

A Biweekly
Newsletter of
Federal Securities,
Corporate &
Banking Law
Developments

SEC TO CONSIDER ADOPTION OF AMENDMENTS TO FORM 8-K REPORTING

Tomorrow, the SEC is expected to adopt rules that would add 13 corporate events that must be reported by public companies using Form 8-K. The rules, if adopted as proposed, would also shorten the filing deadline for filing a Form 8-K to two business days from 5 days (15 days in some cases). (<http://www.sec.gov>)

The purpose is to require disclosure of a much broader range of subjects on a more current basis, providing investors with better and faster disclosure of important corporate events. These new events include, among others: (1) entry or termination of a material agreement that is outside the ordinary course of business; (2) termination or reduction of a customer relationship resulting in a 10% or more loss of the company's revenues; and (3) creation of a material direct or contingent financial obligation. Also, due to the shortened filing deadline, the proposed rules create a safe harbor for failure to file a Form 8-K on a timely basis if certain conditions are met.

These amendments would become effective 60 days after their adoption. In order to comply, companies will need to ensure that procedures are in place to collect, process and disclose such information on an accelerated basis.

■ SUPREME COURT REJECTS REVERSE AGE BIAS LAWSUITS

Alan Strasser of our Washington, DC office writes:

The U.S. Supreme Court recently held that a federal law barring discrimination in the workplace does not protect employees over age 40 who claim that older colleagues have been given better benefits.

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- Supreme Court Rejects Reverse Age Bias Lawsuit
- Increased Disclosure Mandated in Credit Union Conversions
- NYSE and NASDAQ Issue Annual Certification Forms and Affirmations

If you would like more information on these topics or have any questions, please e-mail us at CorporateNotes@KutakRock.com.

(<http://www.supremecourt.us.gov/opinions/03pdf/02-1080.pdf>)

In the case, a new collective bargaining agreement between a company and its employees granted full health benefits only to employees who were at least age 50 on July 1, 1997. In contrast, the prior collective bargaining agreement provided full health benefits to all employees who retired with 30 years of seniority. As a result of the change, certain employees who would no longer be eligible for full health benefits sued based on the theory that the provision in the new collective bargaining agreement was illegal age discrimination.

While the 1967 Age Discrimination in Employment Act (the "Act") prohibits employers from discriminating against any employee who is 40 years or older based on age, the Court found that the Act was intended to prohibit employers from favoring younger (below age 40) workers over older workers. The Court noted that the Act was not intended to prohibit employers from favoring an older employee over a younger one.

Companies should examine existing plans

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DENVER
DES MOINES
FAYETTEVILLE
IRVINE
KANSAS CITY
LITTLE ROCK
NEW YORK
OKLAHOMA CITY
OMAHA
PASADENA
RICHMOND
SCOTTSDALE
WASHINGTON
WICHITA

and policies in which age-related criteria are either used or contemplated.

■ INCREASED DISCLOSURE MANDATED IN CREDIT UNION CONVERSIONS

The National Credit Union Administration recently adopted a final rule requiring increased disclosure of the effect on voting rights, ownership interest and compensation when a credit union proposes to convert to a mutual savings bank. (<http://www.ncua.org>) Thus, credit unions wishing to convert may find it more difficult to do so, if the new disclosures increase the likelihood of member objections.

Under the final rule, the converting credit union must disclose: (1) how any subsequent conversion to a stock institution may affect ownership interests; (2) how a conversion to a mutual savings bank will affect members' voting rights; and (3) the economic benefit a director or senior management official may receive in connection with the conversion.

Moreover, the final rule requires that the credit union affirmatively state whether it intends to:

- Convert to a stock institution;
- Provide compensation to previously uncompensated directors or increase compensation or other conversion related benefits to officers and directors; and
- Base member voting rights on account balances.

Converting from a credit union to a mutual savings bank is still possible, but these rules, and others being proposed, could make the process more difficult.

■ NYSE AND NASDAQ ISSUE ANNUAL CERTIFICATION FORMS AND AFFIRMATIONS

Recently, the NYSE and NASDAQ issued their annual certification forms that listed

companies will need to submit in compliance with the new corporate governance standards. Companies are required to furnish these forms to their respective exchange or national association on an annual basis. NYSE companies will need to file these forms within 30 days after their 2004 annual meeting, while NASDAQ companies will be required to submit their certifications "immediately following" their 2004 annual meeting.

Both NASDAQ and the NYSE prescribe a short CEO certification form. However, the NYSE also requires a lengthy written affirmation with exhibits, including an exhibit disclosing the exact location of each required disclosure called for by the new rules.

We urge NYSE companies to look at the affirmation now to ensure that they can satisfy all its requirements by the required filing date.

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