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SEC I: EDGAR System Release 9.5 To Be Implemented on October 30

U. S. Securities and Exchange Commission, [EDGAR System Release 9.5 to be Implemented on October 30, 2006](#) (Oct. 6, 2006).

U. S. Securities and Exchange Commission, [Draft EDGAR Filer Manual Vol. I General Information \(Vers. 3\) and Vol. II EDGAR Filing \(Vers. 4\)](#) (Oct. 6, 2006).

U. S. Securities and Exchange Commission, [Draft EDGAR XFDL Technical Specification \(Vers. 4\)](#) (Oct. 6, 2006).

U. S. Securities and Exchange Commission, [Draft EDGAR Forms TA-1 XML, TA-2 XML, and TA-W XML Technical Specifications \(Vers. 1 of Each\)](#) (Oct. 6, 2006).

On October 6, the SEC reaffirmed that on October 30, the EDGAR system will be upgraded to Release 9.5 to provide support for designation of accelerated filer status and a duty to file reports indicator for filers of Form 15.

In its announcement, the Commission noted that "[b]ecause of these and other EDGAR modifications starting October 30, 2006, filers will be required to download new EDGARLink templates #2 and #3."

SEC II: Director of Corporation Finance Speaks on Executive Compensation Disclosure and the Role of CFOs

U. S. Securities and Exchange Commission, [Speech by John W. White, Director of the Division of Corporation Finance: Executive Compensation Disclosure and the Important Role of CFOs](#)
(October 3, 2006).

On October 3, 2006, the Director of the SEC's Division of Corporation Finance, John W. White, spoke before the CFO Executive Board in New York regarding "Executive Compensation Disclosure and the Important Role of CFOs". Mr. White discussed the revised rules for executive compensation disclosure adopted by the Commission on July 26.

After summarizing the substance of the revisions to the executive compensation disclosure rules, Mr. White discussed what he said is "the heart of the Commission's new rules": the Compensation Discussion & Analysis (CD&A) that will be deemed filed and incorporated into an issuer's annual reports on Form 10-K. He compared CD&A to MD&A, saying:

"CD&A will bear many similarities to MD&A, albeit covering a different subject matter. In the most summary terms, CD&A is designed to be a principles-based overview explaining -- that is, 'discussing and analyzing', or the 'D&A' part -- the policies and decisions related to executive compensation. And as CFO's, you should particularly appreciate the meaning of principles-based disclosure, as it is not only central to MD&A but is also a close relative of the principles-based standards that are so much in focus lately in the accounting and financial

reporting worlds."

Mr. White emphasized two reasons CFOs must pay close attention to their companies' disclosure controls and procedures in this context. He said:

As I said earlier, your company's disclosure controls and procedures provide much of the support you need in making your required certifications (and don't forget your 906 certifications for that matter, on which you have personal criminal liability); but also

Your Section 302 certification specifically speaks to your responsibility for disclosure controls and procedures and to you, as CFO and a certifying officer, having evaluated those and disclosed your conclusions about them in your company's public filing — you cannot hide your head in the sand on this one.

These revised rules and John White's comments make even more clear, of course, the fact that issuers must pay close attention to what type of updating their companies' disclosure controls and procedures might need. Mr. White provided no guidance in how to determine what sort of updating might be required. Rather, he said that the "answer depends on your company's specific facts and circumstances". He urged only that CFOs be actively involved in assessing the need for such updates and to "think outside the box". As Mr. White put it, "[b]ecause of the new requirements in the executive compensation arena, you may need to include more people, different people who have never been involved in your public company disclosures in the past. You may need to set up new processes and circuits for gathering, compiling and analyzing information even before making disclosure determinations. Remember that the universe of people at the company for whom disclosures may be required has been expanded in many cases."

In discussing the role of the Compensation Committee under the revised rules, Mr. White also had interesting comments. In this regard he noted, in part, the following:

"The Compensation Committee Report will appear over the names of the compensation committee members and will be furnished, not filed — so even though it will be incorporated into your company's 10-K, your certification will not cover this report.

