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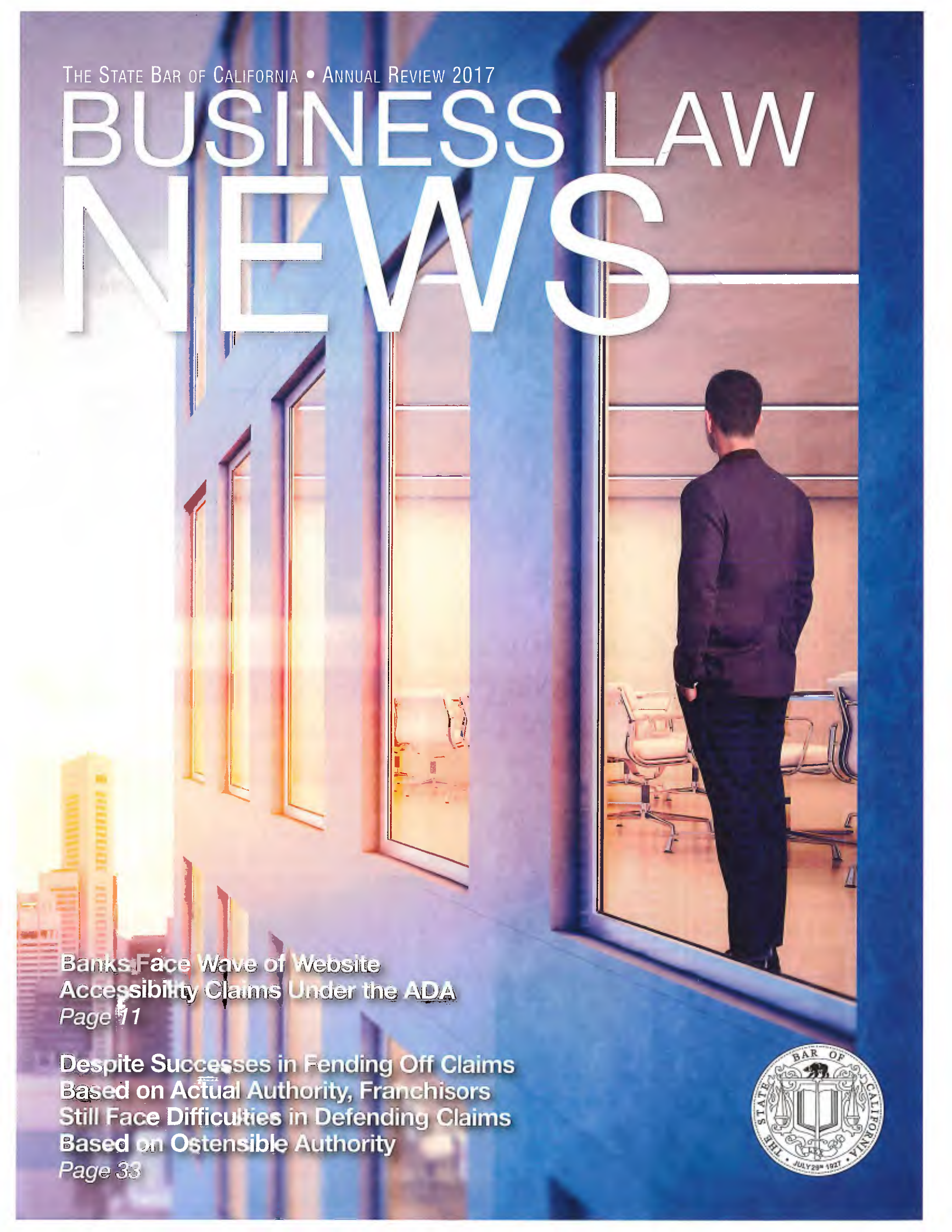
BUSINESS LAW NEWS



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Selected 2016 Developments in Corporate Law

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The following article summarizes selected California legislative, regulatory, and case law developments in 2016, as well as certain significant actions undertaken by or relating to the SEC in 2016.

