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**SEC I: SEC Staff Releases FAQs on Sarbanes-Oxley Section 404 Compliance Deadline Delay**

U.S. Securities and Exchange Commission, [Exemptive Order on Management's Report on Internal Control Over Financial Reporting and Related Auditor Report Frequently Asked Questions](#) (Jan. 21, 2005).

U.S. Securities and Exchange Commission, [Order Under Section 36 of the Securities Exchange Act Granting an Exemption from Specified Provisions of Exchange Act Rules 13a-1 and 15d-1](#), Exchange Act Release No. 50754 (Nov. 30, 2004).

On January 21, the SEC's Division of Corporation Finance released FAQs on Sarbanes-Oxley Section 404 compliance deadline delay. According to the Commission staff, since the Commission released its November 30, 2004 order granting an exemption from specified provisions of Exchange Act Rules 13a-1 and 15d-1 (the "Order"), Commission staffers "have received a number of questions regarding the implementation and interpretation of the Order". The ten FAQs and answers are intended to collect and organize the staff's responses to such questions. According to the SEC:

The FAQs note that the extended compliance period provided for in the February 2004 Release No. 33-8392 allows companies to omit a portion of the introductory language in paragraph 4 of the certification required by Exchange Act Rules 13a-14(a) and 15d-14(a) that refers to the certifying officers' responsibility for establishing and maintaining internal control over financial reporting for the company, as well as paragraph 4(b). FAQ 1 addresses when companies relying on the Order should provide a certification that contains the previously omitted language. The Staff indicates that the contents of the certification should correspond to the contents of the applicable periodic report filed pursuant to the Order and that Certifying Officers may continue to omit the introductory language in paragraph 4 and all of paragraph 4(b) in the Form 10-K that does not include internal control reports as permitted by the Order. According to the FAQs, the "previously omitted certification language must be provided in the certification filed with the amended Form 10-K that contains internal control reports. The certification in the amendment should contain paragraphs 1, 2, 4 (with the complete language, discussed above), and 5. Paragraph 3 of the certification is required as well if the amendment contains financial statements or other financial information."

The amended Form 10-K should not contain only the previously omitted internal control reports. The amended Form 10-K, consistent with Rule 12b-15, must contain not only the previously omitted internal control reports but also at least the certifications required by Exchange Act Rules 13a-14(a) and 15d-14(a)

and all of the information required by "Item 9A. Controls and Procedures" which includes all of the disclosure pursuant to Items 307 and 308 of Regulation S-K.

Delaying the filing of internal control reports in accordance with the Order will not result in non-compliance with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934. According to the Commission staff, the Order provides "that an eligible company is exempt from, and will therefore be in compliance with, the specified Exchange Act rule 13a-1 or Rule 15d-1 requirements. Therefore, a Form 10-I report may omit internal control reports, in accordance with the Order, and still fully comply with the requirements of Section 13(a) or 15(d) of the Exchange Act."

FAQ 4 notes that the Order includes a condition that, for purposes of Form S-2 and S-3 eligibility requirements, a company relying on the exemption will not be considered to have timely filed its Form 10-I report until it has filed the Form 10-K amendment that includes internal control reports. It then addresses whether a company that relies on the Order will be eligible to offer and sell securities off of an effective Form S-3 shelf registration statement during the 45-day period that internal control reports are not on file, indicating that except for certain transaction specified in the FAQs, "offerings pursuant to Form S-3 will not be permissible during the FAQ further provides that for measuring form eligibility under Securities Act Rule 401(b), "the updating of a Form S-3 registration statement through the incorporation of a Form 10-K is the equivalent of filing a post-effective amendment pursuant to Section 10(a)(3) of the Securities Act. Because the Form 10-K would not be considered timely until it is amended to include internal control reports, a company would not be eligible to use a currently effective Form S-3 during the time that internal control reports are not on file."

