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In This Issue:

- [SEC I: Proposes Rules To Provide Shareholder Access to Company Proxy Statements for Director Elections](#)
- [SEC II: SEC Adopts Amendments to Rule 10b-18 Addressing Issuer Stock Repurchases](#)
- [SEC III: SEC Proposes New Regulation SHO Regarding Short Sales](#)
- [SEC IV: SEC Is Orally Advising that Section 906 Certifications Do Not Apply to Forms 6-K, 8-K or 11-K](#)
- [SRO I: NYSE And Nasdaq Proposals for New Corporate Governance Listings Standards Approved by SEC](#)
- [PCAOB I: PCAOB Releases Briefing Paper on Oversight of Non-U.S. Accounting Firms](#)
- [PCAOB II: PCAOB Says It Has Approved the Registration Applications of 598 Firms](#)
- [PCAOB III: PCAOB Proposes Standards for Management's Attestation of Internal Controls](#)
- [Useful Online Resources for Staying Abreast of News Regarding Securities Regulation and Securities Litigation](#)
- [COMINGS AND GOINGS: Who's Doing and Saying What and Where?](#)

SEC I: SEC Proposes Rules To Provide Shareholder Access to Company Proxy Statements for Director Elections

U.S. Securities and Exchange Commission, [Proposed Rule: Security Director Nominations](#), Release Nos. 34-48626, IC-26206 (Oct. 14, 2003).

[Comments on Proposed Rule: Security Holder Director Nominations](#), File No. S7-19-03.

On October 8, the U.S. Securities and Exchange Commission proposed new rules granting certain shareholders access to companies' annual proxy

statements and giving those shareholders the ability to nominate up to three independent directors. A shareholder seeking to nominate independent directors would no longer be required to wage a separate, expensive proxy fight under the proposed rules, but instead could use the company's machinery and funds to support its campaign. The proposal contains eligibility requirements, however, that are designed to prevent the use of the new proxy-access and nomination rules in connection with a change of control. The company's board would continue to nominate its own separate and complete slate of directors and could publicly oppose any shareholder nominees.

The Commission released the text of the proposed rules on October 14. What follows is an overview.

Triggering Events. The proposed rules conferring proxy-access and nomination authority would only be effective with respect to a company if a "triggering event" has occurred and state law permits shareholder nominations (Delaware law permits shareholder nominations). The purpose of the "triggering event" requirement is to limit the proxy-access and nomination authority to those circumstances where a significant portion of shareholders already has demonstrated dissatisfaction with the director nomination and election process. A "triggering event" would occur only if, within the last two years, either:

a shareholder or group owning at least 1% of outstanding shares sponsors a resolution to open the nomination process and provide proxy-access, and a majority of **shares voted** at an annual meeting support this resolution; or
the company receives "withhold" votes representing at least 35% of shares voted in an election for **any director** nominated by the company.

Director Nomination and Proxy-Access Process. Following the occurrence of a "triggering event," the SEC rules would permit specified shareholders to nominate up to three directors to the company's board and would further require that the company include, in its proxy statement, the names of those nominees and additional shareholder-prepared disclosure, as well as proxy cards containing the names of the shareholder nominees. At today's open meeting, the SEC staff did not describe the scope of the permitted shareholder-prepared

disclosure, nor how to resolve disagreements between the shareholders and the company with respect to this disclosure.

Eligible Shareholders and Nominees. The rules would only permit nominations and proxy-access for a shareholder or group that (i) has beneficially owned more than 5% of the company's voting securities for at least two years, (ii) intends to hold those securities through the date of the shareholder meeting and (iii) is eligible to, and has, filed a Schedule 13G evidencing that it is not seeking to change or influence "control" of the company. As a result, the proposed rules would not apply to a participant in a takeover contest. The shareholder or group also cannot have any agreement with the company regarding the nomination process.

Furthermore, shareholder nominees would be required to certify to the company that they are "independent" under applicable listing standards and do not otherwise have a conflict of interest that would interfere with their ability to serve the company's shareholders, as a whole. The directors also would have to certify that they have no financial relationships with, and are not affiliates or employees of, the nominating shareholders.