California Legislative and Regulatory Developments in 2016

California Law Provides New Exemption from Broker-Dealer Requirements for Finders; DBO Proposes Regulations to Implement the New Exemption

Effective January 1, 2016, Governor Brown signed into law Assembly Bill (A.B.) 667, 2015-2016 Reg. Sess.,[1] which creates a new exemption from the broker-dealer requirements for certain individuals acting as finders, codified at section 25206.1 of the California Corporations Code. Among the conditions that must be satisfied to use the exemption are the following:

- the finder must be an individual;
- the size of the offering must not exceed $15 million;
- the finder can only make introductions to accredited investors;
- the finder cannot participate in negotiating any of the terms of the offering; and
- the finder must file with the California Department of Business Oversight ("DBO") an initial statement of information (with a $300 filing fee) and annual renewal statements (with a $275 renewal fee).

On May 17, 2016, the DBO issued proposed regulations[2] under the Corporate Securities Law of 1968 to implement the provisions of A.B. 667.

Changes to the Consumer Cooperative Corporation Law

Effective January 1, 2016, Governor Brown signed into law changes to California Corporations Code sections 12200 et seq. that amend the Consumer Cooperative Corporation Law relating to worker cooperatives.[3] The goal of the legislation was to clarify the law applicable to such cooperatives and promote the establishment of new worker cooperatives. Among the changes was to permit a cooperative to designate itself as a worker cooperative in its articles of incorporation, and to enable a cooperative to have "community investors" who can hold a share or other proprietary interest in a cooperative. Also, the investment limit to qualify for an exemption from the requirements in the Corporate Securities Law of 1968 for shares or memberships in cooperatives was increased from $300 to $1,000.

Changes in Officer Titles for Nonprofit and for Profit Corporations; Emergency Bylaws for Consumer Cooperatives

Effective January 1, 2016, Governor Brown signed into law changes to various sections of the California Corporations Code to expand the permissible titles relating to a chair of the board by for-profit corporations, nonprofit corporations, and consumer cooperative corporations.[4] As part of the same bill that was signed into

law, consumer cooperative corporations were authorized to take certain actions in anticipation of or during an emergency, and to enact bylaws effective only during an emergency regarding the management and conduct of their ordinary business affairs. (For-profit and nonprofit corporations already had this authority.)

Changes to Victims of Corporate Fraud Compensation Fund

Effective September 16, 2016, Governor Brown signed into law changes to the California Corporations Code expanding when victims of corporate fraud can file an application with the Secretary of State for any unpaid judgment against a corporation for fraud, misrepresentation, or deceit.[5] Victims may now apply if they obtain a criminal restitution order against an agent of a corporation for fraud, misrepresentation, or deceit, and submit documentation showing that the defendant is an agent of the corporation.

California Case Law at the End of 2015 and in 2016

SCC Acquisitions, Inc. v. Superior Court (Dec. 11, 2015)[6]

Western Albuquerque Land Holdings, LLC ("Western") served requests for production to SCC Acquisitions, Inc. ("SCC"). Some of the requests sought documents related to "entities that currently are or previously were a subsidiary of [SCC]." SCC objected and declined to produce documents responsive to those requests on the grounds that, among other things, the documents were protected by the right of privacy.

With respect to that objection, the court stated that "corporations do not have a right of privacy protected by the California Constitution." Although corporations do have a right to privacy, it is a lesser right than that held by human beings and is not considered a fundamental right. Accordingly, whether the requests infringe a corporation's right to privacy requires a balancing test—whether the discovery appears to be reasonably calculated to lead to the discovery of admissible evidence balanced against the corporate right of privacy. In this case, the court concluded that (1) Western's requests only sought documents under the possession or control of SCC, (2) any corporate privacy right would have already been compromised, and (3) a protective order could be issued to safeguard any remaining privacy rights.

Innes v. Diablo Controls, Inc. (June 16, 2016)[7]

Appellants, shareholders of Diablo Controls (a California corporation), submitted a written demand to inspect accounting books, meeting minutes, and other records. The demand requested that the inspection take place at Diablo Controls' California office. Diablo Controls located records in its Illinois office, shipped them to California, and made them available for inspection at its counsel's California office. Appellants claimed that the records were incomplete and filed a petition for writ of mandate. After filing the writ, Diablo Controls mailed additional records to California and made them available for inspection at its counsel's California office. Appellants claimed the records were still incomplete, and Diablo Controls opposed the petition on the grounds that section 1601 of the California Corporations Code only obligated it to make the records available for inspection at its Illinois office. The trial court agreed and denied the petition.

