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In This Issue:

Administration: President Bush's 10-Point Plan for Reform
Congress: Senate Bill Seeks Broad and Far Ranging Reform
SEC I: SEC Provides Guidance for Arthur Andersen Audits
SEC II: Oversight of Auditor Independence
SEC III: Chief Accountant Provides Views on Audit Committee's Role
SEC IV: SEC Brings Enforcement Action Seeking Stock Options and Bonuses
SEC V: SEC Criticizes Enron's Interim President's Compensation
International: EU Parliament Approves International Accounting Standards
International: Pan-European Prospectus Approved by EU Parliament
Reform: SEC Staff Fleshes Out Latest Guidance, NIRI Survey and FEI
Recommendations
Boards: NACD/IIA Survey Reveals Board Thinking about "Enron"
What's Up Online: Online Annual Report Trends
Comings and Goings: Who's Doing What and Where
Events Calendar

Online Program: The transcript from our complimentary teleconference program, "Tips for the Proxy Season: Drafting Disclosure and Meeting Planning" is at <http://www.realcorporatelawyer.com/CLE/CLE02-26-02Transcript.html>.

Administration: President Bush's 10-Point Plan for Reform

On March 6, President Bush outlined a ten-point plan to provide investors with better information, make officers accountable for their actions, and strengthen the overall auditing framework.

Federal Reserve Chairman Alan Greenspan has endorsed the President's plan. Many of the matters in President Bush's plan had already been offered by the SEC last month.

The Ten-Point Plan includes:

"Plain English" Financial Disclosures - Each investor should have quarterly

access to information needed to evaluate a company's financial performance, condition, and risks.

More Frequent Critical Disclosure - Each investor should have prompt access to critical information, with an expanded list of significant events reportable on Form 8-K.

Personal Accountability - CEOs should be personally accountable for the veracity, timeliness, and fairness of their companies' public disclosures, including financial statements.

No Personal Profiting - Officers should not be allowed to profit from erroneous financial statements.

Loss of Ability to Serve as Officers - CEOs or other officers who clearly abuse their power should lose their right to serve in any corporate leadership positions.

Prompt Disclosure of Insider Trades - Corporate leaders should be required to tell the public promptly whenever they trade company stock for personal gain.

SEC Ensures Independent Auditor Integrity - Investors should have complete confidence in the independence and integrity of companies' auditors, with the SEC establishing guidelines for audit committees and independent auditors.

New Self-Regulatory Board - An independent regulatory board, under the SEC's supervision, should ensure that the accounting profession is held to the highest ethical standards.

Greater SEC Oversight of the FASB - The authors of accounting standards must be responsive to the needs of investors, with the SEC exercising more oversight of the FASB.

Best Practices for Corporate Accounting - Corporate accounting systems should be compared with best practices, not simply against minimum standards - auditors would be tasked with conducting these comparisons and reporting them to the audit committee.

The text of the President's Plan is at

<http://www.realcorporatelawyer.com/misc/bushplan.html>.

Congress: Senate Bill Seeks Broad and Far Ranging Reform

Sen. Christopher Dodd (D-Conn.), Chairman of the Securities and Investment Subcommittee, and Subcommittee member Sen. Jon Corzine (D-N.J.) introduced a bill - "The Investor Confidence in Public Accounting Act of 2002" - that is one of the most far-reaching reform proposals yet. The bill primarily seeks to overhaul audit practices.

Among other matters, the Dodd-Corzine bill would:

- allow independent auditors to provide other services, such as providing tax advice
- but only with the approval of a company's audit committee
- essentially prohibit independent auditors from auditing companies whose senior

managers worked for the auditor during the previous two years.

establish a self-regulatory board, funded by fees collected from independent auditors and overseen by members appointed by the SEC, the Treasury Department and the Federal Reserve. Only a minority of the SRO's members would be permitted to have experience as accountants. The board would set audit standards, conduct annual inspections of audit firms, and have the power to investigate and discipline accountants.

The Dodd-Corzine bill is similar to one offered by House Democrats - but more restrictive than the bill introduced by Rep. Michael Oxley (R-Ohio) of the House Financial Services Committee last month.