But this report, assuming your committee does recommend inclusion of the CD&A in your company's filings, should help you with the background and comfort you need in making your certifications. Similarly, if your company and your compensation committee do choose to engage in the review and discussions that the CD&A contemplates, I would think that should also help you as part of your disclosure controls and procedures. I should note that the SEC does not require those reviews and discussions (note the use of the word "whether" in the compensation committee report) but I imagine many companies will do so. I would also encourage all of you, individually, to think about what you feel you need and then to make sure you get it. Do you need the chairman of your compensation committee to be more involved, at an earlier stage? If you do, then I personally would urge you to try to get that started. In another speech I gave last week at the Practising Law Institute's Directors' Institute here in New York, I similarly urged directors, especially those serving on compensation committees, to have the same attitude and to understand what their companies, and their management, might need from them in light of the new rules. Don't sit idly by between now and the date your proxy (or even your 10-K) gets filed. Do whatever you need to be prepared."

RealCorporateLawyer is pleased to provide practical guidance on the revised Executive Compensation Disclosure rules addressed by the Director of the SEC's Division of Corporation Finance in his remarks. Recent law firm memoranda on the topic available via the RealCorporateLawyer Web site include the following:

[Executive Compensation Desk Reference from Leonard, Street And Deinard Professional Association from Leonard, Street and Deinard.](#) (10/5/06)

[A Summary Of The SEC's Final Executive Compensation Disclosure Rules: New Rules For Principles-Based Disclosure from Snell & Wilmer LLP.](#) (9/29/06)

[SEC Releases Final Rules on Executive Compensation Disclosure from Morrison & Foerster.](#) (9/29/06)

[Complying with New SEC Rules Regarding Disclosure of Management Compensation, Related Person Transactions and Corporate Governance from McDermott Will & Emery LLP.](#)
(9/27/06)

[New Disclosure Rules - What You Should Do Now from Wachtell, Lipton, Rosen & Katz.](#) (9/11/06)

[Sunlight for Executive Pay — SEC Overhauls Executive and Director Compensation and Related Disclosure Rules from Perkins Coie LLP.](#) (9/6/06)

SEC III: SEC Announces It Will Enact Final Rules Under Gramm-Leach-Bliley Act by Year End

U.S. Securities and Exchange Commission, [SEC Announces Timetable for Enactment of Final Rules Under Gramm-Leach-Bliley Act](#), News Release 2006-169 (Sept. 29, 2006).

On September 29, the SEC announced a timetable for enactment of final rules under the Gramm-Leach-Bliley Act. The move was prompted by the expected passage by both houses of Congress of the Financial Services Regulatory Relief Act of 2006 which requires the SEC and the Federal Reserve to propose final rules to implement the bank broker provisions of the Gramm-Leach-Bliley Act within 180 days from the date the President signs the bill into law. The bill, passed by both houses of Congress, was submitted to the President for signature on October 3.

The Gramm-Leach-Bliley Act repealed a provision that exempted banks from broker-dealer registration requirements in the Securities Exchange Act of 1934.

After passage of Gramm-Leach-Bliley, banks' ability to engage in securities activities without registering as a broker or dealer depended on their ability to meet what the SEC has described as "more narrowly tailored exceptions" to the broker-dealer registration requirements.

Those "more narrowly tailored exceptions" originally were scheduled to become effective on May 12, 2001. The Commission, however, adopted interim rules that postponed full compliance and extended banks' exemption from the definition of "broker" to Sept. 30, 2006. On September 29 the Commission issued an [Exemptive Order](#) that further extends this exemption until Jan. 15, 2007.

In June 2004, the SEC proposed to replace its interim rules with a new "Regulation B". That effort was never completed.

