

August 2005

[Click Here for Printer Friendly Format](#)

Published by RR Donnelley

Editorial Content by Glasser LegalWorks

Blake Bell, Editor in Chief

In This Issue:

- [SEC I: Final Rules on Securities Offering Reform Published in Federal Register](#)
- [SEC II: SEC Extends Compliance Date for Rule 612, the Sub-Penny Rule, of Regulation NMS](#)
- [SEC III: SEC Releases Final Rules To Require '40 Act Registrants To Provide More Detail in Certain EDGAR Filing Headers](#)
- [SEC IV: SEC Advisory Committee Solicits Public Input on Ways To Improve Regulatory System for Smaller Companies](#)
- [SEC V: U.S. Senate Confirms Christopher Cox as New SEC Chairman and Approves Commissioner Posts for Roel C. Campos and Annette L. Nazareth](#)
- [PCAOB I: Board Adopts Auditing Standard No. 4 Dealing with Whether Previously Reported Material Weakness Continues To Exist](#)
- [Litigation I: Workers' Pension Fund Files Shareholder Action Against Morgan Stanley Officers and Board](#)
- [PRACTICAL GUIDANCE I: XBRL - XBRL Awareness Breakfast Seminars are scheduled for New York City, Chicago, San Francisco, and Dallas](#)
- [PRACTICAL GUIDANCE II: Courtesy of RealCorporateLawyer.com](#)
- [COMINGS AND GOINGS: Who's Doing and Saying What and Where?](#)

SEC I: Final Rule on Securities Offering Reform Published in Federal Register

U.S. Securities and Exchange Commission, [Final Rule: Securities Offering Reform](#) (Federal Register Version; Aug. 3, 2005).

U.S. Securities and Exchange Commission, [Final Rule: Securities Offering Reform](#) (July 19, 2005).

See also:

[SEC Votes To Adopt Securities Act Rule Reform and Shell Company Regulations; Considers Matters Remanded by Court of Appeals](#), News Release 2005-99 (July 1, 2005).

[Opening Statement of SEC Chairman Before Open Meeting: Securities Offering Reform.](#) (June 29, 2005).

[Remarks of SEC Senior Special Counsel, Division of Corporation Finance, Before Open Meeting: Securities Offering Reform.](#) (June 29, 2005).

[Webcast Archive \(RealPlayer Format\).](#) (June 29, 2005).

[Webcast Archive \(WindowsMedia Format\).](#) (June 29, 2005).

The Commission released the text of the [Securities Offering Reform final rule](#) on July 19. On August 3, the SEC published in the *Federal Register* its final rules "Securities Offering Reform". The publication follows the Commission's decision at its open meeting held on June 29, to approve the rule intended to overhaul and modernize the registration, communications and offering processes under the Securities Act. With the August 3 publication in the Federal Register, the effective date will be December 1, 2005. In its adopting release, the Commission discusses advances in technology and Exchange Act reporting standards. It addresses well-known seasoned issuers and provides a definition of well-known seasoned issuers. Among many other things, the Commission's overhaul of the securities offering process provides for a streamlined process for large companies in registration for at least one year and with market capitalization of at least \$700 million or new debt of about \$1 Billion to allow for "pay-as-you-go" filing fees and registrations that become effective upon submission.

The adopting release also addresses communications requirements prior to the newly adopted rules and the nature of the amendments being adopted. The release emphasizes the Commission's belief in the need for modernization of the communications requirements in general. The final rules ease (some would say to largely scrap) the so-called "quiet period", to allow issuers to distribute certain written material in addition to the prospectus and to sponsor presentations to the public regarding offerings. Of course, public statements permitted under the reformed process must be accurate and not misleading.

Additionally, one element of the new process sure to capture attention involves electronic

roadshows. To avoid filing with the Commission, electronic roadshows for IPOs must be made available to the public on an unrestricted basis.

Another important aspect of the Commission's actions is to create the long-awaited "access equals delivery" model for final prospectuses. According to the Commission:

"Under this model, filing a final prospectus with the Commission and complying with other conditions will enable offering participants to conduct securities offerings without printing and actually delivering final prospectuses. A cure provision for inadvertent failures to file is included. In addition, the rules include a separate requirement to notify investors that they purchased securities in a registered offering."