The appellate court agreed with the trial court because section 1601 does not specify where the records need to be made available for inspection. The appellate court contrasted section 1601 with section 213 of the California Corporations Code, which requires a corporation's bylaws to be made available for inspection in California or furnished to a shareholder on request. The difference in these two sections buttressed the court's interpretation that section 1601 does not require records to be brought into California for inspection. The court, however, noted that maintaining records in a remote location intentionally to impede inspection would be contrary to section 1601, but there was no evidence of such obstruction in this case.

Palm Springs Villas II Homeowners Association, Inc. v. Parth (June 21, 2016)[8]

The Palm Springs Villas II Homeowners Association, Inc. ("Association") was the governing body for Palm Springs Villas II, a condominium development, and was a nonprofit corporation organized under California law. The Association's governing documents included the Covenants, Conditions, and Restrictions ("CC&Rs"), as well as its Bylaws.

Parth was president of the Association and on its Board of Directors. Parth signed a one-year contract with Desert Protection, a security company, without submitting the agreement to the Board for review or receiving

authorization to execute it. Without knowing that Parth signed a one-year contract, the Board ultimately selected another security company to provide security services and sent Desert Protection a thirty-day termination letter. Desert Protection sued the Association for breach of contract and the Association filed a cross-complaint against Desert Protection and Parth. The Association eventually settled with Desert Protection.

With respect to Parth, the Association asserted breach of fiduciary duty and breach of governing documents. Parth demurred to the cross-complaint. For the breach of fiduciary duty claim, Parth moved for summary judgment and argued that the claim was barred by the business judgment rule and the exculpatory provision in the CC&Rs. Parth relied on *Biren v. Equality Emergency Medical Group, Inc.*[9] in support of her position that the business judgment rule protects a director who violated governing documents as long as the director believed that the actions were in the best interests of the corporation. The trial court agreed and granted the summary judgment motion because the Association failed to offer any evidence, other than that Parth violated the CC&Rs, to overcome the business judgment rule.

The appellate court determined that the trial court erred in assuming that the business judgment rule applied to actions that violated the governing documents. The court noted that the business judgment rule "raises various issues of fact." The court also reasoned that *Biren* only held that a director's violation of the governing documents could receive protection from the business judgment rule when the other requirements of the business judgment rule were satisfied. In this case, there were material issues of fact as to whether Parth acted on an informed basis and exercised reasonable diligence. In addition, the court noted that there may also be an issue of material fact as to Parth's good faith. Accordingly, the court reversed the trial court's summary judgment order.

SEC Rulemaking and Other Action in 2016

SEC Adopts Rules to Simplify Disclosure for Emerging Growth Companies

Effective January 19, 2016, the SEC adopted interim final rules[10] to implement Fixing America's Surface Transportation Act ("FAST Act") provisions revising Forms S-1 and F-1 to enable emerging growth companies to omit certain historical financial information. Form S-1 also was amended to allow forward incorporation by reference for smaller reporting companies if they meet certain eligibility requirements and conditions.

SEC Seeks Public Comment on Improving Disclosure Requirements under Regulation S-K

In April 2016, as part of an initiative by the Division of Corporation Finance to review and improve the disclosure requirements of Regulation S-K, the SEC published a concept release[11] soliciting comment on modernizing certain business and financial disclosure requirements in Regulation S-K. In August 2016, the SEC sought comment[12] on Regulation S-K disclosure requirements relating to management, security holders, and corporate governance matters.

SEC Adopts Rules to Implement JOBS Act Registration and Termination Provisions

Effective June 9, 2016, the SEC adopted final rules[13] to implement the JOBS Act and FAST Act provisions adjusting the registration, termination of registration, and suspension of reporting requirements under sections 12(g) and 15(d) of the Securities Exchange Act of 1934 (the "Exchange Act"), including raising the threshold to 2,000 holders of record or 500 holders of record that are not "accredited investors."

SEC Amends Form 10-K as to Summary Information

Effective June 9, 2016, the SEC adopted an interim final rule[14] that provides that an issuer at its option may include in its Form 10-K a summary of information if each item in the summary cross-references by hyperlink to the section in the Form 10-K containing more detailed information.

