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SEC I: SEC Finally Releases PCAOB Ethics and Independence Rules for Comment

U. S. Securities and Exchange Commission, [Notice of Filing of PCAOB's Proposed Ethics and Independence Rules Concerning Independence, Tax Services, and Contingent Fees](#) (Mar. 7, 2006).

On July 26, 2005, the Public Company Accounting Oversight Board adopted Rule 3501 (Definitions of Terms Employed in Section 3, Part 5 of the Rules); Rule 3502 (Responsibility Not To Cause Violations); Rule 3520 (Auditor Independence); Rule 3521 (Contingent Fees); Rule 3522 (Tax Transactions); Rule 3523 (Tax Services for Persons in Financial Reporting Oversight Roles); and Rule 3524 (Audit Committee Pre-Approval of Certain Tax Services). A few months later on

November 22, 2005, the Board adopted some technical amendments to Rule 3502 and Rule 3522.

The proposed rules address a host of issues including:

Auditors' responsibility "not to knowingly or recklessly contribute to violations" of statutes and regulations regarding the preparation and issuance of audit reports (Rule 3502).

Auditor independence, generally (Rule 3520).

Auditor independence in situations involving contingent fees due to the firm or any affiliate of the firm during the firm's audit and professional engagement period with the client (Rule 3521).

Auditor independence when the firm or any affiliate of the firm provides non-audit service to the client related to marketing, planning or opining in favor of the tax treatment of a confidential transaction or a so-called "aggressive tax position transaction" (Rule 3522).

Firm independence from its client when the firm or any affiliate of the firm provides tax services for persons in financial reporting oversight roles (Rule 3523).

Audit committee pre-approval of certain tax services.

Comments on the proposed rules are due 21 days from the publication of the SEC's notice in the Federal Register.

SEC II: SEC To Study Impact on Investor Protections from Differences Between Exchange Act and Investment Advisers Act Regulatory Regimes

U. S. Securities and Exchange Commission, [Notice of Broker-Dealer/Investment Adviser Study](#), Release Nos. 34-53406, IA-2492 (Mar. 3, 2006).

SEC Chairman Christopher Cox announced on March 3 that the Commission will undertake a study "to compare the levels of protection afforded retail customers of financial service providers under the Securities Exchange Act and the Investment Advisers Act and to address any investor protection concerns arising from material

differences between the two regulatory regimes."

The move seems to arise from the many comments received by the Commission in connection with the promulgation of "[Certain Broker-Dealers Deemed Not To Be Investment Advisers](#)", Investment Advisers Act Release No. 2376 (April 12, 2005). As the Commission noted in its March 3, 2006 release, many of the comments it received before issuing its April 12, 2005 release went beyond the scope of the rulemaking and "implicated matters that might more appropriately fall under broker-dealer regulation." The study announced by Chairman Cox on March 3 will deal with many of the issues raised by the comments relating to the April 12, 2005 release.

SEC III: SEC Will Conduct Roundtable Series on the "New World of Interactive" Financial Data

U.S. Securities and Exchange Commission, [Commission Announces Roundtable Series on Giving Investors and Analysts Better Financial Data Via Internet](#), News Release 2006-34 (Mar. 9, 2006)

The Commission is about to trot out the dogs and ponies to drum up support for its XBRL initiative. On March 9, the Commission announced that it plans to sponsor a series of roundtables to be held throughout the remainder of this year focused on "speeding the implementation of new Internet tools that will help provide investors and analysts with better financial information about companies and funds."

The Commission's move follows a host of previous efforts to encourage the voluntary participation in an XBRL pilot. Thus, in April 2005, the SEC started a voluntary program to receive financial information using XBRL. The program permits the voluntary submission of XBRL documents as exhibits to periodic reports from corporate issuers and Investment Company Act reports.

On January 11, 2006, the Commission announced that Commission Staff "will offer companies that volunteer for a test group as part of the Commission's interactive data initiative" incentives such as expedited reviews of registration statements and annual reports. Not much later it was revealed that on January 27, the Commission published on the Web a [Request for Proposal](#) seeking proposals for

future management of EDGAR. The RFP includes a number of provisions that together suggest that the new manager must be capable to implement XBRL. Apparently determined to push the issue further, on February 13, 2006, Commission Staff announced that the deadline for joining the Commission's "interactive data test group had been extended until March 10, 2006 "in response to requests for more time from potential participants".