RealCorporateLawyer.com is pleased to provide a host of thoughtful law firm memoranda that analyze the adopting release and the text of the final rules. For more, *see*:

[SEC Overhauls the Securities Offering Process in the United States from Paul Weiss Rifkind Wharton & Garrison LLP](#) (08/03/05)

[SEC Adopts New Rules Liberalizing Capital Raising Process from Alston & Bird LLP.](#) (07/29/05)

[SEC Adopts Securities Offering Reform from Bryan Cave LLP.](#) (07/29/05)

[The SEC Adopts Securities Offering Reform Amendments from Covington & Burling.](#) (07/27/05)

[SEC Finalizes Simplification and Liberalization of Communications Rules and Registration Procedures for Securities Offerings from Wachtell, Lipton, Rosen & Katz.](#) (07/27/05)

On August 10 RR Donnelley and Glasser LegalWorks will be offering the next in a series of "Hot Topics" complimentary teleconferences on this topic. The teleconference - "The Securities Offering Reform Initiative: Final Rules" - will begin at 12:00 noon (Eastern Daylight Time). Featured will be Alan L. Beller, Director of the SEC's Division of Corporation Finance, who will provide insights on the SEC's new rules. To learn more about the complimentary teleconference, [click here](#). To register for the teleconference, please [click here](#).

SEC II: SEC Extends Compliance Date for Rule 612, the Sub-Penny Rule, of Regulation NMS

U.S. Securities and Exchange Commission, [Final Rule: Extension of Compliance Date](#), Release No. 34-52196 (Aug. 2, 2005).

U.S. Securities and Exchange Commission, [Extension of Compliance Date for Rule 612, the Sub-Penny Rule, of Regulation NMS](#), News Release 2005-106 (Aug. 2, 2005).

On August 2, the SEC extended the compliance date for Rule 612 of Regulation NMS, the so-called "Sub-Penny Rule". Rule 612 will prohibit market participants from submitting quotations or orders in NMS stocks in increments below a penny "except that quotations or orders of less than \$1.00 may be priced in increments as small as \$0.0001. The original Regulation NMS adopting release required compliance with Rule 612 by August 29, 2005. The Commission now has extended that compliance date to January 31, 2006.

SEC III: SEC Releases Final Rules To Require '40 Act Registrants To Provide More Detail in Certain EDGAR Filing Headers

U.S. Securities and Exchange Commission, [Final Rule: Rulemaking for EDGAR System](#) (July 18, 2005).

On July 18, the Commission released the text of final rules to require '40 Act registrants that make additional disclosure regarding fund series and classes to provide further detail in their EDGAR filing headers. According to the Commission:

"[We are] expanding the information that we require certain investment company filers to submit to us electronically through our [EDGAR] system and making certain technical changes to the system. We are requiring that certain open-end management investment companies and insurance company separate accounts identify in their EDGAR submissions

information relating to their series and classes (or contracts, in the case of separate accounts). In addition, we are adding two investment company filings to the list of those that must be filed electronically and making several minor and technical amendments to our rules governing the electronic submission of filings through EDGAR."

The two new filings involve those made under Section 17(g) dealing with fidelity bonds and claims and settlements and those made under Section 24 dealing with sales literature. Beginning on June 12, 2006, such filings will be required to be submitted via EDGAR.

The adopting release and the final rules provide that for filings covered by the rules, the EDGAR header data will be part of the official filing. Thus, for example, filings that fail to use the required IDs in the header of filings where such IDs are required will no longer comply with filing rules. Such requirements go into effect in February of next year. Thus, before the compliance date funds registered with the Commission using Forms N-1A, N-3, N-4 and N-6 must obtain IDs for each fund and for each class of shares within each fund.

SEC IV: SEC Advisory Committee Solicits Public Input on Ways To Improve Regulatory System for Smaller Companies

U. S. Securities and Exchange Commission, [Request for Public Input by Advisory Committee on Smaller Public Companies](#), Release Nos. 33-8599, 34-52189 (Aug. 2, 2005).

