



Securities Alert

October 31, 2002

SEC Proposes Code of Ethics Disclosure

The SEC recently proposed rules to implement Section 406 of the Sarbanes-Oxley Act of 2002 requiring companies filing annual reports to publicly disclose information about their “code of ethics.” A summary of the proposal follows:

Proposed Disclosure Requirements

- The proposal would require¹ companies to disclose in their annual reports on Form 10-K (or Form 10-KSB for small business issuers, Form 20-F for foreign private issuers or Form 40-F for Canadian issuers) (a) whether the company has adopted a written “code of ethics” that applies to the company’s principal executive officer, principal financial officer, principal accounting officer or controller, or persons performing similar functions (the “specified officers”) and (b) if the company has not adopted a code of ethics, the reasons it has not done so.
- Companies would be required to file a copy of their code of ethics as an exhibit to their annual report.
- The proposal goes beyond Sarbanes-Oxley, which requires that the code of ethics apply to a company’s senior financial officers.
- Under the proposal, a code of ethics would mean a codification of standards that is reasonably designed to deter wrongdoing and to promote:
 - honest and ethical conduct, including the ethical handling of actual or apparent conflicts of interest between personal and professional relationships;
 - full, fair, accurate, timely and understandable disclosure in a company’s SEC filings and other public communications;

¹ The SEC proposes to add a new Item 406 to Regulations S-B and S-K, a new Item 15(c) to Form 20-F and a new Instruction B.9 to Form 40-F.

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- compliance with applicable governmental laws, rules and regulations;
 - avoidance of conflicts of interest, including disclosing to an appropriate person identified in the code of ethics of any material transaction or relationship that reasonably could be expected to give rise to such a conflict;
 - prompt internal reporting to a person identified in the code of ethics of violations of the code; and
 - accountability for adherence to the code of ethics.
- A company would not be required to adopt a code of ethics. The NYSE, however, has submitted proposed new listing standards that would require all NYSE listed companies to adopt a code of business conduct and ethics consistent with the principles enumerated in the listing standards. The NASD has indicated that it intends to propose new listing standards that would require a code of conduct for NASDAQ listed companies

Disclosure Regarding Changes and Waivers

- The SEC proposal would require a company to make public disclosure of (a) any change to its code of ethics that applies to the specified officers or (b) any grant of a waiver of a code of ethics provision to any specified officer. Failure to take action in response to a violation of the code of ethics would be considered an implicit waiver that would have to be disclosed.
- The disclosure would have to be made within two business days after any such change or waiver, by either filing a Form 8-K or posting the information on the company's Internet website.
- Website postings can be used only if the company had disclosed in its most recently filed annual report the address of its Internet website and that it intended to disclose these events in such a way.
- Additionally, if a company elects to disclose this information on its Internet website, the disclosure must be made available on the site for at least 12 months. The company must retain this disclosure for not less than five years and make such information available to the SEC or its staff upon request.
- The proposal would require a foreign private issuer, which is not required to file current reports on Form 8-K, to disclose in its annual report any changes to its code of ethics or waivers from any provisions of its code of ethics made during its past fiscal year that apply to its senior officers. A foreign private issuer would also be required to file the change or waiver as an exhibit to its annual report.

- A foreign private issuer could also make the disclosure more frequently by filing a report on Form 6-K or posting the information on its Internet website. The release does not impose the same two-day notice requirement, but states that the SEC will strongly encourage the foreign private issuer to make such disclosure promptly.

Contact Information

If you have any questions or would like to learn more about the proposed rules, please contact the lawyer who normally represents you, or any of the lawyers listed below involved in the preparation of this SEC Alert.

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