In its announcement of a timetable to address the necessary issues, the Commission noted:

"I am very confident that we will meet the new legislative deadline,' said Chairman Cox, 'and it is our intention to do so by year end, well ahead of schedule. Over the past six months, the SEC, the Federal Reserve, the FDIC, and the Comptroller of the Currency have been working at the highest levels to put these needed clarifications in place. We are already well along in that process.

'With the expectation that proposed new rules will be issued by December 31, 2006, the Commission today extended the current exemption from the definition of "broker" until January 15, 2007,' Chairman Cox added. "This will give the Commission and the banking regulators time to complete the rule-writing and propose new rules before the exemption expires.'

If the new rules are proposed with a 90-day comment period beginning at year end, final rules could be expected in late spring or early summer 2007. 'Because we recognize that banks will need time to implement systems to ensure compliance with the new bank broker provisions,' Chairman Cox said, 'we expect any final rules would have a delayed effective date.'"

SEC IV: SEC Issues Final Rule Regarding Mutual Fund Redemption Fees

U.S. Securities and Exchange Commission, [Final Rule: Mutual Fund Redemption Fees](#), Release No. IC-27504 (Sept. 27, 2006).

U.S. Securities and Exchange Commission, [SEC Votes to Adopt Amendments to the Redemption Fee Rule and Extend Compliance Date](#), News Release 2006-167 (Sept. 27, 2006).

On September 26, the SEC voted to adopt amendments to Rule 22c-2, the redemption fee rule, under the Investment Company Act. The following day the Commission issued its final rule release reflecting the amendments.

Rule 22c-2 requires most funds to enter into shareholder information agreements with intermediaries that hold shares on behalf of other investors (such as broker-dealers). Such agreements are intended to provide funds with access to information about the identities of customers involved in such transactions (including transactions made through so-called omnibus accounts) to help funds enforce restrictions on market timing and similar abusive transactions. The rule also requires fund boards of directors to consider whether a redemption fee policy is "appropriate" for their funds. According to the Commission:

"The amendments to Rule 22c-2 that the Commission has voted to adopt clarify the operation of the rule, and reduce the number of shareholder information agreements that funds must enter into with their intermediaries.

The rule as originally adopted had a compliance date of Oct. 16, 2006. The amendments approved by the Commission will extend the compliance date for portions of the rule. The compliance date for entering into shareholder information agreements will be extended by 6 months, until April 16, 2007, and the date by which funds must be able to obtain information from intermediaries under those agreements will be extended by 12 months, until Oct. 16, 2007."

RealCorporateLawyer is pleased to provide practical guidance on the final rule regarding mutual fund redemption fees. The following recent law firm memorandum on the topic is available via the RealCorporateLawyer Web site:

[SEC Adopts Amendments to Redemption Fee Rule and Extends Compliance Dates from Alston & Bird LLP. \(9/29/06\)](#)

SEC V: SEC Issues Executive Compensation and Related Person Disclosure Transition FAQs

U. S. Securities and Exchange Commission Division of Corporation Finance, [Executive Compensation and Related Person Disclosure Transition Questions and Answers](#) (Sept. 25, 2006).

On September 25, the SEC's Division of Corporation Finance issued "Executive Compensation and Related Person Disclosure Transition Questions and Answers" dealing with the new rules adopted in Securities Act Release No. 8732A that become effective November 7, 2006.

The FAQs provide nine questions and answers dealing with two basic topics: (1) the effective date of the new rules; and (2) early compliance with the new rules during the transition period. The FAQs and associated answers clarify the following:

The new rules are effective as of November 7, 2006.

Companies with a September 30, 2006 FY end that file an annual report on Form 10-K, for example, on December 14, 2006 can either: (i) comply with the new rules, though the company is only required to provide the last year of compensation since it need not restate compensation or related person transaction disclosures for previous years; or (ii) comply with the old rules.

If such a company chooses to comply with the new rules, it "must comply with all of the new rules in the Form 10-K".

When such a company files its Form 10-K for the fiscal year ending September 30, 2007, it will be required to include disclosure in the Summary Compensation Table that complies with the new rules for both fiscal year 2006 and fiscal year 2007.