The Commission's latest announcement describing the planned series of roundtables says that "[r]epresentatives from investors, issuers, auditors, analysts, technology professionals, regulators, and others will be invited to the roundtable discussions." Topics will include:

"what investors and analysts are looking for in the new world of interactive data; how to accelerate the use of new software that permits the dissemination of interactive financial data; and how to best design the SEC's requirements for company disclosures to take maximum advantage of the potential of interactive data."

SEC IV: SEC Releases Exposure Draft of Final Report of Advisory Committee on Smaller Public Companies

U.S. Securities and Exchange Commission, [Exposure Draft of Final Report of Advisory Committee on Smaller Public Companies](#) (Feb. 6, 2006).

On February 28, the Commission released for public comment the exposure draft of the final report of the Advisory Committee on Smaller Public Companies. The report contains 32 recommendations in two "tiers". The first tier includes recommendations to which the Committee assigns the highest priority. Its first primary recommendation is to establish a new system of scaled or proportional securities regulation for two categories of smaller public companies: microcap companies and smallcap companies.

Additionally, the report proposes that microcap companies with less than \$125

million in annual revenue and smallcap companies with less than \$10 million in annual product revenue would be exempt from Section 404 of Sarbanes-Oxley. The report also proposes a safe harbor protocol for accounting for transactions intended to protect good-faith preparers from legal or regulatory actions when the protocol is followed.

Comments on the draft must be received on or before April 3, 2006.

SRO I: NASD Revises its Sanctions Guidelines Effective March 31, 2006

NASD, [Notice to Members: Sanction Guidelines Effective March 31, 2006](#) (Mar. 2006).

On March 8, NASD released a Notice to Members entitled "NASD Revises Sanction Guidelines". In it, NASD announced revisions to its "Guidelines" designed to promote "consistency and uniformity in the imposition of sanctions in disciplinary matters".

The revisions, according to NASD, are intended "to increase the level of flexibility built into individual guidelines and to provide additional guidance as to mitigating and aggravating circumstances for individual violations." The NASD revised the monetary sanction ranges for many of the guidelines. The revised guidelines increase the low end of monetary sanction ranges to \$5,000 for a first violation "to prevent and discourage future misconduct by a respondent, to deter others from engaging in similar misconduct, and to modify and improve business practices". Similarly, the revisions increase to \$10,000 the recommended starting point of the fine range for a second action. Finally, the revisions indicate that adjudicators or settling parties involved in cases of "egregious misconduct" may "consider imposing a fine on a per violation basis".

European Union: The European Corporate Governance Forum Clarifies "Comply or Explain" Principle and Issues Annual Report

European Union, [Corporate Governance: European Forum Clarifies 'Comply or Explain' Principle](#) (Mar. 6, 2006).

On March 6, the European Corporate Governance Forum issued a public statement intended to clarify the so-called "comply or explain" principle that requires companies to "justify any deviation from corporate governance codes". The Forum studies corporate governance "best practices" among the EU member states and periodically issues recommendations in this regard. At the same time, the Forum issued a report detailing its activities in 2005 and its future plans such as "an exchange with bodies monitoring the application of national corporate governance codes" as well as an examination of the "one share one vote" concept.

FASB and IASB Issue Joint Memorandum of Understanding: A Roadmap for Convergence Between IFRSs and US GAAP - 2006-2008

[A Roadmap for Convergence Between IFRSs and US GAAP - 2006-2008: Memorandum of Understanding Between the FASB and the IASB](#) (Feb. 27, 2006).

Financial Accounting Standards Board and International Accounting Standards Board, [FASB and IASB Reaffirm Commitment to Enhance Consistency, Comparability and Efficiency in Global Capital Markets](#) (Feb. 27, 2006).

The Financial Accounting Standards Board and the International Accounting Standards Board jointly released a Memorandum of Understanding on February 27, 2006 reaffirming the Boards' intentions to develop "high quality, common accounting standards for use in the world's capital markets".

The move follows the Boards' October 2002 "Norwalk Agreement" in which the two agreed to implement so-called "convergence". The Boards' February 27 announcement says that the new MOU:

"does not represent a change in the boards" convergence work programme, it does, however, reflect the context of the 'roadmap' for the removal of the reconciliation requirement for non-US companies

that use IFRSs and are registered in the United States. It also reflects the work undertaken by the Committee of European Securities Regulators (CESR) to identify areas for improvement of accounting standards."

FASB and IASB Are Seeking Comments on Fair Value Accounting

Financial Accounting Standards Board and International Accounting Standards Board, [Staff Request for Information About Financial Analysis of Companies That Report Some or All Financial Instruments At Fair Value](#) (Mar. 6, 2006).

