



FENWICK & WEST LLP

CORPORATE & SECURITIES LAW UPDATE

SEC To Propose New Corporate Disclosure Rules

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The SEC announced today that it plans to propose significant changes in the disclosure regime that applies to public companies. If adopted, these changes would accelerate the filing deadlines for Forms 10-K, 10-Q and 8-K, and would require that public companies post these reports on their web sites as they are filed with the SEC. The changes would also accelerate the reporting of transactions in a company's stock by its officers, directors and 10% stockholders. Finally, the changes would expand the list of events requiring a Form 8-K filing, and would require MD&A disclosure of critical accounting policies in the Form 10-K. A summary of these proposals follows, and a copy of the SEC's announcement is attached. No rule changes have been formally proposed at the moment, but we should expect the rule proposals to be forthcoming soon.

Proposed Amendments to Deadlines for Filing Securities Exchange Act Reports

The SEC intends to propose that public companies be required to file their annual reports on Form 10-K within 60 days after their fiscal year end, rather than the current 90 days. Similarly, quarterly reports on Form 10-Q would be due within 30 days after the end of the first three fiscal quarters, rather than the current 45 days. Forms 8-K would be due no later than the second business day following occurrence of the event being report (as opposed to the five or more days that are currently allowed), and the SEC is considering whether some events should be reported by the opening of business on the day after the event occurs.

Proposed Expansion of Events Requiring the Filing of a Report on Form 8-K

The SEC intends to expand the types of information that companies must report on Form 8-K. Some of the new items that may be included in these reports are:

- Defaults and other events that could trigger acceleration of direct or contingent obligations;
- Transactions that result in material direct or contingent obligations not included in a prospectus filed with the Commission;
- Offerings of equity securities not covered by a prospectus filed with the Commission;
- Waivers of corporate ethics and conduct rules for officers, directors and other key employees;
- Material modifications to rights of security holders;
- Departure of the company's CEO, CFO, COO or president (or persons in equivalent positions);
- Notices that reliance on a prior audit is no longer permissible, or that the auditor will not consent to use of its report in a Securities Act filing;

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- Definitive agreement that is material to the company (negotiations of agreements would be excluded from this requirement unless and until a definitive agreement is entered into);
 - Any loss or gain of a material customer or contract;
 - Any material write-offs, restructurings or impairments;
 - Any material change in accounting policy or estimate;
 - Changes in rating agency decisions and other rating agency contacts;
 - De-listing of the company's securities; and
 - Any material events, including the beginning and end of lockout periods, regarding the company's employee benefit, retirement and stock ownership plans.

Disclosures about Critical Accounting Policies

The SEC intends to propose amendments to its MD&A disclosure to require information about critical accounting policies, potentially including the judgments and uncertainties affecting the application of those policies, and the likelihood that materially different amounts would be reported under different conditions or using different assumptions. This tracks the Commission's guidance in December 2001.

Proposed Amendments for Insider Reporting

Under the Exchange Act, officers, directors and greater-than-10% stockholders must file Forms 4 disclosing trading in the company stock no later than the tenth day of the month following the month in which the trades occur. The SEC is supporting legislation that would dramatically shorten this period. In the meantime, the SEC intends to require that issuers promptly report, on Form 8-K, any significant transactions in their stock by their executive officers and directors.

Next Steps

The SEC will issue for public comment one or more detailed proposing releases with the text of the proposed rules. In today's release, the SEC states that it intends "to adopt new rules as quickly as possible." The SEC has also stated that these proposals are "the first steps in the Commission's efforts to improve the current system of financial reporting and disclosure. The Commission is conducting a number of other reviews that likely will result in additional rulemaking."

While many of these proposals will be controversial, the new leadership at the SEC has put significant energy into these proposals, and has emphatically stated its intention to take action in this area. The rules that are finally adopted may be significantly modified from what is proposed, for instance to mitigate the burden on issuers. We would be happy to provide you with additional information on the general proposals announced today, and the actual proposed rule changes when they are announced.

The text of the SEC Announcement can be found at the following link:

<http://www.sec.gov/news/headlines/corpdiscrules.htm>