There are dozens of other bills that have been introduced that react to the Enron collapse. For example, Rep. Dennis Kucinich (D-Ohio) has proposed creating a unit within the SEC to audit companies, similar to how bank examiners scrutinize financial institutions.

SEC I: SEC Provides Guidance for Arthur Andersen Audits

Despite Arthur Andersen LLP's indictment, the SEC will continue to accept the financial statements of public companies audited by it - so long as the financial statements contain certain assurances. The SEC emphasizes that companies should make their own independent decisions regarding completion of current audits - and that its actions are intended only to provide neutral flexibility for companies as they make those decisions.

In addition, if Arthur Andersen is unable to complete a client's audit - or if a company decides to no longer use Arthur Andersen - the SEC will allow the company to file unaudited financial statements - and then amend the Form 10-K within 60 days with audited financials. Pursuant to a temporary/final rule issued by the SEC, the assurances include:

Andersen's vouching for its ability to provide personnel to work on an audit - and to have its national office available for consultation.

Filing deadlines remain in effect, but the SEC will accept filings that include unaudited financial statements from any issuer unable timely to provide audited financial statements. Issuers electing this alternative generally will be required to amend their filings within 60 days to include audited financial statements.

In such cases, companies must include a prominent statement on the cover page of their filings that the filing includes "unaudited financial statements in lieu of audited financial statements because the issuer was unable to obtain from Arthur Andersen LLP (or a foreign affiliate of Arthur Andersen LLP)."

Companies filing unaudited financial statements must include a letter to the SEC stating that Andersen has been their auditor, etc. to be filed as Exhibit 99.

The SEC's action has an immediate effect on Andersen audit clients who submit Form 10-K and 10-Q filings after March 14. The SEC has set up a hotline at (202) 942-2816. The SEC's actions do not apply to audits by Andersen that have been completed.

The SEC's guidance is similar to SAB 90 when another auditor, Laventhol & Horwath, filed for bankruptcy protection in the wake of the savings and loan crisis a decade ago.

The SEC's press release regarding its guidance is at <http://www.sec.gov/news/headlines/andersenreqs.htm>. The Temporary Final Rule and Final Rule are at <http://www.sec.gov/rules/final/33-8070.htm>.

SEC II: Oversight of Auditor Independence

As the Public Oversight Board has disbanded as of March 31, the SEC has changed its plans for completing independence reviews of the design, implementation and operating effectiveness of the Big Five auditing firms. After March 31, the POB staff will continue to carry out its oversight functions under an agreement with the SEC and the Executive Committee of the SEC Practice Section of the AICPA. The staff will be known as the "Transition Oversight Staff," led by its executive director, Jerry Sullivan.

The Transition Oversight Staff will engage independence experts, including experts from the firms' peer reviewers, to perform operating effectiveness tests pursuant to its work programs. The TOS will define and supervise the work performed by the experts.

The SEC has appointed Donald Kirk, former vice chairman of the POB and a former chairman of the FASB, as an independent party to oversee and issue a public report on this work. The report will be issued by the end of October.

The SEC's plans are described at <http://www.sec.gov/news/headlines/finalauditorind.htm>.

SEC III: Chief Accountant Provides Views on Audit Committee's Role

In a March 7 speech, the SEC's Chief Accountant, Robert Herdman, provided his guidance on how an audit committee should function. Among other actions, he believes that the audit committee:

- must ask tough questions when having discussions with management as well as the internal and independent auditors
- has to understand the sometimes highly complex company information and results

should have the power to hire and fire the auditors
should be viewed by the independent auditors as the client
must evaluate the independent auditor's competence and independence
needs to probe the nature and extent of issues that management and the auditors
gave considerable attention to - it's not enough to merely be told there were no
reportable disagreements
should oversee and use its judgment regarding the company hiring key audit firm
personnel into key company positions
should understand and assess the effectiveness of the internal audit - when
internal and independent auditors suggest improvements in controls, there should be
compelling reasons why they are not adopted
should consider the independent audit fee size as a way to monitor whether the
scope of the work is sufficient - and should compare peer group companies' fees
should ask for and receive frank assessments about financial management's
competence

Robert Herdman's speech is at <http://www.sec.gov/news/speech/spch543.htm>.

