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SEC I: SEC Issues Interpretive Release Providing Guidance on MD&A

U.S. Securities and Exchange Commission, [Interpretive Release: Commission Guidance Regarding Management's Discussion and Analysis of Financial Condition and Results of Operations](#), Release Nos. 33-8350, 34-48960 (Dec. 19, 2003).

On December 19, 2003, the Securities and Exchange Commission issued an interpretive release providing guidance regarding Management's Discussion and Analysis of Financial Condition and Results of Operations (MD&A) disclosure in periodic reports and prospectuses.

In its release, the Commission contends that the guidance is not intended to

create new requirements or to modify existing requirements. Rather, it is intended to provide guidance to encourage more informative MD&A rather than a mere recitation "of financial statements in narrative form or an otherwise uninformative series of technical responses".

The interpretive release provides guidance regarding the overall presentation and focus of MD&A, analyses of the issuer's financial data, discussion of material trends and uncertainties, key financial and non-financial performance indicators, liquidity and capital resources and critical accounting estimates.

RealCorporateLawyer.com is please to provide an excellent analysis of the interpretive release prepared by Alston + Bird LLP. See Alston + Bird LLP, [Securities Law Advisory: SEC Issues Interpretive Release Regarding MD&A Disclosure](#) (Dec. 23, 2003).

SEC II: SEC Addresses Late Trading, Market Timing and Related Abuses in the Mutual Fund Industry

U.S. Securities and Exchange Commission, [Disclosure Regarding Market Timing and Selective Disclosure of Portfolio Holdings, Proposed Rule](#), Fed. Reg. (Dec. 17, 2003).

U.S. Securities and Exchange Commission, [Compliance Programs of Investment Companies and Investment Advisers; Final Rule](#), Fed. Reg. (Dec. 24, 2003).

U.S. Securities and Exchange Commission, [Amendments to Rules Governing Pricing of Mutual Fund Shares; Proposed Rule](#), Fed. Reg. (Dec. 17, 2003).

[SEC Takes Steps to Address Late Trading, Market Timing and Related Abuses](#), News Release 2003-168 (Dec. 3, 2003).

On December 3, 2003, the Securities and Exchange Commission took steps to address late trading, market timing and related abuses in the mutual fund industry. The Commission voted to propose a rule that will require that orders to

purchase or redeem fund shares must be received by the fund or its primary transfer agent or registered securities clearing agency by the time that the fund establishes for calculating its net asset value in order to receive that day's price. According to the Commission, "[t]his rule would effectively eliminate the potential for late trading through intermediaries that sell fund shares."

In addition, the Commission voted to adopt a rule regarding compliance programs of investment companies and investment advisers. The new rule will require mutual funds and their investment advisers to: "(i) have compliance policies and procedures, (ii) annually review them and (iii) designate a chief compliance officer who, for funds, must report to the board of directors."

According to the SEC's announcement, "[c]ompliance with this rule will be required no later than nine months after its publication in the Federal Register."

The Commission also voted to propose a rule requiring mutual funds to disclose their market timing policies and procedures, practices regarding their "fair valuation" of their portfolio and procedures, and policies and procedures regarding disclosure of their portfolio holdings.

SEC III: SEC and Other Agencies Issue Proposal to Consider Alternative Forms of Privacy Notices Under Gramm-Leach-Bliley

U.S. Securities and Exchange Commission, [Concept Release: Interagency Proposal to Consider Alternative Forms of Privacy Notices Under the Gramm-Leach-Bliley Act](#) (Dec. 17, 2003).

[Appendix A](#)

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On December 22, the U.S. Securities and Exchange Commission issued a concept release containing an interagency proposal to consider alternative forms

of privacy notices under the Gramm-Leach-Bliley Act. The SEC issued the advance notice of proposed rulemaking along with the Office of the Comptroller, Treasury; the Office of Thrift Supervision, Treasury; the Board of Governors of the Federal Reserve System; the Federal Deposit Insurance Corporation; the National Credit Union Administration; the Federal Trade Commission; and the Commodity Futures Trading Commission. The agencies seek comment on whether they should consider amending the regulations that implement Sections 502 and 503 of the Gramm-Leach-Bliley Act "to allow or require financial institutions to provide alternative types of privacy notices, such as a short privacy notice, that would be easier for consumers to understand.

