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SEC I: Division of Corporation Finance Releases Long-Awaited Regulation G FAQs

FAQs Available on Commission Web Site at

<http://www.sec.gov/divisions/corpfin/faqs/nongaapfaq.htm>

On June 13, 2003, the SEC's Division of Corporation Finance released its long-awaited FAQs ("Frequently Asked Questions"). The 33 questions, with answers, deal with Regulation G, Item 10(e) of Regulation S-K and Item 12 of Form 8-K. The FAQs were released following numerous questions that have arisen since the Commission released [Final Rule: Conditions for Use of Non-GAAP Financial Measures](#), Securities Act Release No. 33-8176, Exchange Act Release No. 34-47226 (Jan. 22, 2003).

RealCorporateLawyer.com has made available two memoranda dated June 16, 2003 and June 19, 2003 that analyze the FAQs prepared by Wachtell, Lipton, Rosen & Katz. The first is entitled "[Sarbanes-Oxley Act: SEC Issues Frequently Asked Questions and Responses Regarding Non-GAAP Financial Measures](#)". The second is entitled "[Sarbanes-Oxley Act: Incorporation by Reference of Non-GAAP Financial Measures Contained in Certain Annual or Quarterly Reports](#)".

What follows are a few of the more important points clarified in the FAQs.

Incorporation by Reference of Filings Made Before the March 28, 2003 Effective Date of the New Rules

- When an annual report or quarterly report containing non-GAAP financial measures was filed before March 28, 2003 but is incorporated by referenced into a registration statement filed after March 28, 2003, the FAQs indicate that the latter filing must comply with Reg G with respect to the non-GAAP financial measures in the earlier filing. The company may: (1) amend the earlier report; (2) identify the non-GAAP financials contained in the earlier report and provide the required reconciliation; or (3) file a current report on Form 8-K or a periodic report that identifies the non-GAAP financial measures in the incorporated materials and provides the required reconciliation -- with that Form 8-K or periodic report incorporated by reference into the new registration statement.

Practical Pointer: The FAQs indicate that the Commission Staff will not object where a registration statement on Form S-8 filed after March 28, 2003 does not

include the required reconciliation of non-GAAP financial measures included in a document filed before March 28, 2003 and incorporated by reference into that registration statement on Form S-8. Additionally, any such

- A registration statement that incorporates by reference an annual or quarterly report containing a non-GAAP "financial measure" relating to a period that ended prior to the March 28, 2003 effective date of the new rules is not required to comply with the new amendments to Regulation S-K regarding non-GAAP financial measures but still must comply with new Regulation G. Regarding the non-GAAP financial measure incorporated from the annual or quarterly report, it is not necessary, however, to comply with the more onerous requirements of Item 10(e) under Regulation S-K which require, among other things, disclosure that is equally prominent, disclosure of the reasons why management believes the measure to be useful and (to the extent material) disclosure of any additional purposes for which the measure is used by management. [This paragraph updated and revised 07/02/03 12:15 p.m. - Thank you to Jane Whit Sellers of McGuire Woods LLP]
- Commission Staff will not object if a "non-compliant non-GAAP financial measure is included in a registration statement filed before March 28, 2003 and with respect to which a pre-or post-effective amendment is subsequently filed."

Practical Pointer: Filers in such circumstances should separately consider the risk that the initial disclosure might be viewed as misleading absent compliance with the new rules.

- The Commission Staff seems to reject the concept of Web site posting involving continual "republication" to the public, at least in this context. The FAQs make clear that if a company posted a non-compliant, non-GAAP financial measure on its Web site before March 28, 2003, it does not have to provide a reconciliation on the site unless additions are made

to the item or it is otherwise amended or updated.