Effective Time. The proposed rules will be open for public comment for a period of sixty days from publication. As a result, the SEC almost certainly will not finalize the rules before the beginning of the 2004 proxy season. Under the proposals, any triggering event that occurs after January 1, 2004 would subject a company to the new nomination and proxy-access requirements – even if final rules are not approved prior to that date. Accordingly, the proposals will likely affect how companies and shareholders conduct their affairs during the 2004 proxy season.

Conclusions. The proposed rules represent a significant intrusion into substantive corporate law by the SEC. While the SEC has considered the adoption of similar rules on at least three previous occasions dating back to the 1940s, we believe the alternative, disclosure-based measures adopted by the SEC in the past to enhance board and management accountability are more

consistent with the policies underpinning the federal securities laws. At the very least, the SEC would ideally have waited to assess the effects of the myriad new rules adopted in relation to the Sarbanes-Oxley Act as well as the new rules to be adopted by the NYSE and Nasdaq before taking any necessary additional action in this area.

The companies that will initially be most vulnerable to the new rules are those that have been previously subject to shareholder dissatisfaction. This dissatisfaction may have been evidenced by either precatory shareholder proposals (e.g., redemption of rights plan, elimination of staggered board, etc.) that have obtained a majority vote at recent annual meetings or director "withhold" votes in amounts that are above or relatively close to the proposed 35% threshold. In the past, many companies have been prepared to offer only limited concessions to activist shareholders because an adverse vote on proposals sponsored by shareholders would often have no practical consequences. The prospect of a triggering event, in contrast to a mere precatory proposal, may pressure companies to make much more significant concessions to shareholder groups than such companies were previously willing to make. Many companies may be reluctant to risk management time and resources associated with a contested election or, if an election is successful, the adverse impact on board cohesiveness that may result from the introduction of one or more new directors who have not been selected by the nominating committee, including those who seek to further a separate agenda.

Companies should assess their vulnerability to a triggering event in order to prepare for the coming proxy season, including evaluating alternatives that address the concerns of institutional investors. These efforts should commence expeditiously because the SEC has proposed that any triggering event occurring on or after January 1, 2004 would subject a company to the nomination and access rules at its subsequent meeting.

Simpson Thacher & Bartlett, [Corporate Governance Alert: SEC Proposed Rules To Provide Shareholders Access To Company Proxy Statements for Director](#)

[Elections](#) (Oct. 8, 2003).

See also:

Gibson Dunn & Crutcher LLP, [SEC Proposes Major Changes to its Proxy Rules, Requiring Companies to Include Shareholder Nominees for Director in Company Proxy Materials](#) (Nov. 3, 2003).

Fried Frank Harris Shriver & Jacobson, [Securities and Exchange Commission Issues Proposed Rules Regarding Inclusion of Security Holder Nominees in Company Proxy Materials](#) (Oct. 27, 2003).

Alston + Bird LLP, [Securities Law Advisory: SEC Issues Proposed Rules Mandating Shareholder Access to Proxies](#) (Oct. 24, 2003).

SEC II: SEC Adopts Amendments to Rule 10b-18 Addressing Issuer Stock Repurchases

U.S. Securities and Exchange Commission, [Proposed Rule: Rule 10b-18 and Purchases of Certain Equity Securities by the Issuer and Others](#), Release Nos. 33-8160, 34-46980, IC-25845 (Dec. 10, 2002).

[Comments on Proposed Rule: Rule 10b-18 and Purchases of Certain Equity Securities by the Issuer and Others](#), File No. S7-50-02.

On October 22, the U.S. Securities and Exchange Commission adopted amendments to Rule 10b-18. That rule offers issuers a type of "safe-harbor" protection against liability for market manipulation claims under federal securities laws in connection with repurchases of their securities in certain circumstances. The Commission adopted amendments that will change the rule substantially as indicated in the proposing release dated December 10, 2002 (see above).

Generally speaking, the rule currently provides protection against liability for market manipulation claims under federal securities laws so long as:

The issuer used a single broker or dealer to bid on or to repurchase its common stock.

The time within which the issuer bids on or repurchases its common stock falls within the period permitted under the rule.

The price bid or paid by the issuer is no higher than the pricing provisions permit under the rule.

The number of securities repurchased by the issuer is no higher than the amount of securities permitted for repurchase in a single day under the rule.