SEC Proposes to Amend the Definition of "Smaller Reporting Company"

In June 2016, the SEC proposed amendments[15] to the definition of "smaller reporting company" to increase capital formation and reduce compliance costs. As proposed, the threshold for certain financial disclosure would increase from $75 million to $250 million, and issuers without a public float but with annual revenues less than $100 million (instead of the current $50 million) would be permitted to have scaled disclosure. The public float is computed by multiplying the issuer's number of

outstanding common shares held by non-affiliates by the price at which the shares were last sold, or the average of the bid and asked price, in the principal trading market for the common shares. Issuers with no common shares outstanding held by non-affiliates or where no market price exists for the common shares would have no public float.

SEC Proposes Changes to Mining Disclosures

In June 2016, the SEC proposed amendments[16] to its property disclosure requirements for mining registrants and related guidance. The SEC believes these changes would modernize disclosure requirements by aligning them with current industry and global practices.

SEC Proposes to Streamline Disclosure Requirements

In July 2016, the SEC proposed amendments[17] to some of its disclosure requirements to eliminate duplicative, outdated, and superseded provisions in light of other SEC rules and U.S. GAAP and International Financial Reporting Standards.

SEC Proposes to Require Registrants to Include Hyperlinks to Exhibits

In August 2016, the SEC proposed amendments[18] to its rules to require registrants in their annual, periodic, and current reports to include a hyperlink to each exhibit listed in the exhibit index of these reports.

SEC Amends Administrative Procedures Rules of Practice

Effective September 27, 2016, the SEC adopted amendments[19] to its Rules of Practice for administrative proceedings. In response to challenges to the Rules in recent years, the SEC updated the Rules to change the timing of deadlines and hearings, provide parties with the right to take depositions, clarify the admissibility of hearsay, and revise procedures regarding appeals to the SEC.

SEC Proposes to Amend Securities Transaction Settlement Cycle

In September 2016, the SEC proposed amendments[20] to its rules to shorten the settlement cycle for most broker-dealer transactions from three business days after the trade date to two business days after the trade date. The SEC believes the amendments would reduce credit, market, liquidity, and systemic risks to market participants.

SEC Proposes Use of Universal Proxies

In October 2016, the SEC proposed amendments[21] to its proxy rules to require the use of universal proxies in most non-exempt solicitations in connection with contested elections of directors. The SEC believes the amendments would enhance the ability of stockholders to exercise their right to elect directors.

SEC Will No Longer Require "Tandy" Representations

On October 5, 2016, the staff of the SEC announced[22] that they will no longer require an issuer to include "Tandy" language when its filings are reviewed by the staff. Such language required the issuer's written acknowledgment that disclosure in its document was its responsibility and to state that it would not raise the SEC review process (and acceleration of effectiveness, if applicable) as a defense in any legal proceeding. Nonetheless, the SEC reiterated that issuers and their management are responsible for the accuracy and adequacy of their disclosures, regardless of any staff review, comments, actions, or absence of actions.

SEC Adopts New Rules for Intrastate Offerings; Amends Rule 504 and Eliminates Rule 505

On October 26, 2016, the SEC amended[23] the Rule 147 intrastate offering safe harbor under the Securities Act of 1933 (the "Securities Act"), and adopted Rule 147A, another intrastate exemption that permits issuers to market their securities through the internet.

California-based issuers conducting an offering in California in reliance on either of the foregoing rules still must comply with California's securities laws. As California has no exemption that allows for general solicitation and general advertising, such issuers likely will have to qualify the offering here by permit under section 25110 of the Corporate Securities Law of 1968.

To facilitate the raising of capital, the SEC also amended[24] Rule 504 of Regulation D under the Securities Act to increase from $1 million to $5 million the aggregate amount of securities that may be offered and sold in any twelve-month period under that rule. To enhance investor protection and to conform Rule 504 offerings with other exemptions under Regulation D, the bad actor disqualifying provisions in Regulation D will now apply to Rule 504 offerings. As a result of Rule 504's increased size of offering, little-used Rule 505 is being repealed.

The amendments to Rule 147 and new Rule 147A will become effective on April 20, 2017. Amended Rule 504 became effective on January 20, 2017 and Rule 505 will be repealed on May 22, 2017.

SEC Permits Posting of Annual Report on Website Instead of Mailing to SEC

On November 2, 2016, the Division of Corporation Finance issued a new Compliance and Disclosure Interpretation[25] that permits registrants to post their annual report to shareholders on their websites—where they must remain accessible for at least one year—in lieu of mailing seven copies to the SEC.