SEC IV: SEC Brings Enforcement Action Seeking Stock Options and Bonuses

In the 1st case since the SEC intimated last month that it would try to force officers to forego compensation linked to manipulated earnings, the SEC charged a former president and chief operating officer of engaging in fraud to inflate his company's, IGI Inc., earnings. As part of the remedy, the SEC is asking the return of an unspecified amount of stock options and bonuses.

While the SEC has recouped bonuses and other types of compensation in fraud cases before, this is the 1st time that the SEC has targeted stock options.

The SEC also is seeking a court order to bar the former president from serving again as an officer or director of a public company, a power the SEC - and President Bush - is asking Congress to grant it directly.

The SEC's action against IGI is described at <http://www.sec.gov/news/press/2002-35.txt>.

SEC V: SEC Criticizes Enron's Interim President's Compensation

The SEC filed an objection in federal bankruptcy court regarding the terms of Enron's proposed agreement with its interim chief executive officer. The package would give the CEO a part-time, 35-hour-per-week job and pay him \$1.3 million a year and allow him to hire up to 15 associates from his former firm at salaries of \$864,000 a year - as well as a \$5 million bonus if Enron emerges from bankruptcy or liquidates.

In its objection, the SEC stated that the compensation arrangements were overreaching, inappropriate in the context of a Chapter 11 bankruptcy case, subject to too few controls and had potential in some circumstances for conflicts of interest and absolve the interim CEO from his fiduciary duties.

Enron quickly responded by filing an amended agreement with the interim CEO that addressed some of the issues raised. But the SEC said it would not respond to Enron's new proposal, arguing that the company had ample opportunity to address its concerns but instead waited until the last possible minute - and did not alert the SEC that the company would be submitting a new agreement. A hearing that will address this issue is scheduled to be held on April 4th.

International: EU Parliament Approves International Accounting Standards

The European Parliament approved its plans to require all listed European companies to use the International Accounting Standards for financial reporting.

Most of the European Union's member states had approved the proposal in December and set a deadline of 2005. However, the European Parliament extended the deadline until 2007 (for those companies that are currently using GAAP) - to facilitate the translation of the IAS into the 11 official EU languages and provide adequate training opportunities.

International: Pan-European Prospectus Approved by EU Parliament

In mid-March, as part of the European Commission's Financial Services Action Plan, the European Parliament passed laws that recognize a pan-European prospectus (in addition to laws on insider trading and bank insurance). The prospectus law would allow companies to:

- select the country (and its regulator) with which they would file the prospectus,
- deliver a single disclosure document for any country in Europe, and

forego annual updates of prospectuses unless a company sought to raise capital.

This Plan must now be approved by the European Council, where member states must agree on whether to approve the amendments. Although action is expected sooner, the European Commission has set a deadline of 2005 for implementation of the Plan.

An outdated version of the Prospectus Directive (updated one is not yet available) is at http://europa.eu.int/comm/internal_market/en/finances/mobil/prospectus.htm. The Financial Services Action Plan is at http://europa.eu.int/comm/internal_market/en/finances/actionplan/index.htm.

Reform: SEC Staff Fleshes Out Latest Guidance, NIRI Survey and FEI Recommendations

During the month, senior staff members of the Division of Corporation Finance have fleshed out the SEC's recent MD&A and other financial disclosure guidance, including statements made at a PLI conference ("Disclosure and Other Lessons Learned after Enron") and during a meeting with the Securities Law Committee of the American Society of Corporate Secretaries.

Qualitative and Timeliness Themes - the twin goals of the rulemaking project announced on February 11th are improved disclosure and timing of disclosures. Rulemaking addressing these two themes are expected to address issues beyond those identified in the February 11th announcement.

Series of Proposals; Rather than One Package - the rulemakings noted in the February 11th announcement will come in separate releases rather than one big project; the first proposal release should be issued fairly soon.

Qualitative, Not "Elevator Music" - Companies should focus on the quality of their disclosures and cut down on disclosure that has no substantive meaning (such as boilerplate in "Liquidity and Capital Resources" and period comparisons). This is somewhat counter to companies that recently have boasted that their latest reports provide more lengthy disclosure.

