



SEC ROUNDUP

This e-zine summarizes some key developments at the SEC in recent weeks.

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SEC TO DELAY PROXY ACCESS RULES UNTIL 2010

SEC Chairwoman Mary Schapiro has announced that in light of the overwhelming volume of comments and complex issues raised by commentators, the SEC will delay voting on its proxy access proposals until early 2010. The delay means that the proposals will not be in place by the 2010 proxy season. The SEC had originally announced its intention to vote on the proxy access proposals in November 2009. The proposed proxy access rules would give shareholders of public companies that meet certain criteria (most notably minimum stock ownership requirements) the right to include their own board nominees in the company's proxy materials. To access a copy of our June 2009 E-Zine that summarizes the proposed proxy access rules in greater detail, please [click here](#).

SEC EXTENDS 404(B) COMPLIANCE DEADLINE FOR NON-ACCELERATED FILERS

The SEC has announced that it will again extend the deadline for non-accelerated filers to comply with Section 404(b) of the Sarbanes-Oxley Act of 2002. Section 404(b) requires companies to include in their Annual Reports on Form 10-K an auditor's report on the effectiveness of the company's internal controls over financial reporting. Under the new extension, non-accelerated filers will now be required to comply with Section 404(b) beginning with their annual reports for fiscal years ending on or after June 15, 2010. Absent the new extension, non-accelerated filers would have been required to comply with Section 404(b) beginning with their annual reports for fiscal years ending on or after December 15, 2009. For a copy of the SEC's final rule release extending the deadline, please [click here](#).



The SEC has indicated that no further extensions for non-accelerated filer compliance with Section 404(b) will be provided. However, the House Financial Services Committee recently passed a bill that would permanently exempt non-accelerated filers from complying with Section 404(b).

SEC ISSUES LEGAL BULLETIN ON SHAREHOLDER PROPOSALS

The SEC's Division of Corporation Finance has issued Staff Legal Bulletin 14E, which contains new guidance on shareholder proposals that will allow fewer exclusions of proposals related to risk and CEO succession planning under Rule 14a-8(i)(7) of the Securities Exchange Act of 1934. For a copy of Staff Legal Bulletin 14E, please [click here](#).

The SEC has historically evaluated an issuer's request to exclude a proposal relating to environmental, financial, or health risks based on whether the proposal requires the issuer to engage in an evaluation of risk. If a proposal would require the issuer to engage in an evaluation of risks and liabilities faced by the issuer as a result of its operations, the SEC has historically permitted issuers to exclude the proposal under Rule 14a-8(i)(7), which permits proposals to be excluded if they relate to the company's "ordinary business operations." Concerned that its application of this standard "may have resulted in the unwarranted exclusion of proposals that relate to the evaluation of risk but focus on significant policy issues," the SEC has adopted a new framework for analyzing these proposals. Under the new framework, if "a proposal's underlying subject matter transcends the day-to-day business matters of the company and raises policy issues so significant that it would be appropriate for a shareholder vote, the proposal generally will not be excludable under Rule 14a-8(i)(7) as long as sufficient nexus exists between the nature of the proposal and the company. Conversely, in those cases in which a proposal's underlying subject matter involves an ordinary business matter to the company, the proposal generally will be excludable under Rule 14a-8(i)(7)." The SEC also noted that "a proposal that focuses on the board's role in the oversight of a company's management of risk may transcend the day-to-day business matters of a company and raise policy issues so significant that it would be appropriate for a shareholder vote."

Staff Legal Bulletin No. 14E also outlines the SEC's revised position on shareholder proposals relating to the adoption or disclosure of chief executive officer succession planning policies. During the past two proxy seasons, the SEC has allowed the exclusion of proposals relating to CEO succession planning on the basis that they relate to the termination, hiring, and promotion of employees, which the SEC previously considered ordinary business matters. Recognizing that "CEO succession planning raises a significant policy issue regarding the governance of the corporation that transcends the day-to-day business matters of managing the workforce," the SEC will now take the position that CEO succession planning proposals may not be excluded under Rule 14a-8(i)(7).



SEC PROPOSES AMENDMENTS TO NOTICE AND ACCESS PROXY RULES

The SEC has proposed amendments to the current notice and access proxy rules to provide additional flexibility to issuers and other soliciting persons on the content and format of the notice of internet availability of proxy materials. The amendments are aimed at reducing confusion caused by the current rules and increasing the rate of shareholder responses to proxy materials. For a copy of the proposed amendments, please [click here](#).

Under the current notice and access rules adopted by the SEC in 2007, issuers and other soliciting persons must post proxy materials on an internet site and are given the choice of two methods for notifying shareholders. The first method, the notice-only option, requires issuers and other soliciting persons to deliver only a notice of internet availability of proxy materials to shareholders containing specific language addressing, among other things, where shareholders can access the proxy materials and a description of how to request a paper or electronic copy of the proxy materials. The second notification method, the full set delivery option, requires issuers and other soliciting persons to deliver a full paper set of proxy materials to shareholders, accompanied by a statement of internet availability of proxy materials. To access a copy of our April 2007 E-Zine that summarizes the current notice and access proxy rules in greater detail, please [click here](#).

The proposed amendments would allow issuers and other soliciting persons more flexibility with the language used in the notice of internet availability by requiring notices to cover certain topics as opposed to requiring specific language (other than the current legend “Important Notice Regarding the Availability of Proxy Materials for the Shareholder Meeting To Be Held [meeting date],” which will continue to be required). The proposed amendments also permit issuers and other soliciting persons using the notice-only option to include with the notice an explanation of the notice and access model to help shareholders better understand the process. The proposed amendments would also change the deadline for the notice-only option for non-issuer soliciting persons to make it easier for them to use the notice-only option.



Remember that these legal principles may change and vary widely in their application to specific factual circumstances. You should consult with counsel about your individual circumstances. For further information regarding these issues, contact:

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