Prior to the end of the 45-day time period when internal control reports are not on file, a company that delays the filing of internal control reports in accordance with the Order can file a new registration statement on Form S-2 or S-3, but not request effectiveness until the internal control reports have been

filed. According to FAQ 5, a "company that delays the filing of internal control reports in accordance with the Order may file new registration statement on Form S-2 or S-3 if it is otherwise eligible to use that form, but it may not request effectiveness during the time period that the internal control reports are not on file." The staff further notes that the cover letter accompanying such a registration statement "must state that the reports have been excluded from the 10-K pursuant to the Order and must also include an undertaking that, if the internal control reports are not filed within the 45-day period prescribed by the Order, then the registrant will amend the Form S-2 or S-3 to the appropriate registration form for which it is then eligible to use."

Form S-3 will be available during the 45-day period that internal control reports are not on file in accordance with the Order for continuous offerings by selling security holders, or that represent dividend reinvestment plans or direct stock purchase plans, in all cases that commenced prior to the original due date for the Form 10-K.

A company that delays filing internal control reports in accordance with the Order would be eligible to use Form S-8, and persons selling the company's securities would be able to rely on Securities Act Rule 144 during the 45-day period that internal control reports are not on file. According to the Commission staff, "Companies that delay filing internal control reports in accordance with the Order will not be disqualified from using Form S-8 and persons selling the company's securities would not be precluded from relying on Rule 144 solely because the filed Form 10-K does not include internal control reports for the 45-day period permitted by the Order. In other words, a company would still be considered to be 'current' in its Exchange Act reporting obligations during the 45 days even if its Form 10-K did not include internal control reports, as permitted by the Order."

The Commission staff also confirms that in "light of the policies underlying the Order, we believe that eligible companies relying on the Order may disregard Question 22" in the [October 6, 2004 FAQs Regarding Management's Report on](#)

[Internal Control Over Financial Reporting and Certification of Disclosure in Exchange Act Periodic Reports](#). That answer to that question included a statement to the effect that "we encourage issuers to include both management's report on internal control over financial reporting and the auditor's report on management's assessment of internal control over financial reporting in the annual report to shareholders when their audited financial statements are included."

A company that delays the filing of the internal control reports in accordance with the Order may not also delay for 45 days the date that management's internal report speaks to regarding the effectiveness of internal control over financial reporting. According to the Commission staff, the Order "allows companies to delay the filing of the internal controls reports, but it does not change the date of the assessment of effectiveness, which still must be as of the end of the company's fiscal year." The answer to FAQ 9 addresses an example involving a company with a fiscal year ending on December 31, 2004 that delays the filing of the internal control reports in accordance with the Order but still must include internal control reports regarding effectiveness by December 31, 2004.

The SEC staff addresses how the Order is intended to affect the filing of auditor consents. According to FAQ 10, if "the auditor's report on internal control is to be incorporated by reference into a Securities Act filing, the auditor's consent to the use of the auditor's internal control report should be filed with the Form 10-K amendment. However, if the Form 10-K amendment does not include an audit report on the financial statements, the auditor is not required to provide a new consent on the use of their audit report on the financial statements incorporated by reference into a Securities Act filing."

### **SEC III: SEC Adopts Updated EDGAR Filer Manual Revised To Support XBRL Program**

On February 3, the Commission also adopted an updated EDGAR filer manual containing revisions to support the XBRL program and also: to provide support

for the new requirement for filers to enter an effectiveness date on submission types 485BPOS and 486BPOS; addition of new Exhibit EX-99.Rule23C1 for Form N-CSR and rescinding of submission types N-23C-1 and N-23C-1/A; and changes to submission form type 25. In addition, the list of Self-Regulatory Organizations in Appendix C section C.1.5 of the EDGAR Release 8.10 EDGARLink Filer Manual has been updated to show the name change of Cincinnati Stock Exchange to National Stock Exchange.