Exception in Case of Certain Disclosures Made in Connection with Business Combinations

- The FAQs provide for an exception from the definition of "non-GAAP financial measures" in the case of certain disclosures offered in connection with business combinations subject to: (1) Rule 425 under the Securities Act, dealing with certain prospectuses and other communications in connection with business combinations; (2) Rule 14a-12 under the Exchange Act, dealing with solicitations before providing a proxy statement; (3) Rules 14d-2(b)(2) and 14d-9(a)(2) under the Exchange Act, dealing with pre-commencement communications; and (4) Item 1015 of Regulation M-A, dealing with reports and opinions. As noted in the Wachtell memorandum referenced above, "The exception does not cover (and, therefore, the new rules do apply to) disclosure of those measures or an update or repetition thereof in registration statements, proxy statements or tender offer statements (other than in the context of Item 1015 of Regulation M-A), annual or quarterly reports or press releases not covered by the specified communication rules (such as earnings releases).

Practical Pointer: According to the FAQs, if a reconciliation is required under the new rules and the most directly comparable measure is a pro forma measure under Article 11 of Regulation S-X, that measure may be used instead of the GAAP measure.

Use of Specific Non-GAAP Financial Measures

- The FAQs make clear that GAAP proscriptions against presenting cash flow per share and presenting per share measures of liquidity continue.
- Reconciliation for EBIT and EBITDA must be to net income, not operating income. And, if the filer uses EBIT or EBITDA as a measure of performance, there must be some disclosure of the usefulness of such a measure "since they exclude recurring items".
- In the case of "free cash flow", if that is presented, a clear discussion of its calculation is required and there must be a reconciliation as well as disclosure of "material limitations" of the measure.

Item 12 of Form 8-K

- An audio Webcast file, according to the FAQs, will satisfy the Web posting requirement for the exemption from Item 12 to provide on Form 8-K earnings information that is presented orally, telephonically, by Webcast, by broadcast or by other, similar means (slides or some such similar presentation will also satisfy this requirement). The company, however, must provide all previously undisclosed material financial and statistical information including any information conveyed in response to questions.

Practical Pointer: Questions 22 and 24 (and their answers) in the FAQs address how a company that wants to avoid having its earnings call trigger the obligation to furnish a second 8-K may still comply with the condition of Item 12(b)(3) providing that "the financial and other statistical information contained in the presentation is provided on the registrant's website". There is at least an argument that a conservative reading of the pertinent FAQs suggests that the information must appear on the company's Web site at the time of the earnings call -- which may effectively mean that a company should Webcast its earnings call in "real time" unless it decides to provide the financial and other statistical information to be presented in the call in written form in some fashion on its Web site prior to the call, or at least at the time the call begins.

- A failure to furnish the Form 8-K required by Item 12 in a timely fashion does not adversely affect the company's eligibility to use Form S-3, but it does constitute a violation of Section 13(a) of the Exchange Act.

Prohibition on Eliminating or Smoothing a Non-Recurring or Unusual Item That Is Reasonably Likely to Recur

- While the FAQs do not contain a blanket prohibition against using Non-GAAP financial measures to eliminate a recurring item, they do make clear that Item 10(e) prohibits eliminating or smoothing an item that is reasonably likely to recur within two years (or where there was a similar item within the prior two years) and calling the item "non-recurring" or "unusual".

Practical Pointer: The Company should focus on the substance of such items rather than any label ascribed to them.

Segment Disclosures and Foreign Exchange Disclosures

- Tables that break down revenues by product are not non-GAAP financial measures if the aggregate equals the revenues presented in the financial statements. Tables that break down revenues by geographical regions and that adjust the GAAP measure to exclude the effects of foreign currency fluctuations are not non-GAAP financial measures "if the table also presents the related foreign currency effects and, therefore, the aggregate amount reflected in the table equals the revenue presented in the financial statements."
- Segment information that complies with FASB Statement 131 is not a non-GAAP financial measure. Segment measures that are "adjusted from the measure reported to the chief operating decision maker" for purposes of making decisions about allocating resources to the segment and assessing its performance, however, do not comply with FASB Statement 131 and, thus, are non-GAAP financial measures.

Compensation

New Rules Will Provide for the First Time Shareholder Approval Requirements for Equity Compensation Plans, Including Stock Option Plans, for Companies Subject to Listing Standards of NYSE and Nasdaq

Release No. 34-48108

[Self-Regulatory Organizations; New York Stock Exchange, Inc. and National Association of Securities Dealers, Inc.; Order Approving NYSE and Nasdaq Proposed Rule Changes and Nasdaq Amendment No. 1 and Notice of Filing and Order Granting Accelerated Approval to NYSE Amendments No. 1 and 2 and Nasdaq Amendments No. 2 and 3 Thereto Relating to Equity Compensation Plans](#) See also <http://www.nyse.com/pdfs/34-48108.pdf>.