If a company has a September 30, 2006 fiscal year end and files a Form S-1 to register its IPO on, for example, December 14, 2006, the company is permitted to comply with the new rules in that registration statement or with the old rules as in the example above.

If such a company chooses to comply with the new rules, it must comply with "all of the new rules required in the Form S-1".

If such a company chooses to comply with the old rules and files its Form S-1 complying with the old rules but then -- after the end of its fiscal year but prior to

effectiveness of the registration statement -- amends its Form S-1, then the company will be required to comply with the new rules in that amendment to its Form S-1 (though the Summary Compensation Table in the amendment would only be required to contain one year of disclosure).

If a company has a September 30, 2006 fiscal year end and files a Form S-1 to register its IPO on, for example, December 14, 2006, and the company chooses to comply with the new rules in that registration statement and voluntarily to comply with the new rules for the disclosure regarding its previous fiscal year ending September 30, 2005, when it amends its registration statement after September 30, 2006 but before the effectiveness of the registration statement it is required to include the disclosure for both fiscal 2005 and fiscal 2006 under the new rules in that amendment to its Form S-1.

If a company has a September 30, 2006 fiscal year end and files a Form S-1 on, for example, March 15, 2007 to register its IPO, the company could either comply with the new rules in that registration statement or comply with the old rules in that registration statement.

NASD I: NASD Revises Sanction Guidelines to Address Consideration of a Firm's Size

NASD, [NASD Revises Sanctions Guidelines to Clarify that Firm Size, Resources May be Considered When Imposing Sanctions for Misconduct](#), News Release (Sept. 26, 2006).

NASD, [Notice to Members: NASD Revises Sanction Guidelines to Further Address Consideration of a Firm's Size](#) (Sept. 26, 2006).

NASD, [NASD Sanction Guidelines](#) (Sept. 26, 2006).

On September 26, NASD announced that effective immediately it has revised its Sanctions Guidelines "to clarify that adjudicators should consider a registered firm's size and available resources when imposing monetary sanctions for misconduct -- and may, when appropriate, impose a fine that is below the minimum levels recommended in the guidelines".

The revised guidelines now indicate that in determining sanctions for violations that are not egregious and do not involve fraud, adjudicators should take into account a firm's revenues, as well as other factors indicative of firm size. The revised guidelines also indicate that, as a result of adjudicators' consideration of

size and available resources, a fine that is below the minimum level otherwise recommended in the Guidelines *may* be imposed.

JUDICIAL DECISION: 2nd Circuit Rejects SEC's Interpretation of Rule 14a-8(i)(8) Exclusion from Proxy Materials

American Federation of State, County & Municipal Employees Pension Plans, Appellant, v. American International Group, Inc., Appellee, Docket No., 05-2825-cv, [Opinion](#) (2d Cir. Sept. 5, 2006).

U. S. Securities and Exchange Commission, [Commission Calendars Proposed Amendment to Rule 14a-8 Governing Director Nominations by Shareholders](#), News Release 2006-150 (Sept. 7, 2006).

On September 5, 2006, the United States Court of Appeals for the Second Circuit issued an important decision that rejected one of the SEC Staff's longstanding interpretations of Rule 14a-8 governing director nominations by shareholders. The decision could make it easier for shareholders to nominate alternative candidates for company boards.

In its decision, the Second Circuit reversed the decision of the lower court. That decision supported the SEC's determination that AIG could exclude from proxy materials a binding shareholder proposal submitted by AFSCME seeking amendment of the company's bylaws to add a provision specifying the means by which shareholders could nominate directors in certain circumstances. The Commission Staff excluded the proposal under Rule 14a-8(i)(8) on the grounds that it purportedly related to an election.

The District Court agreed with the Commission. The Second Circuit, however, reversed the lower Court essentially because the Commission Staff interpreted the rule differently for a number of years in the 1970s and 1980s.

