

Corporate and Financial Weekly Digest

Business/Financial News in Brief
May 5, 2006

SEC/Corporate

SEC to Reduce Securities Act Filing Fees by 71.3%

On May 3, the Securities and Exchange Commission announced that, effective Oct. 1, 2006 (or 5 days after the date the SEC receives its fiscal year 2007 regular appropriation, whichever comes later), the Section 6(b) fee rate applicable to the registration of securities, the Section 13(e) fee rate applicable to the repurchase of securities, and the Section 14(g) fee rates applicable to proxy solicitations and statements in corporate control transactions will decrease to \$30.70 per million from the current rate of \$107.00 per million. This represents a 71.3% decrease in the rate and, together with a 50.2% decrease in Section 31 fee rate applicable to securities on exchanges and certain over-the-counter markets, will, according to the SEC, result in a \$1 billion decrease in aggregate fees for the fiscal year beginning October 1, 2006.

<http://www.sec.gov/news/press/2006/2006-64.htm>

SEC and PCAOB Announce Panelists for Roundtable on Second-Year Experiences with Internal Control Reporting and Auditing Provisions

On May 1, the Securities and Exchange Commission and the Public Company Accounting Oversight Board announced the panelists for the upcoming roundtable on second-year experiences with the reporting and auditing requirements promulgated by the Sarbanes-Oxley Act of 2002. The roundtable will feature a broad range of stakeholders involved with internal control reporting, including issuers, auditors, investors and other interested parties.

The roundtable will address a number of topics, including (1) overview of the second year, (2) management's evaluation and assessment, (3) the audit of internal control over financial reporting, (4) the effect on the market, and (5) the next steps. The roundtable is scheduled to take place on May 10, from 9:00 a.m. to 5:30 p.m., Eastern time, at the SEC's headquarters, 100 F Street N.E., Washington, D.C., and will be open to the public with seating on a first-come, first-served basis.

Real time and archived audio and video webcasts of the roundtable will be accessible at <http://www.sec.gov/news/otherwebcasts.shtml>. Materials related to the roundtable, including the agenda, a briefing paper, and materials submitted in connection with the discussions, are accessible at <http://www.sec.gov/spotlight/soxcomp.htm>

The full text of the SEC's press release is available at <http://www.sec.gov/news/press/2006/2006-62.htm>

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Banking

Federal Reserve Invites Comment on Home Equity Lending Market

On May 1, the Board of Governors of the Federal Reserve System announced that, pursuant to the terms of the Home Ownership and Equity Protection Act of 1994 (HOEPA), it was scheduling four hearings on the home equity lending market and the adequacy of existing regulatory and legislative provisions for protecting the interests of consumers, particularly low income consumers. The hearings are open to the public and will be held in Chicago, Philadelphia, San Francisco and Atlanta.

Panel discussions will be held on the following three topics: (1) predatory lending and the impact of HOEPA rules and state and local predatory lending laws; (2) nontraditional mortgage products and reverse mortgages; and (3) informed consumer choice in the subprime market.

According to the Federal Reserve's press release, the four objectives these meetings will serve are: (1) the gathering of information on the effectiveness of the 2002 revisions to the HOEPA rules in protecting consumers and the rules' impact on the availability of credit in the higher-cost portion of the subprime market; (2) the gathering of information that will assist it in its pending review of Regulation Z; (3) the gathering of information that may be used to create consumer information materials on HOEPA-related topics; and (4) the identification of mortgage lending market issues that require additional research.

The last hearings on these issues were held by the Federal Reserve in 2000.

Comments are due to the Federal Reserve by August 15, 2006.