On June 30, the Commission approved new rules proposed and adopted by the New York Stock Exchange and the Nasdaq Stock Market requiring shareholder approval of equity compensation plans, including stock option plans. The new rules will also require approval for repricings and material plan changes.

Practical Pointer: The NYSE's new rules will replace its current pilot program, which exempted "broad-based" equity compensation plans from any shareholder approval requirement.

In addition, the Commission approved a change in the NYSE Rule 452 for voting shares held in "street name" on equity compensation plans. The change permits a broker that is a member of the Exchange to vote for or against those plans *only* when the broker receives instructions from the beneficial owner of the voting securities. Some of the principal elements of the approved rules are excerpted from the release below.

NYSE Rules

Under the new NYSE rules, an equity compensation plan is defined as a plan or other arrangement that provides for the delivery of equity securities (either newly issued or treasury shares) of the listed company to any employee, director or other service provider as compensation for services, including a compensatory grant of options or other equity securities that is not made under a plan. In addition, the NYSE rules provide for certain types of grants that are exempted from shareholder approval including: (1) inducement awards to person's first becoming an employee of the issuer or any of its subsidiaries; (2) mergers and acquisitions, when conversions, replacements or adjustments of outstanding options or other equity compensation awards are necessary to reflect the transaction, and when shares available under certain plans acquired in corporate acquisitions and mergers may be used for certain post-transaction grants without further shareholder approval; and (3) plans, such as ESOPs, intended to meet the requirements of Section 401(a) of the Internal Revenue Code, plans intended to meet Section 423 of the Internal Revenue Code, and parallel excess plans.

Practical Pointer: Even in circumstances in which equity compensation plans and amendments to such plans are not subject to shareholder approval, the NYSE rules provide that the plans and amendments still must be subject to the approval of the company's compensation committee or a majority of the company's independent directors.

The approved NYSE proposal, of course, is important reading for those who advise in this area. It provides a non-exclusive list of examples of "material revisions" to a plan that trigger the shareholder approval requirements and also clarifies when plans containing an "evergreen formula" and when the "repricings" of options in plans would require shareholder approval.

Nasdaq Rules

The Nasdaq proposal approved by the SEC provides for amendments to NASD Rule 4350(i) to require shareholder approval for stock option plans or other equity compensation arrangements (subject to certain exceptions specified in the rule), to adopt "Interpretative Material" pertaining to shareholder approval for stock option plans or other equity compensation arrangements and to make conforming changes to NASD Rules 4310(c)(17)(A) and 4320(e)(15)(A).

**SEC III: Effective Date for Electronic Submissions of All Section 16 Filings Is Here
No More Paper Submissions of Forms 3, 4 or 5**

Effective June 30, SEC rules require that all Section 16 filings be made electronically whether filed directly on the SEC's new filing Web site or via a third-party service provider who makes the filings electronically. The filing site is located at <https://www.onlineforms.edgarfiling.sec.gov/>.

Hard copy submissions of Forms 3, 4 and 5 will be rejected by the documents control desk and, if sent by mail, will be returned to sender.

**SRO I: NASD and NYSE Release Guidance on Retention of Instant Messaging
As Expected, Guidance Requires Retention of Instant Messages Pursuant to
Record Retention Rules**

NASD Notice to Members 03-33 (July 2003)

In Notice to Members 03-33 (July 2003), NASD provides clarification to members regarding supervisory obligations and recordkeeping requirements for instant messaging. In the notice, the NASD states as follows:

Members must supervise the use of instant messaging consistent with the required supervision of e-mail messaging. Depending on the circumstances, instant messaging could be either sales literature or correspondence. Compliance in each of these situations depends on clear supervision and review procedures that

are consistently followed. If a member is unable to establish an adequate supervisory program, the member must prohibit the use of instant messaging in customer communication.

