenlaw.com

Banking

Banking Agencies Release List of Distressed or Underserved Geographies

On June 1, the federal banking agencies, including the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, the Office of the Comptroller of the Currency and the Office of Thrift Supervision (collectively, the “Banking Agencies”) announced the availability of the 2006 list of distressed or underserved nonmetropolitan middle-income geographies in which bank revitalization or stabilization activities will receive Community Reinvestment Act consideration as “community development.” In addition to the applicable list for 2006, the Banking Agencies simultaneously announced that a revised 2005 list was also being released to correct minor discrepancies.

The terms “distressed” and “underserved” are both defined in the Banking Agencies’ CRA regulations.

Data source information used to generate each list of distressed or underserved geographies was also released.

The relevant information can be found at the website for the Federal Financial Institutions Examination Council (FFIEC).

<http://www.ffiec.gov/cra/examinations.htm>

For more information, contact:

Jeff Werthan at (202) 625-3569 or e-mail jeff.werthan@kattenlaw.com, or Christina J. Grigorian at (202) 625-3541 or e-mail christina.grigorian@kattenlaw.com

Litigation

Court Denies Plaintiff’s Motion to Vacate Ruling by NASD Arbitration Panel

Plaintiff filed an arbitration claim before the NASD against defendants Success Trading Securities, a broker-dealer, and its officers, alleging negligence and fraud related to defendant’s trading software. Defendants’ trading software allowed its customers to trade stock over the internet using a margin account. Plaintiff alleged that he lost money on trades due to a flaw in the trading software that allowed him to make purchases in excess of the amount of money in his account. After a pre-hearing telephone conference, the NASD panel granted defendants’ motion to dismiss for failure to state a claim. Plaintiff then moved, in the District Court, to vacate the NASD panel’s ruling, alleging that the arbitrators engaged in misconduct and exceeded their authority by dismissing his claim based only on the pleadings and a telephone hearing. The District Court denied plaintiff’s motion, finding that plaintiff failed to present any evidence of arbitrator misconduct or partiality. The Court pointed out that the NASD arbitrators had authority to grant pre-hearing dismissals for failure to state a claim, and noted that a panel’s refusal to hear evidence was insufficient to overturn its ruling. Moreover, the court determined that the motion should be denied because the plaintiff did not identify any material evidence that the panel failed to consider. (*Tricome v. Success Trade Securities*, Civ. Act. No. 05-4746, 2006 WL 1451502 (E.D. Pa. May 25, 2006))

For more information, contact:

Steven Shiffman at (212) 940- 6785 or e-mail steven.shiffman@kattenlaw.com, or
Julia Chung at (212) 940-6394 or e-mail julia.chung@kattenlaw.com

CFTC

CFTC Announces June 27 Hearing Regarding Foreign Boards of Trade

The Commodity Futures Trading Commission will hold a public hearing on June 27 regarding the issue of what constitutes a “board of trade, exchange, or market located outside the United States” under Section 4(b) of the Commodity Exchange Act. Individuals or organizations wishing to appear before the CFTC must submit a request to appear by June 12.

<http://cftc.gov/opa/press06/opa5184-06.htm>

For more information, contact:

Kenneth Rosenzweig at (312) 902-5381 or e-mail kenneth.rosenzweig@kattenlaw.com,
William Natbony at (212) 940-8930 or e-mail william.natbony@kattenlaw.com,
Fred M. Santo at (212) 940-8720 or e-mail fred.santo@kattenlaw.com,
David Benson at (312) 902-5642 or e-mail david.benson@kattenlaw.com,
Kevin Foley at (312) 902-5372 or e-mail kevin.foley@kattenlaw.com, or
Joshua Yang at (312) 902-5554 or e-mail joshua.yang@kattenlaw.com

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Katten

KattenMuchinRosenman LLP

www.kattenlaw.com

401 S. Tryon Street
Suite 2600
Charlotte, NC 28202-1935
704.444.2000 tel
704.444.2050 fax

525 W. Monroe Street
Chicago, IL 60661-3693
312.902.5200 tel
312.902.1061 fax

5215 N. O'Connor Boulevard
Suite 200
Irving, TX 75039-3732
972.868.9058 tel
972.868.9068 fax

1-3 Frederick's Place
Old Jewry
London EC2R 8AE
+44.20.7776.7620 tel
+44.20.7776.7621 fax

2029 Century Park East
Suite 2600
Los Angeles, CA 90067-3012
310.788.4400 tel
310.788.4471 fax

575 Madison Avenue
New York, NY 10022-2585
212.940.8800 tel
212.940.8776 fax

260 Sheridan Avenue
Suite 450
Palo Alto, CA 94306-2047
650.330.3652 tel
650.321.4746 fax

1025 Thomas Jefferson Street, NW
East Lobby, Suite 700
Washington, DC 20007-5201
202.625.3500 tel
202.298.7570 fax

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