U. S. Securities and Exchange Commission, [Advisory Committee on Smaller Public Companies Solicits Public Input on Ways to Improve the Current Regulatory System for Smaller Companies](#), News Release 2005-105 (Aug. 2, 2005).

U.S. Securities and Exchange Commission, [Form to Provide Input to the Advisory Committee](#) (Aug. 2, 2005).

On August 2, the SEC announced that its Advisory Committee on Smaller Public Companies is seeking input from the public on ways to improve the current regulatory system for smaller public companies under Sarbanes-Oxley and other U.S. securities laws. Those interested in providing such input may use the [online form](#) to submit their comments. Among the categories of questions posed on behalf of the Committee about which it seeks input are the following:

General impact of Sarbanes-Oxley Act

Sarbanes-Oxley Section 404 / Internal Controls

Accounting / Auditing
Corporate Governance / Listing Requirements

Disclosure System

Miscellaneous Matters

SEC V: U.S. Senate Confirms Christopher Cox as New SEC Chairman and Approves Commissioner Posts for Roel C. Campos and Annette L. Nazareth

U.S. Securities and Exchange Commission, [Christopher Cox Sworn in as SEC Chairman](#), News Release 2005-107 (Aug. 3, 2005).

U.S. Senate, [Nominations Confirmed \(Civilian\)](#) (July 29, 2005).

[NYSE CEO John A. Thain Statement on Confirmations of U.S. Rep Christopher Cox as Chairman and Roel C. Campos and Annette L. Nazareth as Commissioners](#) (July 29, 2005).

With his wife, Rebecca, at his side, on August 3 Christopher Cox was sworn in as the 28th Chairman of the U.S. Securities and Exchange Commission by his friend, Federal Reserve Chairman Alan Greenspan. The swearing in followed the development on July 29 when the United States Senate confirmed Christopher Cox as President Bush's choice as the new SEC Chairman with a term expiring June 5, 2009. The same day the Senate also confirmed Commissioner Roel C. Campos to serve an additional term to expire on

June 5, 2010. The Senate also appointed Annette L. Nazareth to serve as an SEC Commissioner for the remainder of the term expiring June 5, 2007.

In what may be one of his first "official" decisions, Chairman Cox seems to have directed that his remarks to the SEC Staff on August 4 at 10:30 a.m. be broadcast to the public via Webcast -- a welcome move suggesting an environment of greater openness at the Commission.

PCAOB I: Board Adopts Auditing Standard No. 4 Dealing with Whether Previously Reported Material Weakness Continues To Exist

Public Company Accounting Oversight Board, [Reporting on Whether a Previously Reported Material Weakness Continues to Exist](#), PCAOB Release No. 2005-015 (July 26, 2005).

Public Company Accounting Oversight Board, [Briefing Paper: Board Considers Adopting Auditing Standard on Reporting Whether a Previously Reported Material Weakness Continues to Exist](#) (July 26, 2005).

Public Company Accounting Oversight Board, [Board Adopts Standard on Remediation of Material Weaknesses, Rules on Auditor Independence and Tax Services](#) (July 26, 2005).

On July 26, the Public Company Accounting Oversight Board adopted Auditing Standard No. 4, which sets a standard for reporting whether a previously reported material weakness continues to exist. In addition, the Board adopted certain ethics and independence rules addressing tax services, contingent fees, and certain related general ethics and independence standards.

Auditing Standard No. 4

According to the PCAOB, under the new standard both management and the auditor would use the company's stated control objectives as the target for determining whether the material weakness no longer exists. The auditor's testing in the engagement would be limited to the specific controls necessary to achieve those control objectives. To render an opinion stating that a material weakness no longer exists, the auditor must

have obtained evidence about the design and operating effectiveness of the specifically identified controls, determined that those controls satisfy the control objectives, and determined that no scope limitations were placed on the auditor's work.