SEC Updates Tender Offer Disclosure Requirements

On November 18, 2016, the Division of Corporation Finance issued new Compliance and Disclosure Interpretations[26] regarding certain disclosure requirements under Item 5 of Schedule 14D-9 and Item 1009(a) of Regulation M-A relating to a summary of all material terms of employment, retainer, or other arrangement for compensation paid or to be paid to all persons employed, retained, or to be compensated to make solicitations or recommendations in connection with the transaction. The Compliance and Disclosure Interpretations also updated guidance with respect to the *Abbreviated Tender or Exchange Offers for Non-Convertible Debt Securities* no-action letter of January 2015.[27]

SEC Issues Report on Modernization and Simplification of Regulation S-K

On November 23, 2016 and as required under the FAST Act, the staff of the SEC delivered a report[28] to Congress describing the SEC's efforts to modernize and simplify the disclosure requirements of Regulation S-K.

SEC Releases Study on Regulation A+

On December 7, 2016, the SEC released a white paper on the use of Regulation A+ offerings from the June 19, 2015 effective date until October 31, 2016.[29] The study found that Regulation A+ offerings—which are alternatives to small IPO's—have been used at a higher rate than prior Regulation A offerings, with 147 Regulation A+ offerings seeking up to approximately $2.6 billion in financing filed with the SEC during the sixteen-month timeframe.

New Law Establishes Within the SEC an Office of the Advocate for Small Business Capital Formation

On December 16, 2016, President Obama signed into law the SEC Small Business Advocate Act of 2016,[30] which amends the Exchange Act to establish within the SEC an Office of the Advocate for Small Business Capital Formation. The Office's functions include helping small businesses in addressing issues they may encounter with the SEC or self-regulatory organizations, identifying issues hindering the ability of small companies to access capital, and suggesting changes to SEC regulations and the rules of self-regulatory organizations that may benefit small businesses and investors. The new law also establishes the Small Business Capital Formation Advisory Committee, tasked with providing the SEC advice on how SEC rules impact its mission of protecting investors, maintaining fair and orderly markets, and facilitating capital formation.

SEC Enforcement Actions in 2016

During its fiscal year that ended September 30, 2016, the SEC filed a record 868 enforcement actions and obtained orders and judgments in excess of $4 billion in disgorgement and penalties. The SEC brought, and continues to bring, actions involving:

- investment advisers or investment companies;[31]
- insider trading;[32]
- financial reporting fraud;[33]
- deficient internal controls;[34]
- auditor claims;[35]
- the Foreign Corrupt Practices Act;[36] and
- claw backs against chief executive officers and chief financial officers.[37]

SEC Continues Bringing Enforcement Actions Against Companies to Protect Whistleblowers

The Dodd-Frank Act includes provisions aimed at encouraging whistleblowers to report possible violations of the securities laws to the SEC through a combination of measures, including financial rewards, confidentiality protections, and prohibitions on employer retaliation.

From its first whistleblower award in 2012 through December 5, 2016, the SEC has awarded approximately

$135 million to thirty-six whistleblowers. In its 2016 fiscal year, the SEC made thirteen awards aggregating approximately $57 million,[38] including one award of $22 million[39] to an insider who tipped off the SEC to significant fraud at the whistleblower's company and another award of $17 million[40] to a company insider whose information significantly facilitated the SEC's investigation. In addition, during its current 2017 fiscal year, the SEC announced a $20 million[41] award to a whistleblower who provided valuable information that allowed the SEC quickly to bring an enforcement action and recover almost all the funds of wronged investors, a $3.5 million[42] award to an individual who provided information that led to an enforcement action, and an award of over $900,000[43] to a whistleblower whose tip led to multiple enforcement actions by the SEC.

Among its other efforts to help whistleblowers, the SEC brought several enforcement actions[44] against companies for having confidentiality or waiver provisions in their severance agreements that, in the SEC's view, violate Rule 12F-17 by stifling whistleblowers. Rule 21F-17, which was enacted by the SEC effective August 12, 2011 pursuant to the Dodd-Frank Act, provides in part, as follows:

> *(a) No person may take any action to impede an individual from communicating directly with the SEC staff about a possible securities law violation, including enforcing, or threatening to enforce, a confidentiality agreement ... with respect to such communications.*

For the first time, the SEC also brought a stand-alone action for retaliation[45]against a whistleblower, even though the whistleblower's allegations apparently lacked merit.