The Concept Release lists more than 40 questions regarding which the SEC and other agencies seek comment from the public, organized in the following categories: goals of a privacy notice; elements of a privacy notice, language of a privacy notice, format of a privacy notice, mandatory and permissible aspects of a privacy notice, costs and benefits of a short notice, and other categories.

SEC IV: SEC Approves New Rule and Rule Changes Regarding Processing Cancelled Stock Certificates

U.S. Securities and Exchange Commission, [Processing Requirements for Cancelled Security Certificates; Final Rule](#), Fed. Reg. (Dec. 23, 2003).

On December 16, 2003, the Securities and Exchange Commission approved a new rule and rule amendments that revise its requirements regarding cancelled securities certificates. The changes will require transfer agents to develop written procedures regarding the cancellation, storage, transportation and destruction of securities certificates. In addition, the changes require reporting institutions to track securities in transit and to require inquiries regarding possibly lost, stolen or missing certificates within certain time limitations. According to the

adopting release:

"The new rule and rule amendments promote several fundamental Commission goals: Improving the safety and efficiency in processing and transferring securities; reducing or eliminating the physical movement of securities certificates; and reducing the potential for fraudulent use of cancelled securities certificates."

The new rule and rule changes will be effective on January 22, 2004.

SEC V: SEC Adopts Amendments to Recordkeeping Requirements Applicable to Registered Transfer Agents

U.S. Securities and Exchange Commission, [Recordkeeping Requirements for Registered Transfer Agents; Final Rule](#), Fed. Reg. (Dec. 29, 2003).

On December 18, the Securities and Exchange Commission released final rules amending the recordkeeping requirements applicable to registered transfer agents. Among other things, the amendments are intended to make clear that electronic transfer agent records (including such records regarding cancelled securities certificates) may fulfill requirements for the keeping of hard copy records.

In addition, the amendments clarify that a transfer agent may fulfill its software escrow obligation by having a third party deposit with an independent escrow agent a copy of all documentation required under Rule 17 Ad-7(f)(5)(ii) on behalf of the transfer agent. Thus, a transfer agent using a third party vendor to maintain its records would be allowed to have the third party vendor place in escrow a copy of the vendor's proprietary source code on behalf of the transfer agent using the vendor's services. The amendments would also allow a third party vendor maintaining the records of more than one transfer agent to place in escrow one copy of the vendor's proprietary source code for all the transfer agents for which it acts.

The approved changes will become effective January 28, 2004.

SEC VI: SEC Staff Accounting Bulletin Regarding Revenue Recognition Is Issued

U.S. Securities and Exchange Commission, [Staff Accounting Bulletin No. 104 - Corrected Copy](#), Release No. SAB 104 (Dec. 17, 2003).

On December 17, the SEC's Office of the Chief Accountant released Staff Accounting Bulletin No. 104 addressing revenue recognition. The bulletin revised and rescinded certain portions of interpretive guidance previously included in Topic 13 of the codification of staff accounting bulletins to make the Staff's most current published guidance consistent with current rules, regulations and accounting guidance. The bulletin, for example, rescinds the guidance entitled "Revenue Recognition in Financial Statements Frequently Asked Questions and Answers" issued in connection with Topic 13 and incorporates selected portions of that guidance into Topic 13. According to the bulletin, the "principal revisions relate to the rescission of material no longer necessary because of private sector developments in U.S. generally accepted accounting principles."

SEC VII: SEC Proposes Amendments to Rules of Practice to Address Issues Relating to PCAOB

U.S. Securities and Exchange Commission, [Proposed Amendments to the Rules of Practice and Related Provisions; Proposed Rule](#), Fed. Reg. (Dec. 5, 2003).