Members must also ensure that their use of instant messaging complies with applicable SEC and NASD recordkeeping requirements. Messages exchanged on many popular instant messaging platforms cannot be saved or subsequently retrieved, making them inappropriate for communications that must be retained as firm records. Members that permit instant messaging must use a platform that enables the member to monitor, archive and retrieve message traffic.

Citing internal communications and recordkeeping requirements including NASD Rule 3010 and SEC Rules 17a-3 and 17a-4, the notice urges NASD members to evaluate their internal use of instant messaging in the context of supervisory and recordkeeping requirements, concluding: "NASD recognizes that technology enhances business opportunities, increases public access to market information, and supports regulatory compliance. Nonetheless, the preference of employees to use instant messaging to communicate does not alter the obligation of the firm to keep relevant records. NASD members must ensure that their use of instant messaging is consistent with their basic supervisory and recordkeeping obligations.

NYSE Information Memo No. 03-07 (Mar. 5, 2003)

The New York Stock Exchange provided its "guidance" on instant messaging in Information Memo No. 03-07 issued on March 5, 2003. The guidance, if it can be called that, is far less substantive than the guidance issued by the NASD. The NYSE entitled its memorandum "Electronic Logs and Record Retention". In a very brief section, quoted in its entirety immediately below, the NYSE made clear that instant messages are subject to the record retention requirements of NYSE Rule 440 and SEC Rules 17a-3 and 17a-4:

Record Retention

Members are reminded that the record retention requirements of NYSE Rule 440 and the Securities Exchange Act Rule 17a-4 apply to the electronic logs maintained in lieu of paper order tickets and reports of execution, which relate to the member's business. In addition, members and member organizations must ensure that all communications whether electronic or otherwise, including but not limited to e-mails, instant messages, and similar communication devices that relate to the firm's business as such must be maintained and retained in compliance with NYSE Rule 440 and SEC Rules 17a-3 and 17a-4. Any records maintained electronically must be in a non-rewriteable, non-erasable format, i.e., WORM ("Write Once, Read Many"). Any questions about retention requirements should be directed to your Finance Coordinator.

SRO II: NASD Seeks Comment on Proposal Regarding Certification by CEO and Chief Compliance Officer

NASD Requests Comment by July 11 on Proposal to Amend Rule 3010 and to Adopt Interpretive Material 3010-1

NASD, [Certification by Chief Executive Officer and Chief Compliance Officer](#), Special Notice to Members 03-29 (June 2003).

The NASD has issued a Special Notice to Members seeking comment on a proposal regarding annual certifications by Chief Executive Officers and Chief Compliance Officers that their firms maintain adequate compliance and supervisory policies and procedures. NASD is proposing to amend Rule 3010 and adopt related interpretive material "to enhance investor protection by encouraging senior management to focus increased attention to a member's

compliance and supervisory systems and by fostering regular interaction between business and compliance officers." The principal elements of the proposal are as follows:

Each member firm will be required to designate a Chief Compliance Officer. That officer and the Chief Executive Officer (or equivalent officer) will then be required "jointly to certify annually that the member has in place compliance and supervisory policies and procedures reasonably designed to comport with NASD rules, MSRB rules, and federal securities laws and rules."

Practical Pointer: Although the proposal requires only annual certification, the proposal does not relieve member firms of their ongoing obligations to review the adequacy of their policies and procedures in view of business and regulatory developments.

Certification will carry an "implicit representation" that implementation of the compliance and supervisory system has "at least been audited and tested for efficacy"

Certifications will be required to include a statement that the CEO and the Chief Compliance Officer have consulted with or otherwise relied on those employees, officers, outside consultants, lawyers and accountants as they consider appropriate in order to attest to the certification.

Certifications will be required to include a statement that the member firm "has reviewed and will continue to review the adequacy of its compliance and supervisory policies and procedures on a periodic basis as necessitated by the types of businesses in which it engages and the nature of its activities in connection with these types of businesses, any changes or modification in such businesses and activities, or the promulgation of new laws or rules or any amendments to existing laws or rules."