## **SEC II: SEC Adopts Rule Establishing a Voluntary Program for Reporting Financial Information on EDGAR Using XBRL**

U.S. Securities and Exchange Commission, [Final Rule: XBRL Voluntary Financial Reporting Program on the EDGAR System](#), Release Nos. 33-8529, 34-51129, 35-27944, 39-2432 and IC-26747 (Feb. 3, 2005).

U.S. Securities and Exchange Commission, [SEC Adopts Rule Establishing A Voluntary Program For Reporting Financial Information On EDGAR Using XBRL](#), News Release 2005-12 (Feb. 3, 2005).

U.S. Securities and Exchange Commission, [Summary Of Comments On Proposed XBRL Voluntary Financial Reporting Program](#) (Feb. 3, 2005).

U.S. Securities and Exchange Commission, [Adoption of Updated EDGAR Filer Manual](#), Release Nos. 33-8528, 34-51128, 35-27943, 39-2431, IC-26746 (Feb. 3, 2005).

U.S. Securities and Exchange Commission, [EDGAR Rel 8.10 Reduced Content XFDL Filing Specification](#) (Feb. 7, 2005).

On February 3, the SEC issued a release adopting final amendments to

establish a voluntary program related to eXtensible **B**usiness **R**eporting **L**anguage (XBRL). Registrants may voluntarily furnish XBRL data in an exhibit to specified EDGAR filings under the Exchange Act and the '40 Act. The program begins with the 2004 calendar year-end reporting season. According to the Commission, the "primary purpose of the voluntary program is to assess XBRL technology, including both the ability of registrants to tag their financial information using XBRL and the benefits of using tagged data for analysis." The Commission's move is a reaction to the growing prominence of so-called "data tagging". Data tagging adds information to electronic "documents" to provide more context to the information contained in such documents through the use of standard definitions that, according to the Commission should allow documents contained in the EDGAR database to be "retrieved, searched and analyzed through automated means." The concept is to allow the automated analysis of standard categories of financial information across a wide variety of software platforms including platforms accessible online via Web browsers. The effective date is March 16, 2005.

On February 3, the Commission also adopted an updated EDGAR filer manual containing revisions to support the XBRL program and also: to provide support for the new requirement for filers to enter an effectiveness date on submission types 485BPOS and 486BPOS; addition of new Exhibit EX-99.Rule23C1 for Form N-CSR and rescinding of submission types N-23C-1 and N-23C-1/A; and changes to submission form type 25. In addition, the list of Self-Regulatory Organizations in Appendix C section C.1.5 of the EDGAR Release 8.10 EDGARLink Filer Manual has been updated to show the name change of Cincinnati Stock Exchange to National Stock Exchange.

On February 7, the Commission released EDGAR version 8.10. Updated versions of EDGARLink software and necessary templates are available on the EDGAR filing site at <https://www.edgarfiling.sec.gov/>.

**SEC IV: SEC Commences and Settles Enforcement Action Against Google and**

## **its General Counsel**

In the Matter of Google, Inc. and David C. Drummond, SEC Admin. Proc. File No. 3-11795, [Order Instituting Cease-and-Desist Proceedings, Making Findings, and Imposing a Cease-and-Desist Order Pursuant to Section 8A of the Securities Act of 1933](#) (Jan. 13, 2005; Securities Act Release No. 8523).

U.S. Securities and Exchange Commission, [SEC Charges Google and its General Counsel David C. Drummond with Failure to Register Over \\$80 Million in Employee Stock Options Prior to IPO](#), News Release 2005-6 (Jan. 13, 2005).

On January 13, the SEC announced that it commenced and settled and administrative proceeding in which it charged Google, Inc. with failing to register the issuance of option grants to employees or provide required financial information to the option recipients. The Commission's "Order Instituting Cease-and-Desist Proceedings, Making Findings, and Imposing a Cease-and-Desist Order Pursuant to Section 8A of the Securities Act of 1933" also found that Google's General Counsel, David Drummond, was aware that the registration and related financial disclosure obligations had been triggered, "but believed that Google could avoid providing the information to its employees by relying on an exemption from the law. According to the Commission, Drummond advised Google's Board that it could continue to issue options, but failed to inform the Board that the registration and disclosure obligations had been triggered or that there were risks in relying on the exemption, which was in fact inapplicable."