The standard, according to the Board, is intended to allow for significant flexibility in the performance of an engagement to report on whether a previously reported material weakness continues to exist. The briefing paper addressing the standard sets forth four examples in this regard:

The engagement could be undertaken at any time during the year and would not have to be performed in conjunction with an audit or review of financial statements.

The standard would allow an auditor to report on whether one or more material weaknesses continue to exist as part of a single engagement.

Consistent with the framework for using the work of others that Auditing Standard No. 2 established, the standard would permit the auditor to use the work of others to alter the nature, timing and extent of the auditor's work.

If the auditor determines that the material weakness still exists, the auditor would be required to communicate his or her conclusion that the material weakness still exists to the company's audit committee. However, management also would have the ability to continue its remediation efforts, make another assertion at a later date as to whether the material weakness still exists, and re-engage the auditor to report on its assertion.

Ethics and Independence Rules

According to the Board's news release announcing the results of its July 26 open meeting, the ethics and independence rules adopted by the Board address three topics. First, the rules identify three circumstances in which the provision of tax services impairs an auditor's independence:

Rule 3521 treats registered public accounting firms as not independent of their audit clients if they enter into contingent fee arrangements with those clients.

Rule 3522(a) treats a registered public accounting firm as not independent from an audit client if the firm provides services related to marketing, planning, or opining in favor of the tax treatment of a transaction that is a confidential transaction as defined in Rule 3501. In addition, Rule 3522(b) would treat a registered public accounting firm as not independent if the firm provides services related to marketing, planning, or opining in favor of a tax treatment on a transaction that is based on an aggressive interpretation of applicable tax laws and regulations. Rule 3522(b)'s scope would also include listed transactions as defined by U.S. Treasury

Department regulations.

Rule 3523 will treat a registered public accounting firm as not independent if the firm provides tax services to certain members of management who serve in financial reporting oversight roles at an audit client or to immediate family members of such persons.

Second, the rules further implement the Act's pre-approval requirement by strengthening the auditor's responsibilities in connection with seeking audit committee pre-approval of tax services. Specifically, Rule 3524 would require a registered public accounting firm that seeks such pre-approval to describe proposed tax services engagements, in writing, for the audit committee; to discuss with the audit committee the potential effects of the services on the firm's independence; and to document the substance of that discussion.

Third, the rules lay a foundation for the Board's independence rules. Specifically, Rule 3502 codifies, in an ethics rule, the principle that persons associated with a registered public accounting firm should not cause the firm to violate relevant laws, rules, and professional standards due to an act or omission that the person knew, or was reckless in not knowing, would directly and substantially contribute to such violation. Rule 3520 includes a general obligation requiring a registered public accounting firm and its associated persons to be independent of the firm's audit clients throughout the audit and professional engagement period.

The newly adopted standards must still be approved by the SEC.

Litigation I: Workers' Pension Fund Files Shareholder Action Against Morgan Stanley Officers and Board

Lerach Coughlin Stoia Geller Rudman Robbins LLP, [Workers' Pension Fund Files Shareholder Lawsuit Against Morgan Stanley Officers, Board](#) (July 19, 2005).

On July 19, William S. Lerach's law firm filed a derivative action in the name of the Central Laborers' Pension Fund against certain former and present officers and directors of Morgan Stanley. Among other things, the suit names each board member in a case brought by a labor and management pension fund on behalf of itself and nominally on

behalf of the corporation, Morgan Stanley, seeking to recover the money paid out to Philip J. Purcell, the recently ousted Morgan Stanley CEO, and his co-president Stephen S. Crawford, who between them -- according to the complaint -- took cash and benefits worth some \$145 million in departure payments compensation authorized by the company's board. The suit seeks to implement changes in management and corporate governance. It charges that the departure of Purcell and Crawford with excessive golden parachutes were part of a years-long pattern of reckless governance by Morgan Stanley's board of directors and officers, which have crippled the company's financial performance.

PRACTICAL GUIDANCE I: XBRL - The SEC has encouraged companies to participation in its XBRL voluntary filing program. Tagged data has the potential to make financial information more accessible and useful to investors.