Practical Pointer: The NASD's supporting materials clarify that the certification, in and of itself, will not serve as a basis for additional personal liability for those who execute the

certification. As the NASD puts it: "the interpretive material explains that no liability under the proposed rule or other NASD rule will attach to the signatories of the certification, provided there was a reasonable basis to certify at the time of execution. The touchstone of reasonableness would be whether the act of certification was consistent with high standards of commercial honor and just and equitable principles of trade. Provided that the signatories execute upon such a basis, neither would incur any greater liability for the adequacy of supervisory and compliance policies and procedures than would otherwise be the case in the absence of this certification."

D&O Issues I: Delaware Judge Refuses to Dismiss Investor Lawsuit in Decision Expected to Have Far-Reaching Implications for How Companies Conduct Internal Investigations

On June 13, the Honorable Leo E. Strine issued a significant unpublished opinion in *In re Oracle Corp.*, No. C.A. 18751 (Del. Ch. Ct.). The decision has far-reaching implications for how companies conduct internal investigations and is recommended reading for members of special litigation committees, in-house counsel and outside counsel who deal with such matters.

Following commencement of shareholder derivative actions alleging that certain directors of Oracle Corp. engaged in insider trading while in possession of material, non-public information showing that Oracle would not meet the earnings guidance it gave to the the market for Oracle's third quarter of fiscal year 2001,

Oracle established a special litigation committee to look into the matter. That Committee conducted what the company has described as an "exhaustive inquiry" into the matter, prepared a 1,110 report finding that the allegations had no merit and moved the Delaware Chancery Court for an order terminating the actions.

In an opinion that has surprised some, Vice Chancellor Strine denied the motion and questioned the independence of the Special Litigation Committee. See In re Oracle Corp., 2003 WL 21396449, No. C.A. 18751 (Del. Ch., June 13, 2003). He found that the Committee was "fraught" with conflicts and determined that alleged personal and financial ties among members of the Oracle Corp. board, Stanford University and the two Stanford professors hired to review the stock sales pose "an unacceptable risk of bias".

According to the Court, the report cleared Oracle Chairman and CEO Larry Ellison, who reportedly has given millions of dollars to Stanford and was considering whether to donate \$170 million to the school for a scholarship program and to bequeath his \$100 million home to Stanford after his death. The report also cleared Oracle board member Michael Boskin, a Stanford Professor, Donald Lucas, a Stanford alumnus and large donor, and Jeffrey Henley, Oracle's CFO.

The Special Litigation Committee reportedly plans to seek leave of the Chancery Court to appeal the decision.

Practical Pointer: The decision is significant in that it suggests that during this time of heightened corporate scrutiny when such investigations reportedly are underway at a host of companies including HealthSouth Corp. and Tyco International, Ltd., the courts are likely to be very strict in their application of legal requirements that such committees be independent, act in good faith and have reasonable bases for their conclusions. Vice Chancellor Strine's decision makes clear that when forming a special litigation committee, it is important to consider every possible element that

may have any impact on a director's independence including directors' social, philanthropic and non-economic relationships.

D&O Issues II: Delaware Supreme Court Reverses Dismissal of Stockholder Class Action Challenging Merger Finding the Complaint Adequately Alleged that Majority of Directors Recommending the Merger Had "Disabling Conflicts of Interest"

On June 18, the Supreme Court of Delaware issued an important decision in Krasner v. Moffett, et al., 2003 WL 21434913, No. 569,2002 (Del., June 18, 2003). The question before the Court, as set forth at the outset of the opinion written by Chief Justice Veasey, was "whether a stockholder class action can be dismissed under Chancery Rule 12(b)(6) where the complaint adequately alleges that a majority of the directors recommending a merger to the stockholders had disabling conflicts of interest."

The decision reversed dismissal of the action in which former shareholders challenged the 1998 merger of Freeport-McMoran Sulphur, Inc. (FSC) and McMoraan Oil & Gas Co. (MOXY) into McMoRan Exploration Co. (MEC). The complaint alleged that the former directors of FSC breached fiduciary duties owed to them by approving the transaction and that MOXY aided and abetted those breaches of duty. The complaint further alleged that five of the seven directors serving on the FSC board had disabling conflicts of interest in the MEC merger and those conflicts motivated the directors to permit MOXY to receive a disproportionate share of MEC.

