

## Investment Management Industry News Summary - January 2006

JANUARY 30, 2006

This Summary, which draws from a wide range of sources, endeavors to condense important investment management regulatory news of the preceding week into one, easily digestible source. This Summary is not intended as legal advice. Readers should not act upon information contained in this Summary without professional legal counsel. This Summary may be considered advertising under the rules of the Supreme Judicial Court of Massachusetts.

### IRS CIRCULAR 230 DISCLOSURE:

To ensure compliance with requirements imposed by the IRS, we inform you that any U.S. tax advice contained in this communication (including any attachments) is not intended or written to be used, and cannot be used, for the purpose of (i) avoiding penalties under the Internal Revenue Code or (ii) promoting, marketing or recommending to another party any transaction or matter addressed herein.

### ***SEC issues statement regarding corporate penalties***

January 27, 2006 11:23 AM

In connection with the filing of two settled actions against corporate issuers, the SEC recently announced and established a framework designed to provide clarity, consistency and predictability to its imposition of corporate penalties. The two principal considerations that will guide the SEC's application of corporate penalties are:

- The presence or absence of a direct benefit to the corporation as a result of the violation;
- and
- The degree to which the penalty will recompense or further harm the injured shareholders.

Other factors the SEC may consider include:

- The need to deter the particular type of offense;
- The extent of the injury to innocent parties;
- Whether complicity in the violation is widespread throughout the corporation;
- The level of intent on the part of the perpetrators;

- The degree of difficulty in detecting the particular type of offense;
- The presence or lack of remedial steps by the corporation; and
- The extent to which the company cooperates with the SEC and other law enforcement agencies.

In its press release, the SEC stated that its intentions in clarifying these guiding principals are to provide a high degree of transparency to the SEC's decisions, and to be of assistance to the SEC's professional staff, corporate issuers, their counsel and the public.

*SEC Press Release No. 2006-4 (January 4, 2006)*

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***SEC offers incentives for companies to file financial reports with interactive data***

January 27, 2006 11:18 AM

The SEC staff announced that it will offer expedited reviews of registration statements and annual reports to companies that volunteer for a test group as part of the SEC's interactive data initiative. The use of interactive data is intended to replace static, text-only documents companies file with the SEC with dynamic financial reports that can be quickly and easily accessed and analyzed.

In April 2005, the SEC began a voluntary program for receiving financial information using eXtensible Business Reporting Language (XBRL) - a computer language that makes financial data

interactive. This program allows for the voluntary submission of XBRL documents as exhibits to periodic reports from corporate issuers and Investment Company Act reports. Companies that participate in the voluntary program's new test group will furnish financial data contained in their periodic and investment company reports in XBRL format for at least one year and provide feedback on their experiences, including the costs and benefits associated with reporting in the interactive data format. Because of the efficiencies staff anticipates in reviewing their filings prepared in XBRL and to encourage participation in the test group, the SEC staff will offer volunteers expedited reviews of registration statements under the Securities Act of 1933 that the staff has selected for review. The SEC staff is seeking test group participants that will use the commercial and industrial, banking, insurance, or investment management industry classifications in XBRL.

According to the SEC's press release, companies interested in participating in the test group should contact Jeffrey Naumann in the Office of the Chief Accountant ([naumannj@sec.gov](mailto:naumannj@sec.gov)) or Brigitte Lippmann in the Division of Corporation Finance ([lippmannb@sec.gov](mailto:lippmannb@sec.gov)) by Feb. 10, 2006, for more information. The staff expects to have the group set by some time in February.

SEC Press Release No. 2006-7 (January 11, 2006)

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***SEC charges former officers of transfer agent, but not transfer agent, with defrauding clients of \$4 million***

January 27, 2006 11:13 AM

The SEC filed charges against six former senior officers of a Boston-based registered transfer agent, for engaging in a scheme beginning in January 2001 by which the defendants defrauded a defined contribution plan client and group of affiliated mutual funds of approximately \$4 million.

The SEC's complaint alleges that the defendants' misconduct arose out of the transfer agent's one-day delay in investing certain assets of a defined contribution plan client. The markets rose steeply on the missed day, causing the defined contribution plan to miss out on nearly \$4 million of market gains. According to the complaint, rather than inform the defined contribution plan client of the one-day delay or compensate their client for the missed trading gain, the defendants decided to improperly shift approximately \$3 million of the costs of the delay to shareholders of certain affiliated mutual funds through deception, illegal trade reversals, and accounting machinations related to the use of "as of" trading activity. The complaint also alleges that the defendants improperly allowed the defined contribution plan client to bear approximately \$1 million of the loss without disclosing to the defined contribution plan client that they had done so. The complaint further alleges that certain of the defendants took steps to cover-up the wrongful conduct, resulting in the misconduct not being discovered until January 2004.

In connection with the complaint against the six individual defendants, however, the SEC announced that it would not bring any enforcement action against the transfer agent because of its swift, extensive and extraordinary cooperation in the SEC's investigation of the transactions that are the subject of the SEC's complaint. The transfer agent's cooperation consisted of:

- prompt self-reporting, and an independent internal investigation;
- sharing the results of that investigation with the government (including not asserting any applicable privileges and protections with respect to written materials furnished to the SEC staff);
- terminating and otherwise disciplining responsible wrongdoers;
- providing full restitution to its defrauded clients;
- paying for the attorneys' and consultants' fees of its defrauded clients; and
- implementing new controls designed to prevent the recurrence of fraudulent conduct.

Walter G. Ricciardi, Deputy Director of the Division of Enforcement and District Administrator of the SEC's Boston District Office noted that, although the conduct alleged here was egregious, the transfer agent's cooperation in this investigation and the remedial steps taken were extraordinary. He further indicated that he hoped the SEC's determination not to bring any enforcement action against the transfer agent will "encourage those who become aware of wrongdoing to do the right thing - stop the wrongful conduct, promptly report it to the SEC staff, and cooperate fully in any subsequent investigation of the conduct."

*SEC Press Release No. 2006-2(January 3, 2006)*

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#### ***SEC Chairman appoints acting Director of the SEC Division of Investment Management***

January 27, 2006 11:09 AM

SEC Chairman Christopher Cox today announced the selection of Susan Ferris Wyderko as the Acting Director of the SEC's Division of Investment Management, which oversees mutual funds and investment advisers. A 20-year veteran of the SEC, Ms. Wyderko has served as the Director of the Office of Investor Education and Assistance since March 2000. In that position she has been principally responsible for the SEC's outreach to individual investors, ensuring that their problems and concerns are known throughout the SEC and considered when the agency takes action. Ms. Wyderko has held several senior positions within the SEC, including Director of the Office of Legislative Affairs and Acting Director of Public Affairs. She previously served as a Counsel to Chairman Arthur Levitt and as an Assistant General Counsel at the SEC with responsibility for filing SEC briefs with the Courts of Appeals and the Supreme Court. From 1993 to 1995 she was an Assistant Chief Litigation Counsel for the Division of Enforcement at the SEC. She earlier headed the SEC's Rule 2(e) program of disciplinary proceedings against professionals who practice before the SEC. Before coming to the SEC she was at a Washington, D.C. law firm.

SEC press Release No. 2006-8 (January 12, 2006)

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