

“What keeps you up at night?”

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A new year, a new administration and many new securities regulations to consider

By Craig F. Zappetti

The new year has already brought change to the securities regulatory landscape. Mary L. Schapiro, President Obama's nominee to head the Securities and Exchange Commission, was easily confirmed by Congress and was sworn in as the 29th Chairperson of the Commission. Ms. Schapiro brings many years of securities regulatory experience, previously serving on the Commission and more recently serving as Chairperson of the Commodities Futures Trading Commission (“CFTC”) and head of regulation and enforcement at The Financial Industry Regulatory Authority (“FINRA”). She ascends to this position at a time when many critics are questioning the Commission's purpose and capability to address the problems presented by the current financial and credit crises and the 21st Century Global Economy. The Commission's recent enforcement failures, the wide-reaching impact of the current crises and the need to restore faith in our public markets all indicate that we are about to experience a period of increased securities regulations. The recent resignation of Linda Thomsen, Director of the Commission's Division of Enforcement, and the appointment of Robert Khuzami, a former federal prosecutor, indicates a possible change in the Commission's enforcement philosophy.

Some of the issues that may be considered by Congress or the Commission in the near future include:

- Oversight of executive compensation, including “say-on-pay” measures, beyond what has been implemented with TARP
- Shareholder proxy access
- Reorganization of the Commission including a potential consolidation with the CFTC
- Hedge fund regulation and other private fund regulation
- Additional amendments to Regulation D to further liberalize the private securities offering process
- Regulation of credit default swaps

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In addition, the following regulations have been enacted and will come into effect in 2009:

- Final XBRL rules promoting the use of interactive data in all Commission filings
- Electronic filings of Form D
- Modernization of gas and oil reporting
- New municipal securities disclosure requirements

Companies should expect that the Commission will continue to review disclosure regarding executive compensation at all public companies and will focus on Management Discussion and Analysis sections included in annual and quarterly reports, with a particular emphasis on liquidity disclosures in light of the current crises and the recently enacted TARP rules regarding executive compensation limits for companies receiving TARP funds. The Commission will also review and analyze trends in short sales of public company securities.

The Saul Ewing Securities Transaction Group will monitor these developments and will send you updates throughout 2009 to ensure that you have a reliable resource to turn to for the most up-to-date, accurate information concerning the new rules.

By now, you should have received our 2009 SEC Reporting Rules books. If you did not receive these books, you can access them at http://www.saul.com/noteworthy/2009_SEC/index.aspx.

If you have any specific questions regarding securities regulations, you may call us directly.

This Alert was prepared by Craig F. Zappetti, a Partner and Co-Chair of the Securities Transactions Practice Group. Craig can be reached at czappetti@saul.com or 215.972.7896. This publication has been prepared by the Securities Transactions Practice Group for information purposes only.

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