The most significant amendments provide as follows: (1) block trades are no longer excluded from the volume limitations under Rule 10b-18 with certain exceptions to be provided for the benefit of small issuers; (2) a safe harbor for mergers and acquisitions is provided so long as the repurchases occur after the transaction is announced and the amount repurchased is consistent with amounts repurchased during a defined period of time prior to announcement of the transaction. The SEC also has provided, in the amendments, for less restrictive volume restrictions on repurchases in instances following a severe market decline involving the issuer's securities.

The SEC, as of the time of this writing, has not yet released the text of the adopting release on its public Web site.

In a related development during the same open meeting (October 22), the SEC adopted amendments to Regulations S-K and S-B and to a variety of Forms including Forms 10-Q, 10-K, 20-F, N-CSR and others to require issuers to make periodic disclosure of their repurchases.

SEC III: SEC Proposes New Regulation SHO Regarding Short Sales

U.S. Securities and Exchange Commission, [Proposed Rule: Short](#)

[Sales](#), Release No. 34-48709 (Oct. 28, 2003).

On October 22, the U.S. Securities and Exchange Commission proposed new Regulation SHO under the Exchange Act. The rule is intended to replace SEC and SRO rules dealing with short sales including Exchange Act Rules 3b-3, 10a-1 and 10a-2. It proposes, among other things, to require short sellers of equity securities to locate securities to borrow before selling short, and would also impose strict delivery requirements on securities "where many sellers have failed to deliver" the securities. According to the Commission, proposed regulation SHO is intended to address the problem of "naked" short selling. In addition, the proposed Regulation SHO provides for a Proposed Rule 201 that will require a new uniform bid test allowing short sales to be effected at a price one cent above the consolidated best bid with respect to all exchange-listed securities and Nasdaq National Market System securities wherever traded.

In its proposing release the Commission also seeks comment on a temporary rule (Proposed Rule 202(T)) that would suspend operation of the proposed bid test for specified liquid securities during a two-year pilot period. The temporary suspension "would allow the Commission to study the effects of relatively unrestricted short selling on market volatility, price efficiency, and liquidity."

Comments on the proposal must be received by the Commission on or before January 5, 2004.

SEC IV: SEC Is Orally Advising That Section 906 Certifications Do Not Apply to Forms 6-K, 8-K or 11-K

On October 20, Wachtell, Lipton, Rosen & Katz issued a memorandum that was made available on RealCorporateLawyer.com indicating that "[i]n recent days the SEC Staff has orally advised us that the Staff, after consulting with the Department of Justice, has come to the view that the [Sarbanes-Oxley] Section 906 certifications do not apply to Forms 6-K, 8-K or 11-K." There reportedly has been no indication from the Staff regarding when it might state its position in writing.

See Wachtell, Lipton, Rosen & Katz, [Sarbanes-Oxley Act: Update](#)

[on Applicability of Section 906 Certifications](#) (Oct. 20, 2003).

SRO I: NYSE and NASDAQ Proposals for New Corporate Governance Listing Standards Approved by SEC

U.S. Securities and Exchange Commission, [NASD and NYSE Rulemaking: Relating to Corporate Governance](#), Release No. 34-48745 (Nov. 4, 2003).

U.S. Securities and Exchange Commission, [SEC Approves NYSE, NASDAQ Strengthening of Corporate Governance Standards for Listed Companies](#), News Release No. 2003-150 (Nov. 4, 2003).

New York Stock Exchange, [Amendment No. 2 to the NYSE's Corporate Governance Rule Proposals](#) (Oct. 8, 2003).

See also [Comparison of Proposed Rule Text Showing How It Differs from Proposed Rule Filed in April 2003](#).

Nasdaq, [SR-NASD-2002-141 - Amendment 3: Rules 4200 and 4350 Regarding Board Independence and Independent Committees](#) (Oct. 9, 2003).

On October 8, 2003, the New York Stock Exchange filed with the SEC revised listing standards regarding its corporate governance proposals. The revised standards represent the latest iteration in a process that began over a year ago. On August 16, 2002, the NYSE filed its initial corporate governance proposals with the SEC. The NYSE then filed an amendment to these proposals in April 2003, which the SEC published for public comment. The amended listing standards filed last week are a result of the comment letters received, as well as comments made by the SEC staff. On October 9, 2003, the Nasdaq Stock Market filed its own revised corporate governance listing standards with the SEC. The SEC had publicly stated for some time that it intended to work towards

harmonizing the proposed NYSE standards and the proposed Nasdaq standards.