Following one dismissal with leave to replead, the Court of Chancery dismissed the complaint with prejudice holding, in effect, that the merger -- which did not involve a majority stockholder -- was negotiated and overseen by a special committee of independent directors and, thus, the business judgment rule applied to warrant dismissal.

The Delaware Supreme Court disagreed finding, first, that the amended complaint alleged disabling conflicts of interest involving three of the seven

directors and, as to two additional directors the allegations merited an inference that their votes in favor of the merger may have been affected. According to the Court:

The Court of Chancery correctly held that the plaintiffs have pleaded facts sufficient to infer that three of the FSC directors, Moffett, Adkerson, and Rankin, were interested in the MEC transaction because they served on the boards of the directors of both MOXY and FSC. We also agree that the facts set forth in the complaint allege that two additional directors, Wohleber allegedly received substantial income from other entities within the interlocking directorates of Freeport-McMorRan companies and arguably had an interest in appeasing the MOXY and FSC insiders who also served with Latiolais and Wohleber on the boards of other Freeport companies. Although the allegations regarding their lack of independence may ultimately not be factually sustainable, the plaintiffs are entitled at the pleading stage to the inference that Wohleber's and Latiolais' positions would affect the vote of a reasonable person in the same position because these insiders proposed the MEC transaction.

Accordingly, the Court concluded that "Because the plaintiffs have sufficiently alleged facts to suggest that the MEC transaction was 'not approved by a majority consisting of disinterested directors,' the plaintiffs are entitled at the pleading stage to the inferences that may lead to the conclusion that the business judgment rule would not apply to the FSC board's decision to approve the MEC merger and to recommend it to the FSC stockholders." As noted by the Court, it is the burden of the FSC directors -- not the plaintiffs -- to prove that the MEC merger was approved by a committee of disinterested directors, acting independently, with real bargaining power to negotiate the terms of the merger. The Court reversed the decision below and remanded the case for development

of a fuller record.

Securities Litigation: Cornerstone Research Releases Report on Post-Reform Act Securities Lawsuits

Report Entitled "Post-Reform Act Securities Lawsuits: Settlements Reported Through December 2002" Sheds Revealing Light on Emerging Settlement Trends

Last week Cornerstone Research released its most recent analysis of post-Reform Act securities lawsuit settlements through December 2002. The analysis considers settlement data for 400 securities cases filed after passage of the Private Securities Litigation Reform Act on December 22, 1995. Cases considered were limited to those that included allegations of fraudulent inflation in the price of a company's common stock.

Excluding the record high settlement for more than \$3 billion by Cendant in 2000, the data shows that the total settlement value of all cases has increased each year since 1996, with total settlement values in 2000, 2001 and 2002 of \$1.342 billion, \$1.578 billion and 2.378 billion respectively.

While the average settlement amount is nearly \$25 million (\$17 million if Cendant Corp.'s settlement is excluded), the median settlement amount is less than \$6 million, illustrating that a small number of extremely large settlements in excess of \$100 million have affected the average settlement figure.

Average settlement amounts by year, excluding the Cendant Corporation settlement, likewise have been increasing each year since passage of the PSLRA. Average settlement amounts by year 2000, 2001 and 2002 were \$14.6 million, \$16.6 million and \$24.3 million, respectively.

Interestingly, but perhaps not surprisingly, an analysis of median settlement amounts in cases involving an institutional investor as lead plaintiff versus cases where there is no institutional investor as lead plaintiff shows that "[o]verall, cases involving institutional investors as lead plaintiffs are associated with significantly higher settlements" although this seems to be more a function of the

fact that "institutions have tended to participate in larger cases".

One interesting aspect of the Cornerstone Research report addresses securities fraud cases that are accompanied by corresponding derivative actions.

According to the report:

Less than 10 percent of the cases in our sample were accompanied by corresponding derivative actions (i.e., actions filed against the officers and directors or outside parties on behalf of the issuer corporation with allegations similar to the class action in nature and time period covered). Many of these cases were settled simultaneously with the related class action.