The SEC alleged that between 2002 and 2004, Google issued over \$80 million worth of stock options to its employees as part of their compensation without registering the options or providing required financial information to employees. The Commission further alleged that the monetary value of the options issued

"far exceeded" the \$5 million options issuance threshold in a 12-month period above which companies must either register the options or provide required financial information to the option recipients. While neither admitting nor denying the charges, Google and its General Counsel agreed to cease and desist from violating the registration and related financial disclosure requirements.

The Commission's announcement of the settlement included the following statement: "Attorneys who undertake action on behalf of their company are no less accountable than any other corporate officers. By deciding Google could escape its disclosure requirements, and failing to inform the Board of the legal risks of his determination, Drummond caused the company to run afoul of the federal securities laws."

#### **SEC V: SEC Commences and Settles Enforcement Action Against Former General Counsel of Gemstar-TV Guide International**

U.S. Securities and Exchange Commission, [Former General Counsel of Gemstar-TV Guide International Inc. Settles SEC Action](#), Litig. Release No. 19047 (Jan. 21, 2005).

In the Matter of Jonathan B. Orlick, Esq., SEC Admin. Proc. File No. 3-11801, [Order Instituting Administrative Proceedings Pursuant to Rule 102\(e\) of the Commission's Rules of Practice, Making Findings, and Imposing Remedial Sanctions](#) (Jan. 26, 2005; Exchange Act Release No. 51081).

As one recent news report puts it, General Counsels -- not just CEOs -- are in the SEC's crosshairs. See Bobelian, Michael, [GCs in the Crosshairs as Lawyers, Not Just CEOs' Come Under Scrutiny](#), N.Y.L.J. special to NYLawyer.com (Feb. 3, 2005). Such an assessment seems true in view of SEC's enforcement proceeding against Google and its General Counsel (*see* above) as well as the SEC's January 21 announcement that it had settled an administrative proceeding against Jonathan B. Orlick, the former General Counsel of Gemstar-TV Guide

International Inc. in which the SEC alleged that in connection with Gemstar's alleged overstatement of revenues from June 1999 through September 2002 "Orlick knew, but omitted to disclose, that Gemstar was improperly recognizing and reporting material amounts of licensing revenue from two companies" and that he repeatedly signed "false management representation letters to Gemstar's auditors regarding the status of negotiations with one of the companies."

Without admitting or denying the SEC's allegations, Mr. Orlick consented to a permanent injunction from violating securities laws, a ten-year ban from serving as an officer or director of a public company, a suspension from appearing or practicing before the SEC, and the payment of a total of \$305,510.62 in disgorgement, interest, and penalties.

#### **SRO I: NYSE and NASD Issue Joint FAQs Providing Guidance on Application of Supervisory Control Amendments to Members' Securities Activities**

NASD, [Notice to Members: Guidance Regarding the Application of the Supervisory Control Amendments to Members' Securities Activities, Including Members' Institutional Securities Activities](#) (Jan. 31, 2005).

On January 31, the NASD and the New York Stock Exchange issued joint FAQs providing guidance on application of the supervisory control amendments to members' securities activities. The SEC approved the NYSE's proposed rule amendments on June 17, 2004. It approved the NASD's corresponding proposed rule amendments on September 30, 2004. The amended rules became effective on January 31, 2005, the day that NASD and the NYSE released the joint FAQs providing additional guidance on application of the amended rules. The FAQs clarify the following:

Generally, a "Producing Manager" for purposes of NYSE Rule 342.19 and NASD Rule 3012 is a branch office manager, a sales manager, a regional or district sales manager, or any person who performs a similar supervisory function and who services customer accounts in a capacity requiring registration.