On November 4, the SEC approved the new rules proposed and adopted by the NYSE and the Nasdaq Stock Market. According to the Commission, the new rules "establish a stricter, more detailed definition of independence for directors and require the majority of members on listed companies' boards to satisfy that standard. In addition, the rule changes include a number of provisions that require and facilitate independent director oversight of processes relating to corporate governance, auditing, director nominations, and compensation." What follows is a brief summary of some of the principal changes.

Director Independence and Responsibilities

Definition of "Independent Director". Although the revised standards did not change the baseline test for director independence—the board of directors must affirmatively determine that the director has no material relationship with the listed company—the NYSE did make several changes and clarifications to the types of relationships that disqualify a director from being considered independent.

Reduced Look-Back Periods. The look-back periods, which apply to all of the NYSE's *per se* independence disqualifications, have been reduced from five years to three years.

The NYSE has, however, accelerated the phase-in approach to the look-back periods. In its April 2003 amendments, the NYSE had proposed that the look-back periods be prospective only (*i.e.*, the *per se* bars to independence would not apply to the extent that the disqualifying relationship was ended prior to the effective date of the new standards). In response to comments from the SEC that this approach resulted in too long a delay until full compliance was required, the NYSE revised this provision. Pursuant to the latest filing, a one-year look back will apply during the first year in which the revised listing standards are effective, and the full three-year look back would then apply after the end of the first year.

Employment Disqualification. A director who is also an employee of the listed company, or has an immediate family member who is an executive officer of the listed company, is not independent until three years after the employment relationship has ended. This change merely clarifies the April 2003 amendments.

Compensation Disqualification. A director who has received (or has an immediate family member in an executive officer position who has received) more than \$100,000 in direct compensation from the listed company, other than for board service or pursuant to a pension or similar form of deferred compensation, is not independent until three years following the time the compensation was received. In its April 2003 amendments, the NYSE proposed that the receipt of such compensation would merely create a *rebuttable presumption* of non-independence. Based on comments from the SEC, the NYSE revised this provision to create a bright-line disqualification. NASDAQ has proposed a similar rule, except that the applicable threshold is \$60,000.

Business Affiliation Disqualification. A director who is an executive officer or employee (or has an immediate family member who is an executive officer) of another company that in any single fiscal year makes payments to, or receives payments from, the listed company for property or services in an amount that exceeds *the greater of* \$1 million or 2% of *such other company's* consolidated gross revenues is not independent until three years have elapsed since the payment. Prior to this filing, the disqualifying payments were tested against the listed company's consolidated gross revenues. The applicable NASDAQ threshold is the greater of \$200,000 or 5% of the *recipient's* consolidated gross revenues.

In addition, the NYSE clarified that charitable organizations are *not* considered "companies" for purposes of this \$1 million / 2% payment test. The NYSE has added commentary to this proposed standard, however, that requires listed companies to *disclose* contributions to charitable organizations that exceed the \$1 million / 2% threshold in the event that one of its directors serves as an executive officer of the charitable organization.

Additional Clarifications. The NYSE filing clarified that the term "company" includes any parent or subsidiary in a consolidated group with the listed company. The filing also clarified that a person who ceases to be an immediate family member as a result of legal separation or divorce, or by reason of death or incapacitation, would no longer need to be considered in evaluating the independence of a director.

Controlled Companies. The filing did not amend the controlled company exception. Accordingly, a company of which more than 50% of the voting power is held by an individual, a group or another company need not comply with the new standards that require a majority of the board be comprised of independent directors or those standards that require listed companies to have a nominating

and corporate governance committee and a compensation committee. NASDAQ continues to propose a similar exception for controlled companies.

Executive Sessions. The NYSE standards would still require a listed company's non-management directors, whether or not directors of a controlled company, to meet at regularly scheduled executive sessions without management. At the SEC's request, however, the NYSE added commentary stating that a listed company with non-management directors who are not independent (*e.g.*, a non-employee director who is not independent by reason of the business affiliation disqualification) should have an executive session at least once a year with only independent directors.

Independent Board Committees

The revised standards did not alter the fundamental principle that listed companies need to maintain an audit committee, a compensation committee and a nominating and corporate governance committee, with each comprised solely of independent directors. The NYSE's latest filing, however, did amend and clarify certain of the standards regarding the audit and compensation committees.