Critical Accounting Policy Disclosure - This disclosure should have its own caption and placed near the beginning of MD&A, with each policy identified in a bullet point format. This disclosure should be updated every quarter as necessary. It is not sufficient to merely reference footnote disclosure. If MD&A disclosure is provided on a segment basis, companies should consider whether different policies apply to each segment.

Focus on Trends and Uncertainties - The staff is particularly focused on trends and uncertainties disclosure, as noted in the SEC's MD&A release issued in January. The staff clarified that the process of determining whether disclosure is necessary should be on a "reasonably likely" basis - this is a lower threshold than "more likely than not."

Impact of Rulemaking on Foreign Private Issuers - The Form 20-F filing deadline is not likely to be accelerated - nor are Form 6-K requirements likely to be impacted by the upcoming proposals.

On March 20th, the National Investor Relations Institute released a survey that indicated that a majority of respondents would have trouble meeting 60 and 30 day deadlines for Form 10-Ks and Form 10-Qs, respectively. Only 10% indicated that they would have trouble simultaneously posting their 10-Ks on their Web sites at the same time as filing - and only half indicated that it would be difficult to report insider trades within one day of a trade.

On March 19th, the Financial Executives International released a set of 12 reform recommendations in four broad categories that were developed by a member task force. The four categories are:

- Strengthening financial management and commitment to ethical conduct
- Rebuilding confidence in financial reporting, the accounting industry and effectiveness of the audit process
- Modernizing financial reporting and reform of the accounting standards setting process
- Improving corporate governance and the effectiveness of audit committees

Source: The SEC's MD&A statement is at <http://www.sec.gov/rules/other/33-8056.htm> and cautionary advice is at <http://www.sec.gov/pdf/33-8040.pdf>. The NIRI survey is at <http://www.niri.org/publications/alerts/20020320SurveySECPropChangesCorpDiscl.pdf>. The FEI's recommendations are at <http://www.fei.org/download/ReformRecommendations.pdf>.

Boards: NACD/IIA Survey Reveals Board Thinking about "Enron"

Based on a January 31st survey of directors conducted by the National Association of Corporate Directors and the Institute of Internal Auditors, boards are thinking about many of the issues raised by the Enron collapse. Among other findings, the survey revealed:

Special Transactions - About half of directors surveyed stated that off-balance-sheet transactions were planned as a subject for discussion at the next meeting of the board's audit committee, and 20% said they planned to discuss derivatives.

Surprisingly, when asked about how derivatives and other complex transactions were audited at their organizations, over half of the directors stated that their companies had no complex financial transactions, and an additional 21% of board members were unsure whether such transactions were taking place. On the other hand, two-thirds of the

internal audit executives said that derivatives and other complex financial transactions were used at their companies.

Risk Management - When asked, only 37% of directors responded that a formal Enterprise Risk Management (ERM) process was in place in their organization - or that any other formal method of identifying risks was used. Even more alarming was the fact that 17% of directors stated they did not know whether their company had a formal method for identifying risks.

Some 75% reported that they relied on periodic reports on risk throughout the year from their management team. Approximately 37% said that they reviewed summary information from internal audit reports, while 28% - often audit committee members - said that they reviewed all internal audit reports.

Accounting Oversight and Standards Reform - Almost half of directors stated that major changes are needed to U.S. accounting standards. Only 29% said that major changes were not needed, although 24% stated they were not sure if major reforms were appropriate. A separate survey of chief internal audit executives showed similar results, with executives favoring major changes outnumbering those who did not see a need for major changes by a two-to-one margin.

Auditor Independence - More than half already have asked their internal and external auditors about risks similar to those discovered at Enron, and of those, questions about independence were raised 57% of the time. Adequacy of external auditing was also questioned by more than half of boards that questioned their auditors. Of the 91% of organizations that have planned all or part of the agenda for their next audit committee meeting, half of the directors surveyed had already decided to include independence issues on the next meeting agenda.

For SEC-regulated organizations, 88% stated that they reviewed annual communications about independence from external auditors, while approximately 80% stated they reviewed types and amounts/costs of non-audit services provided by their external auditor.