On December 5, the SEC's proposed amendments to its rules of practice were published in the Federal Register. The proposal essentially addresses the Commission's role as reviewer of (i) PCAOB disciplinary actions; (ii) PCAOB registration disapprovals; and (iii) the establishment of so-called "fair funds" for the benefit of investors by the PCAOB. According to the proposing release, the "proposed amendments are intended to enhance the transparency and facilitate

parties' understanding of the applicability of the review process to [PCAOB] proceedings, and to make practice under the rules easier and more efficient."

PCAOB I: PCAOB Proposes Rules Regarding Registration of Non-U.S. Auditors

Public Company Accounting Oversight Board, [Proposed Rules Relating to the Oversight of Non-U.S. Public Accounting Firms](#), PCAOB Release No. 2003-024 (Dec. 10, 2003).

Public Company Accounting Oversight Board, [Board Proposes Rules on Oversight of Non-U.S. Accounting Firms, Registration Deadline](#) (Dec. 9, 2003).

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

On December 9, the Public Company Accounting Oversight Board voted to propose rules relating to the inspection and investigation of non-U.S. public accounting firms. The Board also voted to propose extending the registration deadline for non-U.S. firms by 90 days to July 19, 2004. Broadly speaking, the proposed rule would allow the PCAOB to rely on the work of oversight systems in other jurisdictions "based on a sliding scale: the more independent and more rigorous a local oversight system, the greater the Board's reliance on that system". In its announcement detailing the proposal, the Board stated:

"The allocation of work between the PCAOB staff and the non-U.S. staff, under the proposed rule, would vary depending on the independence and rigor of the non-U.S. system. In jurisdictions with the highest level of independence and rigor, the inspection work program would be executed by the local inspecting body with the participation of experts designated by the Board. PCAOB

participation would be greater in those jurisdictions with less independent and less rigorous systems of oversight. In jurisdictions where auditor oversight is conducted solely by a profession-organized peer review system, the Board would direct PCAOB staff to execute the inspection work program, but could permit some assistance from the non-U.S. peer review body, which would execute certain agreed-upon modules of the program.

SRO I: NYSE Issues FAQs on Equity Compensation Plans

New York Stock Exchange, [Frequently Asked Questions on Equity Compensation Plans](#) (Dec. 12, 2003).

On December 12, the New York Stock Exchange issued a set of "Frequently Asked Questions on Equity Compensation Plans". The 27 questions and answers address:

- whether a plan fits the definition of "equity compensation plan" and thus is subject to the rule;
- transition issues;
- material revision issues;
- formula plans;
- issues relating to use of exemptions; and
- who is considered a "consultant" under the rule.

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NASD Adopts New IPO Rule Replacing Hot Issue Rule from Morgan Lewis	The New World of SEC Enforcement from Morrison & Foerster LLP
Financial Service Department Compliance, Compliance, Compliance from Wachtell, Lipton, Rosen & Katz	Executives! Start Using Rule 10b5-1 Trading Plans! from Morrison & Foerster LLP
Securities Law Advisory: SEC Issues Interpretive Release Regarding MD&A Disclosure from Alston & Bird LLP	SEC Approves NYSE Corporate Governance Rules for Listed Companies from Hughes, Hubbard & Reed LLP
Disclosures and Requirements for the 2004 10-K / Proxy Season from Snell & Wilmer	SEC Approves Nasdaq Corporate Governance Rules for Listed Companies from Hughes, Hubbard & Reed LLP
M&A Notes (Control Share Legislation) from Kirkland & Ellis	Imposing Corporate Governance Reform: The SEC Takes Action from Nixon Peabody LLP
What Does the EU Prospectus Directive Mean to Non-EU Issuers? from Gibson, Dunn & Crutcher	Non EU-Issuer Home Member State Selection Under the Prospectus Directive from Covington & Burling
Easier Public Access to SEC Correspondence - A Double Edged Sword from Dechert LLP	

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

On December 19, the SEC announced that **Wayne M. Carlin**, Regional Director of the Commission's Northeast Regional Office, plans to leave the Commission to become a partner in the law firm of Wachtell, Lipton, Rosen & Katz. Mr. Carlin began his legal career as an associate with Wachtell in 1984. He later was a partner with Testa, Hurwitz & Thibault. See U.S. Securities and Exchange Commission, [Wayne Carlin, Northeast Regional Director, To Leave Commission](#), News Release 2003-177 (Dec. 19, 2003).