The whistleblower program has been criticized by some for not requiring whistleblowers to first report wrongdoing internally, for penalizing the shareholders of companies who pay fines to the SEC, for providing very little information about the particulars of each award (thus undermining accountability to the public), and for awarding the bulk of the money to just a few individuals.

SEC Focus on Non-GAAP Financial Measures

The Division of Corporation Finance has focused in 2016 on registrants' use, or perceived misuse, of non-GAAP financial measures and has provided updated guidance through the issuance of a number of Compliance and Disclosure Interpretations.[46] These cover a number of topics, including the SEC staff's position that under Item 10(e)(1)(A) of Regulation S-K registrants must disclose comparable GAAP financial measures prior to non-GAAP financial measures. The SEC staff has also sent at least several hundred comment letters to registrants addressing a number of non-GAAP disclosure topics, including whether there is equal or greater prominence of GAAP financial measures compared to non-GAAP measures (as required by Item 10(e)(1)(A)), historical reconciliation practices, and explanations of how certain financial measures are calculated and why they provide useful information to investors.

Compliance & Disclosure Interpretations

Aside from the Compliance and Disclosure Interpretations (CD&I's) noted above, the Division of Corporation Finance has issued a series of CD&I's on a number of other topics, including:

- Form S-8 registration statements, including transferring filing fees paid in prior registration statements;[47]
- "small issues" offerings under Regulation A;[48]
- "integration" analysis under Rule 506;[49]
- disclosures under Regulation AB,[50] Form ABS-EE filings,[51] and asset-backed securities issuers;[52]
- CEO pay ratio disclosure rule;[53]
- proxy cards;[54]
- selling security holders under Regulation S-K;[55]
- crowdfunding;[56]
- the relationship between an exemption under the Hart-Scott-Rodino Antitrust Improvements Act and reporting on Schedule 13G;[57]
- "Exxon Capital" exchange offers;[58]
- Rule 144A matters;[59] and
- "Foreign Private Issuer" status.[60]

This article reflects the views of the authors alone and do not necessarily represent those of the California Department of Justice.

Endnotes

1 http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201520160AB667.

2 Dep't of Bus. Oversight, Notice of Rulemaking Action (May 17, 2016), http://www.dbo.ca.gov/Licensees/Corporate_Securities_Law/pdf/05-15%20Notice.pdf.

3 2015-2016 Reg. Sess., http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201520160AB816.

4 Bill Text, S.B. 351, 2015-2016 Reg. Sess. (Corporations).

5 2015-2016 Reg. Sess., http://www.leginfo.ca.gov/pub/15-16/bill/asm/ab_2751-2800/ab_2759_bill_20160916_chaptered.html.

6 243 Cal. App. 4th 741 (2015).

7 248 Cal. App. 4th 139 (2016).

8 248 Cal. App. 4th 268 (2016).

9 102 Cal. App. 4th 125 (2002).

10 https://www.sec.gov/rules/interim/2016/33-10003.pdf.

11 https://www.sec.gov/rules/concept/2016/33-10064.pdf.

12 https://www.sec.gov/rules/other/2016/33-10198.pdf.

13 https://www.sec.gov/rules/final/2016/33-10075.pdf.

14 https://www.sec.gov/rules/interim/2016/34-77969.pdf.

15 https://www.sec.gov/rules/proposed/2016/33-10107.pdf.

16 https://www.sec.gov/rules/proposed/2016/33-10098.pdf.

17 https://www.sec.gov/rules/proposed/2016/33-10110.pdf.

18 https://www.sec.gov/rules/proposed/2016/33-10201.pdf.

19 https://www.sec.gov/rules/final/2016/34-78319.pdf.

20 https://www.sec.gov/rules/proposed/2016/34-78962.pdf.

21 https://www.sec.gov/rules/proposed/2016/34-79164.pdf.

22 https://www.sec.gov/corpfin/announcement/cf-announcement---no-more-tandy-language.html.

23 https://www.sec.gov/rules/final/2016/33-10238.pdf.

24 https://www.sec.gov/rules/final/2016/33-10238.pdf.