Most of the derivative case settlements examined involved only corporate governance changes rather than cash payments. However, . . . settlement amounts for the class actions are significantly higher for such cases, while settlements as a percentage of estimated damages are only slightly higher. Consistent with this pattern, further analysis reveals that derivative suits tend to be associated with larger cases, as measured by estimated damages as well as the defendant's assets and market capitalization.

The report provides further fascinating analyses of: (1) correlations between increased median settlements and the presence of regulatory investigations; (2) median settlements as a percentage of estimated damages and new share issues; (3) median settlements and insider trading allegations; (4) median settlement amounts by industries including financial, healthcare, retail/wholesale, technology and telecom; (5) settlements in cases in which Milberg Weiss was lead plaintiff (more than 50% of all cases analyzed) and those in which Milberg was not lead plaintiff; (6) numbers of settlements with non-cash components; (7) settlements by the nature of the allegations (10b-5, Sections 11 / 12(a)(2), and

cases in which all those sections are involved); and (8) settlements by Circuits. The report, by Dr. Laura E. Simmons and Ellen M. Ryan is a Cornerstone Research publication available from the firm. For more, see <http://www.cornerstone.com/>.

Comings and Goings: Who's Doing and Saying What and Where

Susan G. Markel, who joined the Commission's Enforcement Division in 1994 and since has worked on some of the Commission's most complex accounting investigations, has been selected to succeed **Charles D. Niemeier** as Chief Accountant of the Division of Enforcement. Charles Niemeier was appointed in late 2002 as a member of the Public Company Accounting Oversight Board. See [Susan Markel Named Chief Accountant of the Division of Enforcement](#), News Release 2003-74 (June 19, 2003).

At its June 4, 2003 meeting, the Securities and Exchange Commission Historical Society elected **Robert J. Kueppers**, **Richard H. Rowe** and **Elisse B. Walter** as Vice Presidents of the Society for 2003-04 and **Stanley Keller** as 2003-04 Secretary. **David S. Ruder** will continue as Chairman and **Theodore A. Levine** as President. **Richard M. Phillips** of Kirkpatrick & Lockhart was elected to serve a second term as trustee through 2008 and five others were elected as trustees for the class of 2008: **Donald H. Calvin** (International Business Enterprises, Inc.); **Margaret Foran** (Pfizer, Inc.); **Sheldon L. Goldfarb** (RBS Greenwich Capital); **Richard H. Rowe** (Proskauer Rose LLP); **Elisse B. Walter** (NASD Regulation, Inc.).

What Are the Commissioners Saying?

Commissioner **Roel C. Campos** spoke regarding "[Embracing International Business in the Post-Enron Era](#)" at the Centre for European Policy Studies in Brussels, Belgium on June 11, 2003. SEC Chairman William H. Donaldson delivered "[Remarks Before the New York Financial Writers Association](#)" regarding his first 100 days as Chairman of the Commission.

What Are the Commission Staffers Saying?

Paul F. Roye, Director of the Division of Investment Management, delivered "[Remarks Before the American Law Institute / American Bar Association](#)" regarding mutual fund regulation on June 19. Paul Roye also delivered "[Remarks Before the National Association for Variable Annuities](#)" regarding the variable products industry as well as Congressional and regulatory initiatives affecting the mutual fund industry on June 17. **Annette L. Nazareth**, Director of the Division of Market Regulation, delivered "[Remarks Before the Fourth Annual Securities Industry Association Conference on Market Structure](#)" regarding the Commission's upcoming efforts to focus on the structure of the U.S. markets on June 13. **Alan L. Beller**, Director of the Division of Corporation Finance, delivered "[Remarks Before the American Bar Association's 2003 Conference for Corporate Counsel](#)" regarding where issuers find themselves under Sarbanes-Oxley and the rules promulgated thereunder on June 12. Alan Beller also delivered "[Remarks at the Vanderbilt Directors College](#)" regarding the role of directors and the example they must set for good corporate governance on June 10.

Input, Please

Please let us know what you like - and don't like - so we can tailor the site to be a hands-on resource for you and your colleagues. In addition, if you would like to contribute content to our site, let us know. E-mail comments, suggestions and other input to RealCorporateLawyer@rrd.com.

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