Neither NYSE Rule 342.19 nor NASD Rule 3012 is intended to make any distinction between a Producing Manager who services retail accounts and a Producing Manager who services only institutional accounts. According to the FAQs, while the "method of supervisory oversight and review may differ as a matter of firm policy depending on the type of business being conducted, the rules apply to Producing Managers regardless of the nature of the accounts they service.

There is no exception from the requirements of NYSE Rule 342.19 or NASD Rule 3012 for Producing Managers who conduct a limited or "de minimis" public business. For example if a Branch Office Manager services only a few accounts on behalf of family members, that person is still considered to be a Producing Manager for purposes of NYSE Rule 342.19 and NASD Rule 3012.

If a registered person occasionally engages in customer account activity in rare instances solely as an accommodation to a Producing Manager who is out of the office for a short duration such as vacation, travel, illness, etc., that person would not be deemed to be subject to the supervision and review requirements prescribed by NYSE Rule 342.19 or NASD Rule 3012.

Customer account activity, as contemplated by NYSE Rule 342.19 and NASD Rule 3012, does *not* include stock lending or the clearing, financing or custody functions related to prime brokerage activity. Such activities, however, remain subject to the general supervisory requirements of NYSE Rule 342 and NASD Rule 3010.

The FAQs note that NYSE Rule 342.19 requires that if a person designated to review a Producing Manager receives an override or other income derived from that Producing Manager's customer activity that represents more than 10% of the designated person's gross income derived from the member or member organization over the course of a rolling twelve-month period, the member or member organization must establish alternate senior or otherwise independent supervision of that Producing Manager to be conducted by a qualified person pursuant to NYSE Rule 342.13. The FAQs note however, that because the 10% override provision is intended to identify and address arrangements where the independence of a Producing Manager's supervisor may be compromised by a conflict of interest, if no link between the supervisor's salary and the Producing Manager's production exists, there would be no conflict of the kind intended to be addressed by the rule. The guidance cautions, however, that member firms must use due diligence to determine whether any such direct or indirect link exists.

NASD clarifies that, in accordance with NASD Rule 3012(b), dual NASD/NYSE members that comply with NYSE Rule 342.19 and its related interpretations will be considered to be in compliance with NASD Rule 3012, so long as the member also complies with all of the provisions of NYSE Rule 342.19 and applies that rule to all of its securities activities.

Neither NYSE Rule 410, nor NASD Rule 3110(d) require prior firm approval of *all* account designation changes. Certain such changes would not be subject to prior

firm approval such as: allocations from a parent holding account to sub-accounts by an entity registered under Section 8 of the '40 Act; allocations among sub-accounts by investment advisers registered under Section 203 of the Investment Advisers Act or registered with the appropriate state authority, as required by Section 203A of the Advisers Act; and allocations in the context of a prime brokerage arrangement.

Under NYSE Rule 401 and NASD Rule 3012(a)(2), there is required "a means/method of customer confirmation, notification, or follow-up that can be documented". Any customer contact pursuant to this requirement must be memorialized and retained for review. The rules do not prescribe the means of documentation, but factors to be considered in assessing the adequacy of such documentation include the date of notification, the means/method of contact, the accounts in question, whether there was a response from the customer and, if so, a brief summary of the customer's response and any follow-up action taken. In the case of electronic transactions by means that are subject solely to the customer's control, it would be sufficient under NYSE Rule 401 and NASD Rule 3012 for the system itself, as part of its functions, to generate an electronic notification to the customer evidencing the completed transaction.

Securities transfers that are done through ACATS are *not* covered by the "customer notification" requirements of NYSE Rule 401 or NASD Rule 3012(a)(2). Such transfers are governed by NYSE Rule 412 and NASD Rule 11870. The joint FAQs caution, however, that "both NYSE Rule 412 and NASD Rule 11870 allow a customer to transfer a portion of his or her account assets outside of ACATS pursuant to 'authorized alternate instructions,' such as Letters of Authorization ('LOAs') transmitted to the carrying (*i.e.*, delivering) organization. Any such 'ex-ACATS' transfers are subject to the provisions of NYSE Rule 401 and NASD Rule 3012(a)(2)."