Financial Accounting Standards Board and International Accounting Standards Board, [Questionnaire](#) (Mar. 6, 2006).

Financial Accounting Standards Board and International Accounting Standards Board, [Appendix](#) (Mar. 6, 2006).

On March 6, the Financial Accounting Standards Board and the International Accounting Standards Board issued a joint announcement soliciting "input from users of financial statements about information on financial instruments that is useful to those making investment or credit decisions or advising others on investment or credit decisions". In their announcement, the two organizations explained the reasons for soliciting comments on fair value accounting issues as follows:

"Accounting standards have moved towards requiring or permitting more financial instruments to be initially and subsequently measured at fair value (which is a current value, as defined in the attached appendix) in the balance sheet. Current accounting standards of both the IASB and FASB require that some financial instruments be reported at fair value, as defined in the attached appendix) in the

balance sheet. Current IASB standards give companies the option of reporting other financial instruments at fair value and the FASB recently issued an Exposure Draft of a Statement that would provide a similar option within U.S. GAAP.

Those past standard-setting efforts focused on recognition and measurement of financial instruments, rather than on issues of display in financial statements and user information needs more broadly. Thus, this request is designed to help the Boards improve existing financial reporting by addressing the following issue -- whether current standards provide the information that investors and creditors need to analyze companies that report some or all financial instruments at fair value."

Consolidation Among Exchanges? NASDAQ Bids for London Stock Exchange

NASDAQ, [Announcement in Response to Public Rejection by LSE](#)
(Mar. 10, 2006).

For months there was speculation that Nasdaq was in talks to acquire the London Stock Exchange. The LSE has been the subject of takeover rumors for a very long time and even rejected a recent \$2.7 billion bid by Australia's Macquarie Bank. The speculation that Nasdaq was a suitor likely was fueled, at least in part, by Nasdaq's unsuccessful efforts to create its pan-European exchange called Nasdaq-Europe. On March 9, however, Nasdaq was forced to confirm that it had made a 2.4 billion pound (\$4.1 billion) offer to acquire LSE after LSE publicly rejected its offer. In its announcement, Nasdaq stated that it "believes that its proposal would present an attractive offer for shareholders, listed companies and the trading community and reflects unique benefits for LSE which have not to date been proffered by other parties."

With increasing consolidation pressures among the exchanges, there have been some recent suggestions that the New York Stock Exchange will join the fray. With

the NYSE's recent acquisition of Archipelago Holdings and its move to form a publicly owned, for-profit entity, it seems certain the SEC will step in to reevaluate its regulatory scheme applicable to the exchanges. In fact, at a recent event, SEC Chairman Christopher Cox said as much. See Gordon, Marcy, [SEC Chief Speaks About Exchange Regulation](#), Associated Press special to SeattlePI.com (Mar. 14, 2006).

PRACTICAL GUIDANCE: Courtesy of RealCorporateLawyer.com

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<p>Business Enterprises Alert: Important Delaware Ruling Limits Protection From Fraud for Sophisticated Parties from Pullman & Comley, LLC. (03/09/06)</p>	<p>Corporate Law Bulletin: SEC Proposes New Rules on Executive Compensation Disclosure--What You Should Do Now from Morrison & Foerster LLP. (02/22/06)</p>
<p>Securities Law Advisory: "SEC Proposes Amendments to Mutual Fund Redemption Fee Rule" from Alston & Bird LLP. (03/09/06)</p>	<p>FTC "Reforms" Second Request Process from Wachtell, Lipton, Rosen & Katz. (02/22/06)</p>
<p>Attacks by Activist Hedge Funds from Wachtell, Lipton, Rosen & Katz. (03/08/06)</p>	<p>SEC Issues Guidance on Perquisites and Personal Benefits That Is Applicable for the Upcoming Proxy Season; Proposes Related Rule Changes for Future Proxy Season from Mayer, Brown, Rowe & Maw LLP. (02/22/06)</p>
<p>Commodity Futures Trading Commission Requires Commodity Pool Operators to File Financial Reports Electronically; Defines "Client" of a Commodity Trading Advisor from Alston & Bird LLP. (03/01/06)</p>	<p>Federal Trade Commission Announces Reforms to Merger Review Process from Morrison & Foerster LLP. (02/21/06)</p>
<p>Recent Victory by Cathay General</p>	<p>Some Reps Never Die - Delaware</p>