On December 11, the American Institute of Certified Public Accountants announced that **Thomas P. Ochenschlager** will join the AICPA as Vice-President - Taxation. Mr. Ochenschlager previously was a partner with Grant Thornton LLP in Washington, D.C. responsible for tracking Federal tax legislative developments. See American Institute of Certified Public Accountants, [Thomas](#)

[Ochsenschlaer Joins AICPA as Vice President - Taxation](#) (Dec. 11, 2003).

The New York Stock Exchange announced on December 18 that its Board of Directors has appointed **John A. Thain**, president and chief operating officer of Goldman Sachs, as CEO and a member of the Board of Directors of the NYSE effective January 15, 2004. **John S. Reed**, who has been interim chairman and CEO of the NYSE since September 30 will resign as interim CEO and will remain as interim Chairman until a new Chairman is appointed. See New York Stock Exchange, [NYSE Appoints John A. Thain as Chief Executive Officer: Mr. Thain Has Been President and COO of Goldman Sachs Group, Inc.](#) (Dec. 18, 2003).

The New York Stock Exchange confirmed on December 5, 2003 that it has extended an invitation to North Carolina State Treasurer **Richard Moore** to serve on its Board of Executives, pending SEC approval of the NYSE's proposed changes to its governance structure. See New York Stock Exchange, [NYSE Statement Re: North Carolina State Treasurer Richard Moore](#) (Dec. 5, 2003).

What Are the Commissioners Saying? SEC Commissioner **Roel C. Campos** delivered a [Statement Regarding the NYSE Approval Order](#) at the SEC's open meeting on December 17, 2003. Similarly, at the same meeting SEC Chairman **William H. Donaldson** delivered an "[Opening Statement at Open Commission Meeting](#)" addressing the restructuring of the NYSE's governance structure. On December 4, SEC Commissioner **Harvey J. Goldschmid** spoke before the ICI 2003 Securities Law Developments Conference regarding "[Mutual Fund Regulation: A Time for Healing and Reform](#)". SEC Chairman **William H. Donaldson** delivered an "[Opening Statement at Open Securities and Exchange Commission Meeting](#)" on December 3 regarding the Commission's actions to protect mutual fund investors.

What Are the Commission Staffers Saying? **Randolph P. Green**, Professional Accounting Fellow - Office of the Chief Accountant delivered [Remarks at the 2003 Thirty-First AICPA National Conference on Current SEC Developments](#) on December 11. **Robert J. Comerford**, Professional Accounting Fellow - Current Accounting Projects Office of the Chief Accountant, delivered [Remarks at the](#)

[2003 Thirty-First AICPA National Conference on Current SEC Developments](#) on December 11. Likewise, **D. Douglas Alkema**, Professional Accounting Fellow - Current Accounting Projects - SEC's Office of the Chief Accountant, delivered his own [Remarks at the 2003 Thirty-First AICPA National Conference on Current SEC Developments](#) the same day. **Gregory A. Faucette**, another Professional Accounting Fellow, delivered [Remarks](#) before the same conference that day, as did **Eric Schuppenhauer** ([Remarks](#)), **Chad A. Kokenge** ([Remarks](#)), **John M. James** ([Remarks](#)) and **Russell P. Hodge** ([Remarks](#)). In addition, **Scott A. Taub**, Deputy Chief Accountant of the SEC's Office of the Chief Accountant, delivered [Remarks](#) at the same conference as did the SEC's Chief Accountant, **Donald T. Nicolaisen** ([Remarks](#)). On December 4, **Paul F. Roye**, the SEC's Director of the Division of Investment Management, spoke regarding "[A Turning Point for America's Mutual Fund Industry](#)" before the ICI 2003 Securities Law Developments Conference in Washington, D.C. And, finally, on December 3, **Paul F. Roye** delivered a [Statement at the Open Commission Meeting](#).

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