The SEC promptly issued a statement indicating that it has calendared a proposed amendment to Rule 14a-8 for its open meeting scheduled for October

18, 2006. In its statement, the Commission indicated:

"Rule 14a-8, the shareholder proposal rule, provides shareholders important rights in the proxy process,' said Chairman Christopher Cox in announcing the calendaring of the proposed amendment. 'These rights are best secured under consistent national application of Rule 14a-8 to shareholder proposals.

Therefore, to provide certainty with regard to shareholder proposals in every judicial circuit, I have directed the staff to prepare recommendations for revisions to Rule 14a-8 that will assure its consistent nationwide application. Following the publication of a proposed amendment and the opportunity for public comment, a final proposal will be considered at an open meeting of the Commission that will be scheduled to allow a final rule to go into effect in time for the 2007 proxy season."

PRACTICAL GUIDANCE: Courtesy of RealCorporateLawyer.com

RealCorporateLawyer.com provides its readers with free access to a very large collection of law firm memoranda providing practical guidance on current hot topics. Readers are encouraged to visit the frequently-updated "Emerging Legal Issues" area of the home page for such current memoranda, as well as the [Expert Analysis: SEC Reform Portal](#) section containing hundreds of other such memoranda. Recent additions include:

[SEC Adopts Amendments to Redemption Fee Rule and Extends Compliance Dates from Alston & Bird LLP.](#) (9/29/06)

[Boardroom Confidentiality from Wachtell, Lipton, Rosen & Katz.](#) (9/26/06)

[A Summary Of The SEC's Final Executive Compensation Disclosure Rules: New Rules For Principles-Based Disclosure from Snell & Wilmer L.L.P.](#) (9/29/06)

[SEC Charges Ex-CEO in Financial Reporting Case - No Charges Against Company from Wachtell, Lipton, Rosen & Katz.](#) (9/25/06)

[Federal Appeals Court Holds That Merger Agreement Amends Employee Benefit Plan from Wachtell, Lipton, Rosen & Katz.](#) (9/29/06)

[Backdating Stock Options: Anatomy Of A Corporate Scandal from LeClair Ryan.](#) (9/13/06)

[Hewlett-Packard: A Caution for](#)

[SEC to Amend Shareholder](#)

[Company Directors from Fried, Frank, Harris, Shriver & Jacobson LLP.](#) (9/28/06)

[Proposal Rule Regarding Director Elections from Alston & Bird LLP.](#) (9/13/06)

[Corporate Governance Update: Proxy Access-Not Then, Not Now from Wachtell, Lipton, Rosen & Katz](#) (9/28/06)

[New Disclosure Rules - What You Should Do Now from Wachtell, Lipton, Rosen & Katz.](#) (9/11/06)

[Complying with New SEC Rules Regarding Disclosure of Management Compensation, Related Person Transactions and Corporate Governance from McDermott Will & Emery LLP.](#) (9/27/06)

[Sunlight for Executive Pay — SEC Overhauls Executive and Director Compensation and Related Disclosure Rules from Perkins Coie LLP.](#) (9/6/06)

[NASDAQ Extends Cure Period for Companies that Lose an Independent Director or Audit Committee Member from Alston & Bird LLP.](#) (9/26/06)

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

On October 3, the Public Company Accounting Oversight Board announced that **Paul Schneider**, PCAOB Chief Administrative Officer, will leave the Board at the end of October. He has served in that position since April 2003. The announcement does not describe his plans after leaving PCAOB. *See* Public Company Accounting Oversight Board, [Chief Administrative Officer Paul Schneider to Leave PCAOB](#) (Oct. 3, 2006).

The PCAOB also announced on October 2 that its Public Affairs Director, **Christi Harlan**, has informed the board that she intends to leave the PCAOB. The announcement does not describe her plans after leaving PCAOB. *See* Public Company Accounting Oversight Board, [Public Affairs Director Christi Harlan to Leave PCAOB](#) (Oct. 2, 2006).