## **PCAOB I: PCAOB Releases FAQs Regarding Auditing Internal Control Over Financial Reporting**

Public Company Accounting Oversight Board, [Staff Questions and Answers: Auditing Internal Control Over Financial Reporting](#) (Jan. 21, 2005).

On January 21, the Public Company Accounting Oversight Board released a set of additional "Staff Questions and Answers" addressing "Auditing Control Over Financial Reporting". The FAQ (there is only a single question and answer) provides guidance regarding [PCAOB Auditing Standard No. 2, An Audit of Internal Control Over Financial Reporting Performed in Conjunction with an Audit of Financial Statements](#).

The PCAOB's FAQ deals in detail with [Temporary Transitional Rule 3201T \(Temporary Transitional Provision for Auditing Standard No. 2\)](#). That rule provides that notwithstanding Auditing Standard No. 2 in connection with the audit of an issuer that does not file management's annual report on internal control over financial reporting in reliance on the SEC's [Order Under Section 36 of the Securities Exchange Act Granting an Exemption from Specified Provisions of Exchange Act Rules 13a-1 and 15d-1](#) (Exchange Act Release No. 50754; Nov. 30, 2004), an auditor need not date the auditor's report on management's assessment of the effectiveness of internal control over financial reporting with the same date as the auditor's report on the issuer's financial statements, as long as the date of the auditor's report on management's assessment is later than the date of the report on the financial statements.

In posing the FAQ, the PCAOB Staff noted that that paragraph 14 of [PCAOB Auditing Standard No. 3, Audit Documentation](#), defines "report release date" as the date the auditor grants permission to use the auditor's report in connection with the issuance of the company's financial statements and that paragraph 15 of the same Auditing Standard requires that a complete and final set of audit documentation be assembled for retention as of a date not more than 45 days after the report release date (the "documentation completion date"). The staff also noted that when an auditor is engaged to perform an integrated audit of the financial statements and internal control over financial reporting under [PCAOB Auditing Standard No. 2, An Audit of Internal Control Over Financial Reporting Conducted in Conjunction with an Audit of Financial Statements](#), the auditor may prepare a single set of integrated audit documentation for the engagement. According to the PCAOB Staff, one question that has arisen since last November is the following:

"If an auditor that has been engaged to perform an integrated audit of the financial statements and internal control over financial reporting under Auditing Standard No. 2 releases his or her report on the financial statements before releasing his or her report on

Rule 3201T, does this action create two separate documentation completion dates -- one for the auditor's report on the financial statements and one for the auditor's report on management's assessment?

The Staff clarifies that in such a circumstance there would *not* be two separate documentation completion dates if the auditor releases his or her report on management's assessment of internal control in reliance on Rule 3201T within the time period prescribed in the SEC's November 30 order. According to the Staff:

"In the circumstance in which the auditor releases his or her report on the financial statements *before* releasing his or her report on management's assessment of internal control over financial reporting in reliance on Rule 3201T, the 45-day period specified in paragraph 15 of Auditing Standard No. 3 that determines the documentation completion date for the auditor's report on the financial statements begins on the earlier of (1) the release of the auditor's report on management's assessment of internal control over financial reporting or (2) the date that management was required, under the SEC's order, to file an amendment to its Form 10-K that was to include the omitted management and auditor reports on internal control."