Audit Committee. Rather than restating the audit committee independence and responsibility requirements recently adopted by the SEC pursuant to Section 301 of Sarbanes-Oxley, which the NYSE's April 2003 amendments had done, the NYSE's revised listing standards now contain one standard which simply states that listed companies must have an audit committee that satisfies the requirements of Rule 10A-3 under the Exchange Act. A separate listing standard then outlines the audit committee requirements that NYSE-listed companies must abide by in addition to the SEC requirements. These additional requirements have essentially remained unchanged since the NYSE first proposed them in August 2002 (*e.g.*, audit committee must discuss policies regarding risk management and risk assessment, meet separately with management, the internal auditors and the independent auditors, etc.).

Compensation Committee. The filing clarified that the compensation committee may work together with the other independent directors in determining and

approving the CEO's compensation. The filing further clarified that the compensation committee's authority to determine and approve the CEO's compensation should not be read to preclude discussion of CEO compensation with the board generally or otherwise in any way impair communication among board members.

Additional Items

Corporate Governance Guidelines and Code of Ethics. The filing did not amend the proposed listing standards that require NYSE-listed companies to adopt corporate governance guidelines and a code of business conduct and ethics. The only amendment to these standards was a clarification that listed companies must state in their *Annual Report on Form 10-K filed with the SEC* that these codes have been adopted and are available on the company's website (previously the listing standards simply said "annual report").

Use of Public Reprimand Letters. The filing notes that the issuance of public reprimand letters, a type of sanction much less severe than suspension and delisting, is not intended for use in those cases in which a listed company either falls below the financial or other continued listing standards or fails to comply with the SEC-specified audit committee requirements.

Close-End Funds and ETFs. The NYSE's revised proposals lessen the degree to which close-end funds and Exchange Traded Funds are required to comply with the new corporate governance listing standards.

Foreign Private Issuers. No changes were made to the proposed listing standard that requires listed foreign private issuers to disclose any significant ways in which their corporate governance practices differ from those followed by domestic listed companies.

Effective Dates and Transition Periods

General Transition Periods. Listed companies will have until the *earlier* of their first annual meeting after January 15, 2004 or October 31, 2004 to comply with *all* of the new corporate governance listing standards. Prior to this filing, the NYSE had proposed an 18-month transition period in respect of the independence standards and a six-month transition period in respect of most

other standards, but these periods were changed in response to SEC comments. The revised proposals continue, however, to contain an exception for listed companies with classified boards. These companies would not be required (unless otherwise mandated by the SEC's recently adopted audit committee rules) to change a director who would not normally stand for election in the first annual meeting after January 15, 2004. Instead, these companies may continue to have such a director in office until the second annual meeting after January 15, 2004, but no later than December 31, 2005.

Foreign Private Issuers. Foreign private issuers will have until July 31, 2005 to comply with the new audit committee standards required by the SEC's recently adopted rules. Foreign private issuers will have until the earlier of their first annual meeting after January 15, 2004 or October 31, 2004 to comply with the other corporate governance listing standards applicable to it (*i.e.*, disclosure of significant differences in home country corporate governance practices and CEO notification to the NYSE upon becoming aware of material non-compliance with the listing standards).

Initial Public Offerings, Transferring Companies and Other Special Situations.

The filing provides that companies listing in conjunction with their initial public offerings may phase in their independent nominating and compensation committees on the same schedule as that mandated by the SEC's new rules for audit committees. Accordingly, IPO companies need to have one independent director on each of the audit, compensation and nominating and corporate governance committees at the time of listing, followed by majority independence within 90 days of listing and full independence within one year of listing. IPO companies also have one year following listing to comply with the majority independent board requirement.

These same transition rules applicable to IPOs apply to companies that are emerging from bankruptcy and to companies that have ceased to be a "controlled company". Companies transferring from another market will have one year from the date of transfer in which to comply with any requirement to which it had not

previously been subjected.

See Simpson Thacher & Bartlett LLP, [Corporate Governance Alert: NYSE Files Revised Proposal for Corporate Governance Listing Standards with SEC](#) (Oct. 14, 2003).

PCAOB I: PCAOB Releases Briefing Paper on Oversight of Non-U.S. Accounting Firms

Public Company Accounting Oversight Board, [Briefing Paper: Oversight of Non-U.S. Public Accounting Firms](#) (Oct. 28, 2003).