XBRL-US, FEI (www.fei.org), IMA (www.imanet.org), and AICPA (www.aicpa.org) are joining to present a series of events to raise awareness of the benefits and implementation considerations of XBRL. Breakfast seminars will be offered in New York City, Chicago, San Francisco, and Dallas hosted by members of XBRL-US.

Managers and decision-makers will learn at these seminars what XBRL is and how it can be used in their organization, the need and benefits of standards for financial reporting, the use of XBRL for internal reporting, the benefits of XBRL to consumers of financial reports such as analysts and regulators, and how to participate in the SEC XBRL Voluntary Filing program.

XBRL-US will also offer full-day hands-on technical training for XBRL preparers in New York City, Chicago, San Francisco, and Dallas. This will give organizations' technical and accounting personnel the opportunity to learn the process of and resources required for preparing financial reports in XBRL.

XBRL Awareness Breakfast Seminars are scheduled for

- 8 September – Dallas
- 9 September – New York City
- 12 September – Brisbane, CA (near SFO airport)
- 13 September – Chicago

Additional details are available at <http://www.xbrl.org/us/events> including details about more in-depth XBRL Preparer Training. Register for any of these events by sending email to xbrlus@xbrl.org with your name, title, company, email address, and the date of the event that you will be attending. The 9 September (NYC) and 12 September (SFO) sessions will also be webcast.

Transforming Business Reporting – This brochure, together with the following industry-specific inserts for Investors, Preparers, and Regulators, explains the value and benefits of using XBRL to potential users:

<http://www.xbrl.org/us/us/XBRL%20Transforming%20Business%20Reporting%20flyer.pdf>

[“XBRL: It's Unstoppable”](#)

[Benefits to Investor Communications](#)

[Benefits to Preparers July 20, 2005](#)

PRACTICAL GUIDANCE II: 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:

<p>SEC Overhauls the Securities Offering Process in the United States from Paul Weiss Rifkind Wharton & Garrison LLP (08/03/05)</p>	<p>Data Security: The Time Is Now from Morrison & Foerster. (07/20/05)</p>
<p>SEC Adopts New Rules Liberalizing Capital Raising Process from Alston & Bird LLP. (07/29/05)</p>	<p>Securities Law Advisory: SEC Issues New Staff Legal Bulletin Regarding Shareholder Proposals from Alston & Bird LLP. (07/19/05)</p>
<p>SEC Adopts Securities Offering Reform from Bryan Cave LLP. (07/29/05)</p>	<p>New California Law Increases the Risks for Private Placements Made under the So-Called "Finder's Exemption" From Morrison & Foerster. (07/15/05)</p>
<p>The SEC Adopts Securities Offering Reform Amendments from Covington & Burling. (07/27/05)</p>	<p>Whistle-blowing Lines: Conflicting Obligations from Morrison & Foerster. (07/11/05)</p>
<p>SEC Finalizes Simplification and Liberalization of Communications Rules and Registration Procedures for Securities Offerings from Weebull, Linton, Rosen &</p>	

Offerings from Wachtell, Lipton, Rosen & Katz. (07/27/2005)	
---	--

Don't forget RR Donnelley's SEC "Hot Topics" Seminar - Fall 2005. It is a complimentary, full-day education program (CLE / CPE credit) including a continental breakfast and luncheon. The fall series topics will provide a complete briefing on the newest developments and practices regarding such matters as securities offering reform, disclosure including Section 404 and 8-K, corporate governance, enforcement, fairness opinions and XBRL. The seminar will be held in Dallas at The Fairmont on September 21. It will be held in Chicago on September 27 at The Conference Center, 111 South Wacker. It will be held in Cleveland at the Marriott on September 29. To learn more, [click here](#). To register, please [click here](#) or call (800) 308-1700 (extension 101).

For those interested in securities offering reform, on August 10 RR Donnelley and Glasser LegalWorks will be offering the next in a series of "Hot Topics" complimentary teleconferences. The teleconference will deal with "The Securities Offering Reform Initiative: Final Rules" and will begin at 12:00 noon (Eastern Daylight Time). Featured will be Alan L. Beller, Director of the SEC's Division of Corporation Finance, who will provide insights on the SEC's new rules, which eliminate certain restrictions on registered securities offerings, streamline the shelf registration process, allow for greater communication before and during the registration period and continue the Commission's efforts towards integrating disclosure. To learn more about the complimentary teleconference, [click here](#). To register for the teleconference, please [click here](#).