**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 "Special Features" area of the home page for such current memoranda, as well as the [SEC Reform Portal](#) containing hundreds of other such memoranda. Recent additions include:

<a href="#">Securities Law Update: SEC Posts Frequently Asked Questions Regarding the Postponement of Internal Control Reports from Nixon Peabody LLP</a> (Jan. 28, 2005).	<a href="#">SEC's Regulation AB -- Major Changes for the Securitization Industry from Thacher Proffitt &amp; Wood LLP</a> (Jan. 12, 2005).
<a href="#">Second Circuit Gives Guidance on Loss Causation and Timely Filing of Rule 10b-5 Actions from Wachtell, Lipton, Rosen &amp; Katz</a> (Jan. 25, 2005).	<a href="#">The WorldCom Settlement and Director Liability from Wachtell, Lipton, Rosen &amp; Katz</a> (Jan. 7, 2005).
<a href="#">Securities Update: SEC Adopts Final Rules for Asset-Backed Securities from Mayer, Brown, Rowe &amp; Maw LLP</a> (Jan. 25, 2005).	<a href="#">Some Thoughts For Boards of Directors in 2005 from Wachtell, Lipton, Rosen &amp; Katz</a> (Jan. 7, 2005).
<a href="#">M&amp;A Notes: Observations Regarding the Enron and WorldCom Settlements from Kirkland &amp; Ellis LLP</a> (Jan. 25, 2005).	<a href="#">Reg Guidance on Structured Finance Activities Has Holes From Arnold &amp; Porter LLP</a> (Jan. 18, 2005).
<a href="#">Client Alert: SEC's Dim View of Indemnification Darkens from Bailey Cavaliere LLC</a> (Jan. 19, 2005).	<a href="#">WorldCom And Enron Directors Settle Litigation Using Own Funds from Morrison &amp; Foerster</a> (Jan. 11, 2005).
<a href="#">M&amp;A Notes: NASD Proposed Rules on Fairness Opinions from Kirkland &amp; Ellis</a> (Jan. 19, 2005).	<a href="#">January 2005 Corporate Communicator from Snell and Wilmer LLP</a> (Dec. 2004).
<a href="#">The Second Circuit Holds That SLUSA Does Not Preempt 'Holder' State-Law Class Actions from Wachtell, Lipton, Rosen &amp; Katz</a> (Jan. 19, 2005).	

Please don't forget that RealCorporateLawyer.com makes searchable collections of the presentation materials used at its complimentary programs available online. For example, the transcript for the recent [SEC "Hot Topics" Seminar \(Fall 2004\)](#) is available. The conference was a FREE full day briefing presented by RR Donnelly and Glasser LegalWorks. Other recent transcripts are available on the "[Programs](#)" page. For example, to read the transcript of the July 20 SEC "Hot Topics" Teleconference that addressed the SEC's and PCAOB's new regulations regarding internal controls over financial reporting, [click here](#).

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

On February 4, the New York Stock Exchange announced that it has appointed **John M. Holman** as vice president, Fixed Income. He will report to **Robert J. McSweeney**, Senior Vice President, Competitive Position. Mr. Homan most recently was a managing director at Piper Jaffray and Co. See NYSE, [NYSE Appoints John Holman Vice President](#), Fixed Income (Feb. 4, 2005).

On February 4, the New York Stock Exchange announced that it has appointed **Peggy Kuo** as Chief Hearing Officer. She will report to NYSE President and Co-Chief Operating Officer **Catherine R. Kinney**. Ms. Kuo worked most recently at Wilmer Cutler Pickering Hale and Dorr LLP. *See* NYSE, [NYSE Appoints Peggy Kuo as Chief Hearing Officer](#) (Feb. 4, 2005).

On January 31, the American Institute of Certified Public Accountants announced several promotions as well as selected organizational changes. **Arleen Thomas**, CPA, current Vice President of Professional Standards and Services will serve as Senior Vice President of Member Competency and Development. **Susan Coffey**, CPA, current Vice President of Audit Quality and Professional Ethics, has been promoted to Senior Vice President, Member Quality and State Regulation. **Anthony Pugliese**, CPA, current Vice President of Business Reporting and Member Specialization, has been promoted to Senior Vice President of Finance and Administration. **Chuck Landes**, CPA, currently a Director, will now become Vice President of Professional Standards and Services. **Bea Sanders** will now serve as Vice President as she continues to head Academic and Career Development. **John Toman**, who has headed Conferences and Sales, has now been named Vice President in that area. **Patricia Duane**, formerly Director of Human Resources, will now serve as Vice President of Human Resources and Organizational Effectiveness. **Clarence Davis**, CPA, has relocated his family to Savannah, Georgia, and will be stepping down as Chief Operating Officer as he works toward his retirement. **Alan Anderson**, Senior Vice President of the Member and Public Interest teams, will be joining Franklin Templeton Investments as Senior Vice President of Global Project Management and Strategy. *See* American Institute of Certified Public Accountants, [AICPA Announces Promotions / Organizational Changes](#) (Jan. 31, 2005).