Public Company Accounting Oversight Board, [Board Releases Briefing Paper on Oversight of Non-U.S. Accounting Firms](#) (Oct. 28, 2003).

On October 28, the Public Company Accounting Oversight Board released a briefing paper that describes the Board's anticipate approach to the oversight of non-U.S. accounting firms. Generally, the paper lays out the following broad parameters for such oversight:

A framework to permit varying degrees of reliance on a firm's home country system of inspections, based on a sliding scale: the more independent and robust a home country oversight system, the higher the reliance on that system.

A modification to the PCAOB's registration form to permit, where applicable, the inclusion of certain information about a non-U.S. firm's home country oversight system, in order to facilitate coordination between the PCAOB and non-U.S. oversight systems.

A 90-day extension of the Board's deadline for non-U.S. firm registration in order to allow sufficient time for the Board to have final rules in place in this area, as well as permit non-U.S. firms a reasonable amount of time to understand and prepare for registration.

PCAOB II: PCAOB Says It Has Approved the Registration Applications of 598 Firms

Public Company Accounting Oversight Board, [Board Approves Registration of 598 Accounting Firms](#) (Oct. 22, 2003).

Public Company Accounting Oversight Board, [Registered Public Accounting](#)

[Firms as of 10/29/2003](#) (Oct. 29, 2003).

Public Company Accounting Oversight Board, [Applicants for Registration](#) (Oct. 31, 2003).

As of October 29, the Public Company Accounting Oversight Board has approved the registration applications of 598 accounting firms. A list of the registrant firms as well as the location of the headquarters office for each is available on the PCAOB Web site (see above). A separate list of applicants for registration is also available (see above).

PCAOB III: PCAOB Proposes Standards for Attestation of Management's Assessment of Internal Controls

Public Company Accounting Oversight Board, [Proposed Auditing Standard -- An Audit of Internal Control Over Financial Reporting Performed in Conjunction with an Audit of Financial Statements](#), PCAOB Release No. 2003-017 (Oct. 7, 2003).

Public Company Accounting Oversight Board, [Comments Received to Date on Proposed Auditing Standard -- An Audit of Internal Control Over Financial Reporting Performed in Conjunction with an Audit of Financial Statements \(Release No. 2003-017\)](#) (Nov. 3, 2003).

On October 7, the Public Company Accounting Oversight Board proposed new standards for attestation of management's assessment of internal controls. Public comments must be provided to the PCAOB on or before November 21. Auditors must form an opinion regarding whether management's assessment of the effectiveness of the company's internal control over financial reporting is fairly stated in all material respects. Additionally, the auditor's report must address whether internal controls provide reasonable assurance that transactions are recorded as necessary. The auditor must apprise the registrant's audit committee of all significant deficiencies and material weaknesses in internal controls and must inform company management of such deficiencies. The proposed standards set forth the principal elements of the auditor's review including planning the audit, evaluating management's procedures for assessing the effectiveness of internal controls, developing a reasonable understanding of the company's internal controls, and evaluating the effectiveness of the actual

controls, among other things.

In planning the audit, the auditor would be expected to consider the scope and extent of its knowledge of the company and its processes, the industry or industries in which the company operates, the company's own business and any changes in the company's operations or controls that might have an impact on financial reporting.

In evaluating management's procedures for assessing the effectiveness of internal controls, the auditor must assess whether management has a basis for its assessment of internal controls, collect information to help it understand the company's internal controls, work with the company to plan the audit of internal controls and develop the data and support that the auditor uses to support its own opinion regarding the registrant's internal controls. The PCAOB's proposal allows auditors to use work performed by others (including management) to a "reasonable" extent in reviewing company management's assessment of internal controls.

In developing its understanding of management's internal controls and confirming that the controls are, in fact, operating as intended, the auditor will have to observe personnel involved in executing the controls and make necessary inquiries of such personnel when appropriate, review documents relating to the controls, compare underlying support documents such as contracts, invoices and the like to the accounting records and conduct physical inspections ("walkthroughs") of important control processes.