In addition, RealCorporateLawyer is pleased to make available the [program page for the Spring 2005 SEC "Hot Topics" Seminars](#) where presentation materials including PowerPoint presentations and papers may be found.

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

On July 29, the United States Senate confirmed **Christopher Cox** as President Bush's choice as the new Chairman of the U.S. Securities and Exchange Commission with a term expiring June 5, 2009. The Senate also confirmed Commissioner **Roel C. Campos** to serve an additional term to expire on June 5, 2010. The Senate also appointed **Annette L. Nazareth** to serve as an SEC Commissioner for the remainder of the term

expiring June 5, 2007. See U.S. Senate, [Nominations Confirmed \(Civilian\)](#) (July 29, 2005).

On July 21, the U.S. Securities and Exchange Commission announced that **Martha Peterson**, Counselor to Former SEC Chairman **William H. Donaldson** is leaving the Commission to become Executive Vice President of the Mutual Fund Directors Forum. See U.S. Securities and Exchange Commission, [Martha Peterson, Counselor to Former Chairman Donaldson, to Leave the Commission](#), News Release 2005-104 (July 21, 2005).

On July 19, the SEC announced that **Andrew McLelland** has been named the academic accounting fellow for a one-year terms beginning in August 2005. Mr. McClelland presently is an assistant professor at Auburn University who teaches financial accounting and valuation courses in graduate and undergraduate business programs. See U.S. Securities and Exchange Commission, [Andrew McLelland Named Academic Accounting Fellow For SEC Division of Corporation Finance](#), News Release 2005-102 (July 19, 2005).

What Are the Commissioners Saying? Not much, it turns out, in the month of July. On July 26, SEC Commissioner **Roel C. Campos** delivered "[Remarks Before the Committee on Banking, Housing and Urban Affairs United States Senate](#)".

What Are the Commission Staffers Saying? Likewise, Commission staffers were somewhat quiet during the month of July. On July 26, the Commission's Chief Economist / Director of the Office of Economic Analysis, **Chester Spatt**, spoke on the "[Economic Aspects of Hedge Funds](#)". On July 21, recently appointed SEC Commissioner Annette L. Nazareth (then Director of the Commission's Division of Market Regulation) delivered "[Remarks Before the SIA Compliance and Legal Division Member Luncheon](#)".

Input, Please

Please let us know what you like - and don't like - so we can tailor the site to be a hands-on resource for you and your colleagues. In addition, if you would like to contribute content to our site, let us know. E-mail comments, suggestions and other input to RealCorporateLawyer@rrd.com.

To Subscribe

Subscribe to this news service for free by visiting <http://www.RealCorporateLawyer.com> and filling out the online form or send an email to RealCorporateLawyer@rrd.com.

To unsubscribe, send an email to RealCorporateLawyer@rrd.com.

© 2005 RR Donnelley

This free E.zine is provided for informational purposes only and does not constitute legal advice. RR Donnelley & Sons Company is not engaged in rendering legal or other professional services. Publication on this E.zine is not intended to create, and the information contained hereon does not constitute, an attorney-client relationship. Do not act or rely upon the information and advice given in this publication without seeking the services of competent professional counsel.

RR Donnelley's capital markets business is integral to the capital raising and regulatory processes worldwide. We help corporations, securities law firms and investment banks create, manage, produce and deliver transaction and compliance documents. We add value through highly personalized and around-the-clock service, single-source deal solutions, deal management, worldwide regulatory expertise, a global reach, client education and insight that comes from a history of experience and achievement. We partner with our clients to make it easier for them to get the deal done so they can focus on where they add value. We provide our clients a world-class experience, augmented by our flexibility, ability to listen and anticipate changing needs.

For more information, visit us at capitalmarkets.rrdonnelley.com or www.RealCorporateLawyer.com, a reference resource site for corporate and securities lawyers.