

COMPLIANCE WEEK

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New Sec. 16 Guidance; SEC Ponders Global Markets

By Melissa Klein Aguilar — June 5, 2007

The Securities and Exchange Commission has issued a new set of interpretations regarding Section 16 of the Securities Exchange Act, which governs the reporting obligations of corporate insiders.

The interpretations, which supersede those found in the Telephone Interpretations Manual and FAQs that related to Section 16, consolidate a collection of existing interpretive guidance previously located in multiple documents into a single, easy-to-find document, says Howard Berkenblit, a partner at the law firm Sullivan & Worcester.



“Before this, there were two sets of telephone interpretations and two sets of Frequently Asked Questions that addressed Section 16 issues, meaning someone looking for SEC staff guidance in this area could have to look in as many as four different locations,” Berkenblit says.

Berkenblit

He notes that the SEC’s Division of Corporation Finance has taken the consolidation approach with other topics addressed in multiple sources, such as executive compensation, the Trust Indenture Act, and Rule 144; the Division has also said it will continue to do so to help create more user-friendly guidance resources and cut down on the number of calls to the office.

While the SEC staff added a few new interpretations and updated or modified the wording of some others, Berkenblit says the changes are mostly technical in nature and don’t appear to contain any major policy shifts. For example, some interpretations needed to be updated or eliminated to reflect improved electronic filing technology for Section 16 reports, while others were added or expanded to codify what had previously been said orally.

“For most companies, this action by the Division of Corporation Finance won’t have any impact until they are faced with one of the narrow situations addressed,” Berkenblit says. “The real benefit to issuers from this new document is that when a Section 16 question does arise, an issuer or its counsel now only has to look in one location to see if there is any informal SEC guidance in the topic rather than having to inefficiently hunt around the SEC Web site.”



While he says the new interpretations “can’t be read as reflecting any sea change in the [SEC]’s overall approach to Section 16,” David Lamarre, a partner at the law firm Pillsbury Winthrop Shaw Pittman notes, “There are a few nuggets of interest.”

Lamarre

For example, Lamarre says, Question 123.12 clarifies the SEC staff’s views on the potentially broader “diversification” transactions that 401(k) plan participants must now be allowed to make, with respect to company stock in their plan accounts, under the 2006 Pension Protection Act. According to the Q&A, the staff feels that these new “401(a)(35)” transactions don’t enjoy the same exclusions from Rule 16b-3’s conditions to be exempt, which are enjoyed by other types of diversification transactions that arise under older IRS rules, Lamarre says.

SEC Seeks Input On Opening U.S. Markets

The SEC’s love affair with roundtables continues this month. The agency’s next confab, set for June 12 at SEC headquarters, will seek input on letting some foreign exchanges have direct access to U.S. investors. Under selective mutual recognition, the SEC would give some foreign exchanges access to U.S. markets under an abbreviated registration system, if they’re governed by a securities regulatory regime similar to that of the United States.

Such a move would mark a major departure for the SEC, which currently requires foreign exchanges that conduct business in the U.S. to register both the exchange and the securities trading on it with the Commission, even if the exchange operates outside the United States and the securities it lists are registered in their home countries.



Cox

Noting that innovations in technology have eliminated many barriers to cross-border access between U.S. and foreign markets, SEC Chairman Christopher Cox said in a statement, “It is imperative that the commission consider the implications of increased U.S. investor demand for foreign investment opportunities.”

The roundtable will explore whether selective mutual recognition would benefit U.S. investors by providing greater cross-border access to foreign investment opportunities. The SEC said the forum will consist of a series of panels designed to reflect the views of investors, exchanges, and broker-dealers. A separate panel will consider the issue of how the SEC can best assess regulatory comparability and convergence. Ethiopis Tafara, director of the SEC’s Office of International Affairs, says the discussions “should help to inform the commission as to possible benefits and risks of a system of selective and reciprocal recognition.”

The topic of mutual recognition has made its way into the recent public remarks by many

of the commissioners. For example, last month, Cox told members of the Security Traders Association that the SEC is exploring ways to give U.S. investors more direct access to foreign securities, including looking at whether foreign exchanges could work with U.S. brokers in the United States without need for registrations in two or more countries. That's happening, Cox said, "because we're now beginning to realize that some of the old ways of doing things may have grown obsolete."

The roundtable will be open to the public and also available via webcast on the SEC Web site. The SEC is also seeking feedback on any of the topics to be addressed at the roundtable.

SEC COMMENT SUBMISSIONS

What follows are instructions for submitting comments on the mutual recognition roundtable to the SEC:

Electronic Submissions: Use the Commission's Internet submission form; or send an e-mail to rule-comments@sec.gov.

Paper Submissions: Send paper submissions in triplicate to:

Nancy M. Morris
Secretary
Securities and Exchange Commission
100 F Street, N.E.
Washington, D.C. 20549-1090

All submissions should refer to File Number 4-539. This file number should be included on the subject line if e-mail is used. To help process and review submissions more efficiently, please use only one method. The Commission will post all submissions on its Web site at www.sec.gov.

Please note that all submissions received will be posted without change; the SEC does not edit personal identifying information from submissions. Only information desired to be shared publicly should be submitted.

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