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# SEC VOTES TO ADOPT E-PROXY RULE AMENDMENTS AND TO PROPOSE INTERPRETIVE GUIDANCE FOR SARBANES-OXLEY 404 IMPLEMENTATION

*By Allison C. Bell and Leola C. Cormier*

At its meeting held on December 13, 2006, the Securities and Exchange Commission (the "SEC") voted to issue a number of new proposed and final rules, including a rule that would allow companies to furnish proxy materials to shareholders through a "notice and access" model using the Internet, and proposed guidance for management to use in conducting the annual evaluation of internal control over financial reporting required under Section 404 of Sarbanes-Oxley. The SEC is expected to publish releases with respect to these matters shortly.

## The E-Proxy Rules

Under the new rules, a company may, but is not required to, furnish proxy materials to shareholders through a "notice and access" model. A company choosing to follow the model must post its proxy materials on an internet website and mail a notice to shareholders at least 40 days prior to a meeting informing them of the availability of electronic proxy materials and explaining how to access the materials. A proxy card may not accompany the notice. However, a company may send a paper proxy card accompanied by another copy of the notice 10 days or more after mailing the original notice. The new alternative model for furnishing proxy materials seeks to substantially decrease the expense incurred by issuers to comply with the proxy rules and provide persons other than the company with a more cost-effective means to undertake their own proxy solicitations. The new proxy access rules become effective on July 1, 2007. No company or person may comply with the notice and access model before that date.

## Interpretive Guidance on Conducting Management's Evaluation of Internal Control Over Financial Reporting

The SEC also voted to propose interpretive guidance for corporate management to improve the annual evaluation of internal control over financial reporting required under Section 404 of Sarbanes-Oxley. The interpretive guidance addresses four specific areas: (i) identification of risks to reliable financial reporting and the related controls that management has implemented to address those risks, (ii) evaluation of the operating effectiveness of controls, (iii) reporting the overall results of management's evaluation, and (iv) documentation. At the meeting, the SEC stated that the proposed interpretive guidance should reduce uncertainty about what constitutes a reasonable approach to management's evaluation while maintaining flexibility for companies that have already developed their own assessment procedures and tools that serve the company and its investors well. While the interpretive guidance is designed to assist management, companies will not be required to change their existing procedures.

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*Please 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 you may contact the head of our Corporate and Securities practice group:*

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