

SEC Votes to Adopt Additional 8-K Requirements

On March 11, 2004, the SEC voted to adopt amendments to Form 8-K to require the reporting of a number of additional events and to expand the required disclosure relating to certain 8-K filing events. While the SEC adopted substantial portions of its original rule proposal, it did not adopt proposals requiring the inclusion of a “mini-MD&A” or the reporting of terminations or reductions of material customer relationships.

The new disclosure items include:

- entry into a material non-ordinary course agreement;
- termination of a material non-ordinary course agreement;
- creation of a material direct financial obligation or a material obligation under an off-balance sheet arrangement;
- triggering events that accelerate or increase a material direct financial obligation or a material obligation under an off-balance sheet arrangement;
- material costs associated with exit or disposal activities;
- material impairments;
- notice of delisting or failure to satisfy a continued listing rule or standard; transfer of listing; and
- non-reliance on previously issued financial statements or a related audit report or completed interim review (restatements).

The new rules also will require companies to report on Form 8-K any unregistered sales of equity securities and material modifications to rights of security holders. Currently these events are reported on Form 10-Qs or 10-Ks.

Finally, the new rules will modify two existing 8-K item requirements to require expanded disclosure covering:

- the departure of directors or principal officers, election of directors, or appointment of principal officers; and
- amendments to Articles of Incorporation or Bylaws and change in fiscal year.

Filings on Form 8-K will now be required to be made within four business days of the triggering event.

The new rules will become effective on August 23, 2004. The text of the final rules is not yet publicly available. When the SEC publishes the final rules, we will distribute a more detailed SEC Alert.

Contact Information

If you have any questions or would like to learn more about these FAQs, please contact your usual legal advisor at Ropes & Gray.