Once they have gained an understanding of the internal controls, auditors will be required to evaluate the effectiveness and completeness of the *design* of those controls through interaction with company personnel, observations of the operation of the controls, physical inspections and investigation to permit an evaluation of whether the controls are likely to reveal financial statement misstatements. In addition, the auditors will be required to perform similar tasks to evaluate the *operating* effectiveness of the controls.

For an excellent overview of the PCAOB proposal as well as a revealing

discussion of some of its limitations, see:

Paul, Weiss, Rifkind, Wharton & Garrison LLP, [PCAOB Proposes Standard for Review of Internal Control Over Financial Reporting](#) (Oct. 2003).

Useful Online Resources for Staying Abreast of News Regarding Securities Regulation and Securities Litigation

In the August 2003 issue of the RealCorporateLawyer E.zine we included a list of "[Useful Corporate Governance Web Sites](#)". There are, in addition, a host of additional Web resources that offer breaking news and analysis regarding securities regulation and securities litigation. Some of the better sites where developments of note to securities lawyers are addressed daily are described below.

[RealCorporateLawyer.com](#) - Of course we must start with RR Donnelley's excellent site. The [home page](#) offers daily news updates on SEC and other regulatory developments as well as breaking news on corporate governance and corporate law developments. In addition, visitors can view a page that summarizes changes to the SEC's Web site in the previous 24 hours.

[FindLaw Corporate Counsel Center](#) - This West Group - affiliated site provides current news of interest to corporate lawyers as well as legal memoranda on topics relating to corporate law, litigation watch information, business contract forms and more.

[Corp Law Blog](#) - Corp Law Blog is a Web Log administered by Michael J. O'Sullivan that addresses issues encountered by corporate lawyers. In addition to daily commentary on corporate law developments, the Blog offers a wealth of links to other sites of interest to corporate and securities lawyers.

[TheCorporateCounsel.net Blog](#) - TheCorporateCounsel.net Blog describes itself as "The Practical Corporate & Securities Law Blog". This Web Log, administered , provides daily commentary on corporate governance, securities law and corporate law issues.

[Institutional Shareholder Services \(ISS\) Securities Litigation Watch](#) - This Blog contains daily commentary on securities litigation news and developments of interest to those who follow securities litigation.

[The 10B-5 Daily](#) - This Blog, administered by Lyle Roberts, describes itself as a place where visitors can find "News and events related to securities class action litigation. Containing all facts, with particularity, and an occasional does of commentary."

[ProfessorBainbridge.com](#) - This Blog, administered by Professor Stephen Bainbridge of UCLA Law, is described as "A corporate law professor's eclectic mix of law, business and economics, current events, and wine". Some of the commentary is quite humorous, although there is a good amount of commentary on important news items posted on a daily basis.

[The Securities Law Beacon](#) - This Blog includes very brief news summaries relating to securities laws with links to the pertinent news items and is updated frequently throughout the day.

COMINGS AND GOINGS: Who's Doing and Saying What and Where?

On October 30, FASB announced that **Robert E. Denham** has been elected Chairman of the Financial Accounting Foundation and **Edward V. Regan** has been named trustee. Mr. Denham will succeed **Manuel H. Johnson** who has served as FAF Chairman and President since 1997 and as a member of the Board of Trustees since 1996. Mr. Regan, in turn, has been President of Baruch College since June 2000. See Financial Accounting Standards Board, [News Release: Robert E. Denham Elected Chairman of Financial Accounting Foundation; Edward V. Regan Named Trustee](#) (Oct. 30, 2003).

On October 23, the Securities and Exchange Commission announced the reappointment of **Charles D. Niemeier** to the Public Company Accounting Oversight Board. The Commission unanimously selected Niemeier to serve a five-year term as a PCAOB board member upon the completion of his one-year appointment at the end of October. See U.S. Securities and Exchange Commission, [Commission Reappoints Charles D. Niemeier to Public Company Accounting Oversight Board](#), News Release 2003-141 (Oct. 23, 2003).

On October 22, **S. Scott Voynich**, managing partner of the Columbus, Georgia accounting firm of Robinson, Grimes Co. was elected Chairman of the American Institute of Certified Public Accountants, succeeding William F. Ezzell Jr. See

American Institute of Certified Public Accountants, [S. Scott Voynich Begins Post as New AICPA Chairman; Will Continue to Focus Profession on Restoring Integrity and Objectivity](#) (Oct. 22, 2003).