The NACD/IIA survey is at <http://www.nacdonline.org/dm/EnronSurvey%20Jan02.pdf>.

What's Up Online: Online Annual Report Trends

There is quite a bit of disparity regarding the manner in which companies are creating and posting online annual reports - from differing formats and layouts to a wide range of archival practices and navigation structures. Clearly, there are no "standard practices" in this area yet.

Based on an informal survey of the Fortune 100:

Choice of Format- 80% have a PDF version and 65% have a HTML version -

45% have both types available. Quite a few companies use the term "Printable Version" when referring to their PDF documents.

Archival Practices - 40% post just the last available annual report - the remaining 60% post annual reports for a number of years, typically two or three. Approximately 10% post annual reports for at least five years.

Navigation - For the companies that offer a HTML format, nearly 50% provide a table of contents along the top of each page; 10% provide a table of contents on the left or right side of the page; and 10% offer a "drop down" box as the table of contents. Nearly a third do not provide any navigational tools at all.

The Investor Relations Information Network (www.irin.com) has begun compiling online annual reports in a directory and already has reports for over 3000 companies. OnlineProxy.com (www.onlineproxy.com) has developed a HTML annual report template that is quite investor-friendly. IR Web Report (www.irwebreport.com) provides tips and insights into developing online annual reports.

Comings and Goings: Who's Doing What and Where

At Congress, a variety of the bills that have been recently introduced seek more money for the SEC to hire additional staffers, particularly accountants. Chairman Pitt has asked Congress for an extra \$91 million to boost salaries and hire 100 new accountants and lawyers. Several bills seek significantly more money for the SEC than Chairman Pitt's request.

As for pay raises, the Office of Management and Budget prefers a phased-in approach that links pay to job performance rather than ensuring there is full "pay parity" in fiscal 2003. The SEC is taking a different approach by asking for its employees to be removed from the General Schedule and making job performance an important factor in raises. Conversely, the National Treasury Employees Union, which represents 2,000 SEC employees, favors across-the-board raises.

At the SEC, Chairman Pitt commenced a four-month internal special study to examine the SEC's operations, efficiency, productivity, and resources. The purpose of the special is to ascertain whether the SEC needs staffing and other resources beyond the amount that the Chairman has already requested. Mid- and senior-level SEC staff will conduct the special study with the assistance of an outside consultant. Comments on the special study can be sent to SpecialStudy@sec.gov.

Events Calendar

Upcoming events of interest include:

RealCorporateLawyer.com's "Tips for the Proxy Season: Drafting Disclosure and Meeting Planning" - teleconference transcript and course materials now available at <http://www.realcorporatelawyer.com/CLE/CLEHome.html#proxytips>

SEC's Financial Disclosure and Auditors Oversight Roundtable, Chicago, April 4
American Bar Association's Business Law Section "Spring Meeting," Boston, April 4-6

Columbia Law School's "Global Markets, Domestic Institutions: Corporate Law and Governance in a New Era of Cross-Border Deals," New York City, April 5-6

FT Knowledge's "US GAAP & SEC Reporting" Brussels, Belgium, April 22-23

FT Knowledge's "Critical Issues In Accounting" Brussels, Belgium, April 24

FT Knowledge's "International Accounting Standards (IAS)" Brussels, Belgium, April 25-26

National Association of Corporate Director's "Annual Corporate Governance Conference," Washington D.C., April 28-30

Glasser's "Fourth Annual SEC Disclosure, Accounting and Enforcement Conference," April 25-26 in New York City and May 2-3 in San Francisco

"Information Integrity World Summit," Washington D.C., May 15-16
(www.411integrity.com)

National Institute of Investor Relation's "2002 Annual Meeting," Palm Springs, Ca., June 3-5

ABA/ACCA's "The Legal Department's Role in Enhancing the Corporate Bottom Line," Washington D.C., June 6-7

CPE's "How to Meet Shareholder & Regulatory Demands through Board & Management Excellence," Washington DC, June 10-11

(<http://www.cpeonline.com/corpgov/corpgov.pdf>)

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