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**Please note that *Corporate and Financial Weekly Digest* will not be published on July 1. The next issue will be distributed on July 8.**

## SEC/CORPORATE

### SEC Staff Publishes Observations from its Review of Interactive Data Financial Statements

On June 15, the staff of the Securities and Exchange Commission's Division of Risk, Strategy, and Financial Innovation published observations regarding filers' compliance with the SEC's rules concerning interactive data for financial reporting. The staff identified some of the most common and significant issues contained in interactive data submissions based on filings made in early 2011, which included 10-K's from Large Accelerated filers, the largest of which provided detailed tagging of notes to the financial statements. The staff also reiterated its view that the rendered version of interactive data (XBRL) financial statements need not look exactly the same as HTML financial statements, emphasizing the primacy of quality, completeness and accuracy of tagging over the formatting and appearance of XBRL financial statements.

One of the most common errors filers make in interactive data submission, according to the staff's observations, is to incorrectly enter an amount with a negative value. The staff indicated that while a number may be presented as negative in HTML filings (such as a credit), numbers should almost always be tagged as positive numbers in XBRL submissions. The staff has provided examples of language in certain elements that can be entered as negative.

The staff's observations also included guidance regarding the propriety of extending elements in interactive data submissions versus using a GAAP element from the SEC's standard taxonomy.

Click here to view the full text of the staff's observations from its review of interactive data financial statements.

## BROKER DEALER

### FINRA Approves Registration, Qualification and Continuing Education Requirements for Certain Member Firm Operations Personnel

On June 16, the Securities and Exchange Commission approved a proposed rule by the Financial Industry and Regulatory Authority to require registration of certain personnel of a member firm who perform and oversee member operations functions. New FINRA Rule 1230(b)(6) will establish a registration category and qualification examination requirement for certain operations personnel, as well as adopt continuing education requirements for such operations personnel. An individual will be required to register as an "Operations Professional" if the person is a "covered person," who has responsibility for one or more of 16 "covered functions," such as customer account data and document maintenance; receipt and delivery of securities and funds, account transfers; and prime brokerage. Any person required to register as an Operations Professional will be required to pass a new qualification examination, subject to certain exceptions, which tests for general knowledge about the securities industry. Continuing education requirements will also be expanded to include Operations Professionals.

According to FINRA spokeswoman Nancy Condon, the effective date for the new rule will be announced within the next two to three weeks. From the effective date of the new rule, broker-dealers will have 60 days to identify persons who are required to register as Operations Professionals based on their activities, as of the effective date of the rule. Persons identified during the 60-day period who must pass the qualification examination will have 12 months from the effective date of the new rule to pass such examination.

Click here to read SEC Release No. 34-64687.

## LITIGATION

### Supreme Court Sets High Bar for Class Action Suits

The U.S. Supreme Court overturned certification of a class of 1.5 million current and former female employees of Wal-Mart Stores, Inc. in the largest sex discrimination case in history. In a 5-4 decision, the Court found that plaintiffs had not cleared the "commonality" hurdle for class certification set by Federal Rule of Civil Procedure 23(a)(2), which requires parties to prove that claims of putative class members share common questions of law and fact.

Plaintiffs, current or former employees of Wal-Mart, sought judgment against the company on behalf of themselves and a nationwide class of female employees, alleging that Wal-Mart discriminates against women in violation of Title VII of the Civil Rights Act of 1964. Plaintiffs claim that local managers exercise their discretion over pay and promotions disproportionately in favor of men, which has an unlawful disparate impact on female employees.

The U.S. District Court for the Northern District of California certified the class, and the U.S. Court of Appeals for the Ninth Circuit substantially affirmed, concluding that respondents met Rule 23(a)(2)'s commonality requirement. The Supreme Court reversed, holding, among other things, that because the crux of a Title VII inquiry is "the reason for a particular employment decision," plaintiffs' varied factual scenarios rendered their case inappropriate for class treatment. "Without some glue holding together the alleged reasons for those [adverse employment] decisions, it will be impossible to say that examination of all the class members' claims will produce a common answer to the crucial discrimination question." (*Wal-Mart Stores, Inc. v. Dukes et al.*, No. 10-277, 2011 WL 2437013 (U.S.) (June 20, 2011))

### Monetary Sanctions Imposed on Counsel and Client for Discovery Violations

The U.S. District Court for the Western District of Washington imposed monetary sanctions on plaintiff Play Visions, Inc. and its counsel for failure to search for documents in a timely fashion, delayed and inadequate document production, false certification that the relevant records were maintained only in paper format, and for counsel's specific failure to adequately understand the client's document retention system or assist in production.

Following over a year of contentious litigation, Play Visions moved to voluntarily dismiss its suit with prejudice. Defendants Dollar Tree Inc., and Greenbrier International, Inc. did not oppose the dismissal, but sought sanctions for alleged discovery misconduct and moved to recover fees and costs.

Defendants alleged that plaintiff's counsel was unreliable in ensuring appropriate production and discovery as required by Rule 26(g)(1) of the Federal Rules of Civil Procedure. The court found that Play Visions' counsel did nothing to familiarize himself with Play Visions' document retention and destruction policies, and did not assist in searching for or responding to defendants' first or second requests for production. Instead, the slow production of documents, with false or misleading certifications that all relevant documents had been reproduced, violated Rule 26(g)'s mandate that such certifications be formed after a reasonable inquiry. Based on the defendants' billing records, the court ordered fees in the amount of $137,168.41, to be born by both plaintiff and its counsel jointly and severally. (*Play Visions, Inc. v. Dollar Tree Stores, Inc.*, No. C09-1769 MJP (W.D. Wash. June 8, 2011))

# EXECUTIVE COMPENSATION AND ERISA

### Agencies Clarify Requirements for Health Plan Claims Procedures

The Patient Protection and Affordable Care Act (PPACA) mandates certain requirements for claims and appeals procedures that must be followed by all health insurers and group health plans, including employer-provided plans that are subject to the Employee Retirement Income Security Act (ERISA). PPACA was originally enacted in 2010, and initially required compliance only with ERISA's claims and appeals rules. However, through prior guidance issued jointly by the Departments of Treasury, Labor and Health and Human Services (the Departments), the claims and appeals rules have been expanded. In guidance issued on June 22 (the Guidance), the Departments have clarified the new claims and appeals requirements.