On October 10, the Securities and Exchange Commission's Office of the General Counsel announced that **Joseph A. Hall** of Davis Polk & Wardwell has been appointed as Senior Policy Fellow for a two-year term that began on October 20, 2003. See U.S. Securities and Exchange Commission, [Joseph Hall Named Senior Policy Fellow in the Office of the General Counsel](#), News Release 2003-137 (Oct. 10, 2003).

The NASD has released its list of NASD Board of Governors Nominees to be voted on during the upcoming annual meeting to be held beginning January 6, 2004. Their terms of office will be 2004-2007. They are: **William C. Alsover, Jr.** (Chairman, Centennial Securities Company, Inc.); **Charles A. Bowsher** (Former Comptroller General of the United States); **Joel Seligman** (Dean, Washington University School of Law); and **Sharon P. Smith** (Deal, College of Business Administration, Fordham University). See NASD, [Special Notice to Members: Board of Governors Nominees](#), NASD NtM 03-60 (Oct. 2003).

On October 7, the Public Company Accounting Oversight Board announced the appointment of two staff members to lead the New York Office. **Esslie W. Hughes** will serve as Director of the New York office. She previously worked for more than 20 years in commercial banking with The Bank of New York, European American Bank and Bankers Trust Company. **Paul E. Bijou** will lead the inspection team and serve as Deputy Director of Inspection in the New York Office. He formerly served as a partner at PricewaterhouseCoopers. See Public Company Accounting Oversight Board, [Board Announces Leaders of New York Office](#) (Oct. 7, 2003).

On October 2, the Securities and Exchange Commission's Division of Corporation Finance announced that it recently selected Mary Brady Greenawalt as the academic accounting fellow for a one-year term. Professor Greenawalt holds the First Union National Bank Chair in accounting at Francis Marion

University in Florence, S.C. See U.S. Securities and Exchange Commission, [Division of Corporation Finance Selects Mary Greenawalt as Academic Accounting Fellow](#), News Release 2003-130 (Oct. 2, 2003).

What Are the Commissioners Saying?

SEC Commissioner **Cynthia A. Glassman** delivered "[Remarks on Governance Reforms and the Role of Directors before the National Association of Corporate Directors](#)" on October 20. Commissioner Glassman also delivered "[Remarks on Sarbanes-Oxley's Lessons For Broker-Dealers Before the NASD Fall Securities Conference](#)" on October 17 and delivered "[Remarks Before the Security Traders Association](#)" the day before that. On October 8, Commissioner Glassman spoke in Washington, D.C., delivering "[Remarks Before the Bank Insurance and Securities Association's Legislative, Regulatory and Compliance Seminar](#)". The same day, October 8, Commissioner **Harvey J. Goldschmid** delivered "[Remarks on Proposed Rules for Shareholder Access to Company Proxy Material](#)" at the Commission's open meeting. October 8 was a busy day for speeches. Commissioner Paul S. Atkins delivered "[Remarks at Open Meeting Regarding Shareholder Access Proposal](#)" and SEC Chairman **William H. Donaldson** likewise provided "[Introductory Remarks at the October 8 Open Meeting: Proxy Access Proposal](#)".

What Are the Commission Staffers Saying?

Lori A. Richards, Director of the OCIE, delivered Remarks entitled "[Current Examination and Enforcement Issues: 15th Annual Conference on the Securities Industry](#)" on October 29, 2003. On October 17, **Ethiopsis Tafara**, Director of the Office of International Affairs, spoke in Seoul, Korea on "[Combating Financial Crime Globally: IOSCO Annual Conference](#)". **Annette L. Nazareth**, Director of the SEC's Division of Market Regulation, spoke on October 17 Regarding: "[The National Market System: Fulfilling the Promise: The Securities Traders Association 70th Annual Conference and Business Meeting](#)". Ms. Nazareth also delivered "[Remarks Before the SIA Research Conference](#)" in New York City on October 16. **Paul F. Roye**, Director of the SEC's Division of Investment

Management, gave the "[Keynote Address at the Ninth Annual Advanced ALI-ABA Course of Study: Investment Management Regulation](#)" in Washington, D.C. on October 16. Finally, on October 9, Lori A. Richards spoke before the Securities Industry Association's Small Firms Conference on "[Keeping Pace with the Speed of Change for Small Firms: Perspectives from the SEC.](#)"

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