On September 18, the SEC's Office of the Chief Accountant announced it has selected three professional accounting fellows for two-year terms: **Mark J. Barrysmith** (formerly a Senior Manager in KPMG's Department of Professional Practice); **Ashley W. Carpenter** (a Senior Manager in Deloitte & Touche's Carolinas Professional Practice Group Charlotte, NC); and **Katrina A. Kimpel** (a

Senior Manager in Ernst & Young's National Professional Practice Group in New York City). *See* U.S. Securities and Exchange Commission, [Office of the Chief Accountant Selects Three Professional Accounting Fellows](#), News Release 2006-154 (Sept. 18, 2006).

On September 8, the SEC's Office of Economic Analysis announced that it has named **Dr. Zeigham Khokher** as an Economic Fellow for a term ending in October 2007. He formerly served on the Faculty of the Ivey Business School at the University of Western Ontario. *See* U.S. Securities and Exchange Commission, [Economic Fellow Named by the Office of Economic Analysis](#), News Release 2006-152 (Sept. 8, 2006).

Also on September 8, the SEC's Office of Economic Analysis announced the appointment of **Dr. Jennifer Marietta-Westberg** as a Visiting Academic Scholar for a term ending in August 2007. She formerly served on the faculty of Michigan State University. *See* U.S. Securities and Exchange Commission, [Visiting Academic Scholar Named by the Office of Economic Analysis](#), News Release 2006-151 (Sept. 8, 2006).

What Are the Commissioners Saying?

SEC Chairman **Christopher Cox** delivered a "[Speech to the SEC Government-Business Forum on Small Business Capital Formation](#)" in Washington, D.C. on September 29. On September 28, SEC Commissioner **Annette L. Nazareth** delivered "[Remarks Before the ABA National Institute on Securities Fraud](#)". On September 25 Commissioner Nazareth delivered "[Remarks Before the IA Week Sixth Annual Fall Conference](#)". On September 21, SEC Chairman Cox spoke before the Financial Services Roundtable 2006 Fall Conference Leadership Lunch regarding "[Gramm-Leach-Bliley Seven Years Later](#)". Chairman Cox also delivered "[Introductory Remarks to the 30th Annual Southwest Regional Enforcement Conference](#)" on September 14. SEC Commissioner **Paul S. Atkins** gave "[Remarks Before the Coping with Broker-Dealer Regulation Seminar](#)" on September 13. The same day, SEC Commissioner **Annette L. Nazareth** delivered "[Remarks Before the Financial Services Institute 3rd Annual Public Policy Day](#)".

SEC Commissioner **Roel C. Campos**, spoke on September 5 regarding "[The Current Role of Capital Market Regulation](#)".

What Are the Commission Staffers Saying?

On October 5, the SEC's Chief Counsel of OCIE, **John H. Walsh**, spoke at the NRS 21st Annual Fall Compliance Conference regarding "[Compliance Professionals Versus Identity Thieves](#)". **John H. White**, Director of the SEC's Division of Corporation Finance, spoke on October 3 before the CFO Executive Board regarding "[Executive Compensation Disclosure and the Important Role of CFOs](#)". On September 29, the SEC's Chief of the Office of Municipal Securities, **Martha Mahan Haines**, delivered "[Comments to the Tenth Annual Conference of Women in Public Finance](#)". **Andrew J. Donohue**, Director of the SEC's Division of Investment Management, delivered the "[Keynote Address Before IA Week's 6th Annual Fall Compliance Conference](#)" on September 25. Mr. Donohue also spoke on September 20, delivering "[Remarks Before the 4th Annual Art of Indexing Summit](#)". John H. White, Director of the SEC's Division of Corporation Finance, spoke regarding "[The Principles Matter: Options Disclosure](#)" on September 11. On September 6, Mr. White spoke regarding "[Principles Matter](#)" at a PLI Conference in New York City. Finally, on September 5, the SEC's Director of the Office of International Affairs, **Ethiopsis Tafara**, gave a speech on "[The Benefits of an Enforcement Division](#)".

Input, Please

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