On January 27, the Board of Governors of the American Stock Exchange announced that it has appointed **Neal L. Wolkoff** acting CEO replacing **Salvatore F. Sodano** in that post effective immediately. Mr. Sodano, who previously announced his intention to retire from the Amex in 2005, will continue as

Chairman of the Amex to accommodate a smooth transition. Mr. Wolkoff was formerly Chief Operating Officer at the New York Mercantile Exchange and most recently served as a consultant to the Amex working on market operations and trading floor-related matters. *See* American Stock Exchange, [American Stock Exchange Names Neal L. Wolkoff Acting CEO](#) (Jan. 27, 2005).

On January 19, the U.S. Securities and Exchange Commission announced that **Patrick Von Barga**n, Managing Executive for Policy and Staff, will leave the Commission at the end of February to become CEO of the Center for Venture Education. *See* U.S. Securities and Exchange Commission, [Patrick Von Barga, Managing Executive for Policy and Staff, To Leave Commission](#), News Release 2005-8 (Jan. 19, 2005).

On January 4, 2005, NASD announced that during its annual meeting its membership voted to elect seven people to the NASD Board of Governors. Six of the individuals were elected to a second term of three years: **John W. Bachmann, James E. Burton, Richard F. Brueckner, Sir Brian Corby, Raymond A. Mason and John Rutherford, Jr. William H. Heyman**, E.V.P. and Chief Investment Officer of the St. Paul Travelers Companies, Inc., was elected to his first three-year term on the Board. *See* NASD, [NASD Members Elect Seven Governors to Board](#) (Jan. 4, 2005).

**What Are the Commissioners Saying?** On February 1, SEC Commissioner **Paul S. Atkins** delivered "[Remarks Before the Bond Market Association 2005 Legal & Compliance Conference](#)" regarding the need in the post-Sarbanes-Oxley world for the SEC to cooperate with regulated entities in developing a stronger oversight regime. On January 25, SEC Chairman **William H. Donaldson** delivered a speech at the London School of Economics and Political Science entitled "[U.S. Capital Markets in the Post-Sarbanes-Oxley World: Why Our Markets Should Matter to Foreign Issuers](#)".

**What Are the Commission Staffers Saying?** On January 28, **Paul F. Roye**, Director of the SEC's Division of Investment Management, delivered "[Remarks Before the ALI-ABA Course of Study -- Investment Adviser Regulation](#)" regarding

recent regulatory initiatives under the Investment Advisers Act. The SEC's Deputy Director of the Division of Enforcement, **Linda Chatman Thomsen**, delivered a "[Statement Regarding Royal Ahold and its U.S. Food Subsidiary](#)" on January 13. **Alan L. Beller**, the SEC's Director of the Division of Corporation Finance, delivered a speech on January 12 entitled "Investors, the Stock Market, and Sarbanes-Oxley's New Section 404 Requirements." The SEC's **Paul F. Roye** also spoke on January 12 delivering "[Remarks Before the Managed Funds Association's Educational Seminar Series 2005 -- Guidance on the SEC's New Regulatory Framework for Hedge Fund Advisers](#)." On January 7, **Chester Spatt**, the Chief Economist and Director of the SEC's Office of Economic Analysis, delivered "[Remarks Before the Presentation of the Paul A. Samuelson Award for Publication on Lifetime Financial Security by TIAA-CREF](#)".

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