<u>Bancorp in Contested Acquisition from Wachtell, Lipton, Rosen & Katz.</u> (03/01/06)	<u>Ruling Sets Bright Line Rules for Allocating Risk in Private Company M&A from Wachtell, Lipton, Rosen & Katz.</u> (02/17/06)
<u>Compliance Advisory: So You Want A Document Retention Plan? Part IV – What To Do About E-Mail from Alston & Bird.</u> (02/28/06)	<u>SEC Overhauls Executive Compensation Disclosure Rules from Kirkland & Ellis LLP.</u> (02/15/06)
<u>SEC Proposes New Executive Compensation Disclosure Requirements from Chapman and Cutler LLP.</u> (02/23/06)	<u>SEC Proposes New Disclosures Relating to Executive Pay, Director Compensation and Related Party Transactions from Bryan Cave LLP.</u> (02/13/06)

Please don't forget that RR Donnelley has released the latest supplement to its widely-acclaimed SEC Handbook. The full-text searchable supplement is available via RealCorporateLawyer.com and is entitled "[SEC Handbook Supplement: Securities Act of 1933 Offering Reform Final Rules - 17 CFR Parts 200, 228, 229, et al. Effective Date: December 1, 2005](#)". The [Table of Contents](#) for the detailed and exceptionally rich primer on the recently adopted Securities Offering Final Rules shows how detailed and substantial the treatment of the subject is in this 142-page Supplement. The supplement may be found here: <http://www.realcorporatelawyer.com/teleconferences/SecuritiesOfferingReform.htm>.

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

On March 8, the Public Company Accounting Oversight Board announced that it has selected **Mark West** as Regional Associate Director of Inspections for the Board's Denver Office. He has succeeded **Michael Pauk**, who left the PCAOB on March 10. See Public Company Accounting Oversight Board, [Board's Denver Office Gets New Leader](#) (Mar. 8, 2006).

On March 7, the Commission announced that **Randall J. Fons**, Regional Director of the SEC's Central Regional Office, will leave the SEC in late March to enter private practice. See U.S. Securities and Exchange Commission, [Randall Fons, Head of the SEC's Central Regional Office, To Leave the Commission](#), News Release No.

2006-33 (Mar. 7, 2006).

SEC Chairman **Christopher Cox** announced on February 27 that Acting Director of the SEC's Office of Public Affairs, **John Nester**, will become Director of the Office of Public Affairs. See U.S. Securities and Exchange Commission, [Chairman Christopher Cox Appoints SEC Veteran John Nester Director of Public Affairs](#), News Release 2006-28 (Feb. 27, 2006).

On February 27, the SEC announced that **Martin P. Dunn**, Deputy Director of the Division of Corporation Finance Since 2002, has been appointed Acting Director of the Division until **John White** assumes that position on March 20, 2006. See U.S. Securities and Exchange Commission, [Martin Dunn Named Acting Director of Division of Corporation Finance](#) (Feb. 27, 2006).

What Are the Commissioners Saying?

On March 9, Commissioner **Cynthia A. Glassman** spoke before the Tenth Annual Corporate Counsel Institute regarding ["Priorities and Concerns at the SEC"](#). During the March 3 SEC Speaks conference, remarks were delivered by [Roel C. Campos](#), [Annette L. Nazareth](#), [Chairman Christopher Cox](#), [Paul S. Atkins](#) and [Cynthia A. Glassman](#). Commissioner Atkins also delivered ["Remarks Before the IA Compliance Best Practices Summit 2006"](#) on February 28. On February 23, Commissioner Glassman delivered ["Remarks before the Tenth Annual Conference on SEC Regulation Outside the United States"](#). Commissioner Atkins also delivered ["Remarks Before the U.S. Chamber Institute for Legal Reform"](#) on February 16. Also on February 16, Commissioner Glassman delivered ["Remarks Before the NASD Investor Education Foundation's Military Financial Education Campaign Launch"](#). Commissioner Roel C. Campos delivered ["Remarks Before ASIC Summer School \(by Recorded DVD\)"](#) on February 13. Finally, on February 9, 2006, Chairman Cox delivered ["Remarks at the Tax Council Policy Institute"](#).

What Are the Commission Staffers Saying?

The SEC's Director of the Office of International Affairs, Ethiopis Tafara, spoke on February 28 before the Office of International Affairs, Prague, Czech Republic, regarding ["How Much Regulation is Just Enough?"](#) Lori A. Richards, Director of OCIE, spoke on February 27 regarding ["Fiduciary Duty: Return to First Principles"](#). The SEC's General Counsel, **Brian G. Cartwright**, delivered ["Remarks Before the Mutual Fund Directors](#)

[Forum](#)" on February 15.

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