

Corporate and Financial Weekly Digest

Business/Financial News in Brief

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SEC/Corporate

SEC Provides Update on Interactive Data and Announces Roundtable

The Securities and Exchange Commission announced on May 23 that the list of companies that have agreed to furnish financial information in their SEC filings in computer-readable interactive data format has grown to 20. Companies participating in the program, which will last at least one year, will receive expedited reviews of their SEC registration statements and annual reports. For their part, the companies will furnish financial data in their periodic reports to the SEC using the XBRL data-tagging format informally known as interactive data. Interactive data will permit individual investors and analysts to quickly search for individual items of information from financial reports, such as net income, executive compensation, or mutual fund expenses. It will also enable them to download selected information directly into financial software. In the near future, the SEC hopes that popular Internet applications will permit automatic, real-time delivery of SEC financial data directly to the computer desktop.

The Commission also announced that it will conduct the first in a series of interactive data roundtable discussions on Monday, June 12. The roundtable will also be webcast at <http://www.sec.gov/>. Additional Topics will include discussions of what information is most helpful to investors, how to accelerate the use of new software that permits the dissemination of interactive financial data, and how to best design the SEC's disclosure requirements to take maximum advantage of the potential of interactive data.

<http://www.sec.gov/news/press/2006/2006-79.htm>

Bush Chooses Casey to Fill SEC Commissioner Vacancy

As reported last week, Securities and Exchange Commissioner Cynthia A. Glassman announced that she intends to leave the SEC after the completion of her current term on June 5. Within days of Glassman's announcement, the White House announced that Kathleen Casey is President Bush's choice to succeed Glassman. Ms. Casey, who currently serves as the staff director of the Banking Committee of the United States Senate, formerly worked as chief of staff and legislative director for Richard Shelby, a Republican Senator from Alabama. If confirmed, Casey will serve a five-year term ending June 5, 2011.

http://today.reuters.com/investing/financeArticle.aspx?type=governmentFilingsNews&storyID=2006-05-18T233238Z_01_N18178143_RTRIDST_0_BUSH-SEC-UPDATE-2.XML

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 Eliminating Sending Account Statements to Certain Institutional Customers

New York Stock Exchange LLC Rule 409 requires member firms to send, at least quarterly, account statements to all accounts having a money or security position or effecting a transaction during the quarter unless NYSE gives the firm permission not to do so. The proposed amendment filed with the Securities and Exchange Commission would allow firms not to send account statements to customers who effect only delivery against payment/receive against payment transactions, do not have money or security positions with the firm and consent in writing to the suspension of receipt of account statements. The firm must agree to provide any specific statement requested by the customer and to resume sending account statements if the customer requests. The proposal would mainly affect institutional investors. The Securities Industry Association estimates this could save members \$100,000 a year.

<http://www.sec.gov/rules/sro/nyse/2006/34-53826.pdf>

The SEC Brings Its First Anti-Money Laundering Case

The Securities and Exchange Commission filed a settled cease and desist proceeding for violation of the Customer Identification Procedures Rule against Crowell, Weedon & Co. Crowell Weedon has been registered as a broker-dealer since 1936, and this was the first enforcement action brought against it. Crowell Weedon's Customer Identification Procedures tracked the rule's requirements, including verifying a customer's identity by documentary and non-documentary means. However, between October 2003, the effective date of the rule, and April 2004 neither the third party Crowell Weedon retained to perform this nor Crowell Weedon personnel completed the necessary verifications for the 2900 accounts opened during that period. Crowell Weedon retained a new party in April 2004 to perform customer verifications going forward as well as to verify the 2900 accounts that had not been verified. The SEC found that these actions violated Securities Exchange Act of 1934 Rule 17a-8 that requires a broker-dealer to comply with the Financial Crimes Enforcement Network Broker Customer Identification Procedure rule and issued a cease and desist order but imposed no monetary fine.

<http://www.sec.gov/litigation/admin/2006/34-53847.pdf>

CBOE Adopts Rule to Contract Out Enforcement

The Chicago Board Options Exchange, Incorporated has filed a rule, effective immediately, with the Securities and Exchange Commission to allow the CBOE to enter into regulatory services agreements with other domestic and foreign self-regulatory organizations and contract markets to enforce the rules of the CBOE. The CBOE would remain a self-regulatory organization ultimately responsible for enforcing its and the SEC's rules. The CBOE notes that (i) it has a Regulatory Services Agreement with the other options markets for surveillance of option trading in the National Market System, and (ii) the Boston Stock Exchange has adopted a rule similar to that adopted by the CBOE.

<http://a257.g.akamaitech.net/7/257/2422/01jan20061800/edocket.access.gpo.gov/2006/pdf/E6-7918.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

United Kingdom Developments

Submitted by our London Affiliate: Katten Muchin Rosenman Cornish LLP

<http://www.kattenlaw.co.uk/>

FSA Consults on Organizational Systems and Controls Requirements

On May 19, the Financial Services Authority published CP06/9 which proposes rules and guidance to implement in the UK the organizational and systems and controls requirements contained in the EU Markets in Financial Instruments Directive (MiFID) and Capital Requirements Directive (CRD), each of which contain requirements intended to secure effective management and internal systems and controls of regulated firms.

CP 06/9 proposes revised regulatory criteria to be set out in the FSA's rules. The revised rules will set the standards expected of firms and of their senior management in the areas of effective management oversight and systems and controls, including risk management and organizational requirements.

The proposed FSA rules cover seven areas of management oversight and control. These are: (1) general organizational requirements (including business continuity) (2) employees, agents and other relevant persons (including senior management requirements) (3) compliance, (4) risk controls, (5) outsourcing, (6) record keeping and (7) conflicts of interest.

For more information, contact:

Martin Cornish at (011) 44 20 7776 7622 or e-mail martin.cornish@kattenlaw.co.uk, or

Edward Black at (011) 44 20 7776 7624 or e-mail edward.black@kattenlaw.co.uk

Litigation

Court Finds Optimistic Statements Not Actionable Under the Securities Laws

Plaintiffs brought securities fraud claims alleging, in part, that defendants made materially false statements regarding existing facts. In granting the defendants' motion to dismiss, the Court found, among other things, that several of the defendants' statements were not actionable because they were mere "puffery," or expressions of corporate optimism. In particular, the Court explained that the defendants' statements that it was "compet[ing] favorably" and that its "competitive position has never been stronger" lacked the necessary specificity to be considered material for purposes of a securities fraud claim. (*In re Laboratory Corporation of America Holdings Securities Litigation*, No. 1:03CV591, 2006 WL 1367428 (M.D.N.C. May 18, 2006))

Absent Identifiable Date of Breach, Prejudgment Interest to Run From Date of Complaint

On remand from the Second Circuit, the district court was called upon to explain its reasons for calculating prejudgment interest from the date that plaintiff's Complaint was filed instead of the date of the contract at issue was breached. The district court acknowledged that it is well settled that prejudgment interest on a contract should run from the date of the breach. However, since it could not establish the date of defendant's breach, the Court determined that the date the Complaint was filed was an appropriate date to begin calculating interest. (*Valjean Manufacturing, Inc. v. Werdiger, Inc.*, No. 03 Civ. 6184, 2006 WL 1359957 (S.D.N.Y. May 18, 2006))

For more information, contact:

Steven Shiffman at (212) 940- 6785 or e-mail steven.shiffman@kattenlaw.com, or

Daniel A. Edelson at (212) 940- 6576 or e-mail daniel.edelson@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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