<http://www.federalreserve.gov/boarddocs/press/bcreg/2006/20060501/default.htm>

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Broker Dealer

NASD Modifies Short Interest Reporting

Effective July 3, 2006, the NASD will implement changes to the Regulation Filing Applications system for reporting short interest positions to: (1) reject member submissions of short interest reports for the current reporting month that are submitted prior to the designated settlement date; (2) require that members append an exchange or market code for each issue symbol and short interest position reported; and (3) implement a validation process for all short interest reports to ensure that all exchange/market codes and issue symbols are valid and reject member reports that fail such validation. To accommodate these changes, NASD members will need to modify their systems and processes. Firms can test their changes on the NASD's Regulation Filing Applications test site at <https://regfilingtest.nasd.com/>. The test site will be available as of June 1, 2006.

http://www.nasd.com/web/idcplg?IdcService=SS_GET_PAGE&ssDocName=NASDW_016453&ssSourceNodeId=5

NASD Extends Compliance Date for Recent Amendments to NASD's Order Audit Trail System Rules

In November 2005, the NASD announced Securities and Exchange Commission approval of amendments to Rules 6950 through 6957 relating to its order audit trail system (OATS), as well as questions and answers regarding the application of the amended OATS reporting requirements. In April 2006, the NASD announced SEC approval of further amendments to the OATS Rules that expanded the NASD's exemptive authority relating to manual orders to include the OATS electronic recording requirements. Pursuant to an NASD rule change, the compliance date for all of the referenced amendments has been extended to July 10, 2006. The NASD has granted six-month exemptions from the new OATS requirements to firms that have met certain specified criteria (set forth in NASD Rule 6958). Therefore, in light of the delayed compliance date, all exemptions granted to date will commence on July 10, 2006 and expire on January 10, 2007. Firms already granted exemptions need not resubmit an exemption request to extend their exemption to January 10, 2007.

http://www.nasd.com/web/idcplg?IdcService=SS_GET_PAGE&ssDocName=NASDW_016412

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Litigation

Hart Scott Rodino -- Gun Jumping Results in \$1.8 Million Civil Penalty

The Department of Justice settled for \$1.8 million with two merging companies in connection with allegations of “gun jumping” in violation of the Hart Scott Rodino Act of 1976. Under the HSR rules, merging companies must operate independently until they have filed HSR Premerger Notification Reports and the 30 day HSR waiting period has expired or been terminated by the Federal Trade Commission.

In *U.S. v. Qualcomm Inc.*, the Department of Justice charged Qualcomm and Flarion Technologies, Inc., with violating the HSR Act in connection with Qualcomm’s acquisition of Flarion. According to the government’s complaint, Flarion covenanted in the Merger Agreement not to “engage in certain basic business activities without [the acquiror’s] written consent.” Thus, after the announcement of the merger but before the HSR waiting period ended, the acquiror “obtained operational control over [the target] without observing the premerger waiting period requirement in violation of federal antitrust law.” Examples of the illegal behavior included requiring the target to seek the acquiror’s consent before undertaking certain ordinary course of business activities, such as making proposals to customers, licensing intellectual property, and hiring certain employees. The complaint also charged that Qualcomm’s control over Flarion’s business operations went beyond that permitted in the Merger Agreement. (Press Release, Department of Justice, Qualcomm and Flarion Charged With Illegal Premerger Coordination (April 13, 2006)(<http://www.usdoj.gov/>)); (Complaint, *U.S. v. Qualcomm Inc.*, Civ. Action No. 1:06CV00672 (PLF)(2006))

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CFTC

CFTC Initiates Formal Process to Define Foreign Boards of Trade

The Commodity Futures Trading Commission voted unanimously in a closed meeting on May 3, 2006 to direct its staff to initiate a formal process, including a public hearing to be conducted by the CFTC, to define what constitutes a “board of trade, exchange, or market located outside the United States, its territories or possessions” as that phrase is used in section 4(a) of the Commodity Exchange Act. The CFTC action follows the issuance of a notice announcing the revision of the CFTC policy regarding the listing of new futures and option contracts by foreign boards of trade (FBOTs) that have received staff no-action relief to provide direct access to their automated trading systems from locations in the United States. Under the revised policy, a FBOT must notify CFTC staff ten business days prior to offering such a contract and may not make the contract available for trading by US persons if CFTC staff notifies the FBOT that additional time is needed to complete its review of any regulatory issues pertinent to the additional contract.

<http://www.cftc.gov/files/opa/speeches06/opastatement-1.pdf>

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