Before PPACA, ERISA generally set forth claims and appeals procedures that included deadlines for responses to claims and appeals and mandated the inclusion of certain provisions in such responses. Pursuant to the previously issued guidance, the PPACA claims and appeals requirements (which will supersede ERISA's requirements) expand upon the pre-PPACA requirements. The new requirements include:

- expanding the scope of the procedures to address claims related to coverage rescission;
- mandating response to urgent care claims no later than 24 hours after receipt;
- requiring that additional plan-produced material related to the claim must be provided to a claimant upon request;
- clarifying conflict of interest rules that apply when hiring claims adjudicators;
- demanding that response letters must be drafted using language that is culturally and linguistically appropriate;
- increasing the information that must be included in claim denials;
- allowing claimants access to court if the plan/employer does not strictly adhere to the claims rules; and
- establishing an external review procedure for certain claims.

The Guidance clarifies and finalizes the items described above. The Guidance provides that, for the most part, the new requirements do not become fully effective until the beginning of the 2012 plan year (January 1, 2012, for calendar year plans). Prior to that effective date, plan sponsors are encouraged to review their health plan claims and appeals procedures to ensure that they are updated to comply with new PPACA requirements. This review may require updates to the plan document and summary plan description for each health plan, and may also require contracting with third-party vendors to ensure compliance with mandated external review procedures.

The guidance can be found here.

# UK DEVELOPMENTS

### FSA Publishes Financial Crime Measures

On June 27, the UK Financial Services Authority (FSA) published a financial crime consultation paper (CP11/12 – *Financial Crime: A Guide for Firms*) which proposes a new FSA guide designed to help firms reduce the risk of their businesses being used to facilitate financial crime, as well as other anti-financial crime measures.

The proposed financial crime guide aims to improve firms' understanding of the FSA's expectations in this area and draws together prior FSA statements on financial crime. The guidance addresses issues including anti-money laundering, terrorist financing, fraud, data security, bribery and corruption, sanctions, and weapons proliferation financing.

Read more.

## FSA Criticizes Banks' Management of High-Risk Money Laundering Situations

On June 22, the UK Financial Services Authority (FSA) published the results of a thematic review of how banks manage their money laundering risks, particularly with respect to high-risk customers including Politically Exposed Persons (PEPs), correspondent banking relationships and wire transfer payments.

The FSA has serious concerns about the findings of the anti-money laundering (AML) thematic review. It found that some banks appeared unwilling to turn away very profitable business relationships, including with PEPs, even where there appeared to be an unacceptable risk of handling the proceeds of crime. Among other findings, three quarters of the banks the FSA sampled failed to take adequate measures to establish the legitimacy of the source of their customers' wealth and the source of the funds to be used in the business relationship. So far, two banks have been referred to enforcement following the identification of apparent serious weaknesses in their systems and controls for managing high risk.

During the review, which lasted from early 2010 until February 2011, the FSA identified some examples of good AML risk management, but is concerned to have uncovered what it describes as "serious weaknesses" common to many of the banks visited. It has referred two banks to its Enforcement and Financial Crime Division after identifying apparent serious weaknesses in their systems and controls for managing high-risk customers, including PEPs. The FSA is also considering whether further regulatory action, including use of its enforcement powers, against other banks is required.

The FSA's principal conclusion is that around three quarters of the banks visited, including the majority of major banks, are not consistently managing their relationships with high-risk customers and PEPs effectively and must do more to ensure they are not being used for money laundering. The serious weaknesses identified, together with indications that, where there are potentially large profits to be made, some banks are prepared to enter into very high-risk business relationships without adequate controls, mean it is likely these banks are handling the proceeds of corruption or other financial crime.

As a result of the findings of the review, the management of high-risk customers, including PEPs, will remain a significant focus of the FSA's anti-financial crime agenda for the foreseeable future.

Read more.

## FSA Publishes Annual Report

The UK Financial Services Authority (FSA) has published its Annual Report for 2010/11, outlining its performance against the priorities set out in its 2010/11 Business Plan and its statutory objectives. The Report highlights, among other matters:

- the results of the FSA's enforcement approach and its commitment to "credible deterrence," which has led to criminal convictions for insider dealing and substantial fines for market abuse;
- the FSA's new supervisory approach to protect retail customers, including its decision to act earlier to prevent perceived customer detriment;
- the FSA's more intensive approach to prudential supervision; and
- its work to promote global standards of prudential banking supervision.

The FSA considers that it achieved 90% of its milestones and that it is also coping well with the transition to the new UK regulatory bodies.

One particular focus is the FSA's "Market Cleanliness Study," which focuses on abnormal pre-announcement price movements (APPMs). After remaining stable for the past few years, the level of APPMs for the takeovers declined to 21.2% in 2010 from 30.6% in 2009. This is the lowest level since 2003. While this fall has taken place against the backdrop of increasing focus on market abuse by the FSA, the FSA acknowledges that the reason behind this decline cannot be determined with certainty. Nevertheless it welcomes this apparent improvement in market participants' behavior.

Read more.

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