25 https://www.sec.gov/divisions/corpfin/guidance/exchange-act-rule-14a3-14c3.htm.

26 https://www.sec.gov/divisions/corpfin/guidance/cdi-tender-offers-and-schedules.htm.

27 https://www.sec.gov/divisions/corpfin/cf-noaction/2015/abbreviated-offers-debt-securities012315-sec14.pdf.

28 https://www.sec.gov/reportspubs/sec-fast-act-report-2016.pdf.

29 https://www.sec.gov/dera/staff-papers/white-papers/Knyazeva_RegulationA-.pdf.

30 https://www.congress.gov/bill/114th-congress/house-bill/3784.

31 *See, e.g., Apollo Charged with Disclosure and Supervisory Failures* (Aug. 23, 2016), https://www.sec.gov/news/pressrelease/2016-165.html; *AIG Affiliates Charged with Mutual Fund Shares Conflicts* (Mar. 14, 2016), https://www.sec.gov/news/pressrelease/2016-52.html; *Investment Advisers Paying Penalty for Advertising False Performance Claims* (Aug. 25, 2016), https://www.sec.gov/news/pressrelease/2016-167.html.

32 *See, e.g.,* SEC Press Release, *SEC Charges Hedge Fund Manager Leon Cooperman With Insider Trading* (Sept. 21, 2016), https://www.sec.gov/news/pressrelease/2016-189.html; SEC Press Release, *Hedge Fund Managers and Former Government Official Charged in $32 Million Insider Trading Scheme* (June 15, 2016), www.sec.gov/news/pressrelease/2016-119.html; SEC Press Release, *Insider Traders Returning Illegal Profits and Kickbacks* (Mar. 9, 2016), www.sec.gov/news/pressrelease/2016-44.html; SEC Press Release, *SEC Charges Company Executive With Insider Trading* (Feb. 5, 2016), www.sec.gov/news/pressrelease/2016-24.html; SEC Press Release, *Silicon Valley Executive Settles Insider Trading Charges* (May 2, 2016), www.sec.gov/news/pressrelease/2016-79.html; SEC Press Release, *SEC Announces Insider Trading Charges in Case Involving Sports Gambler and Board Member* (May 19, 2016), www.sec.gov/news/pressrelease/2016-92.html; Lit. Rel. No. 23492, *Former Microsoft Corporation Finance Manager Agrees to Settle Insider Trading Charges* (Mar. 18, 2006), https://www.sec.gov/litigation/litreleases/2016/lr23492.htm.

33 *See, e.g.,* SEC Press Release, *Oil Services Company Paying $140 Million Penalty for Accounting Fraud* (Sept. 27, 2016), https://www.sec.gov/news/pressrelease/2016-194.html; SEC Press Release, *SEC Announces Financial Fraud Cases* (Apr. 19, 2016), www.sec.gov/news/pressrelease/2016-74.html; SEC Press Release, *SEC Announces Settlement with Cabela's and its CFO for Misleading Statements in SEC Filings and Earnings Releases* (Apr. 26, 2016), www.sec.gov/litigation/admin/2016/34-77717-s.pdf; Lit. Rel. No. 23544, *SEC Charges Corporate Officers with Earnings Management Scheme Fraud* (May 24, 2016), www.sec.gov/litigation/litreleases/2016/lr23544.html; SEC Press Release, *SEC Bars Corporate VP and Controller for False Accounting* (June 8, 2016), www.sec.gov/news/pressrelease/2016-110.html; SEC Press Release, *Monsanto Paying $80 Million Penalty for Accounting Violations* (Feb. 9, 2016), https://www.sec.gov/news/pressrelease/2016-25.html.

34 *See, e.g.,* SEC Press Release, *SEC Charges Company and Executives for Faulty Evaluations of Internal Controls* (Mar. 10, 2016), www.sec.gov/news/pressrelease/2016-48.html; *In re* Int'l FCStone Inc., Admin. Proc. File No. 3-17207 (Apr. 12, 2016), www.sec.gov/litigation/admin/2016/34-77596.pdf.

35 *See, e.g.,* SEC Press Release, *Ernst & Young, Former Partners Charged with Violating Auditor Independence Rules* (Sept. 19, 2016), www.sec.gov/news/pressrelease/2016-187.html.

36 *See, e.g.,* SEC Press Release, *Teva Pharmaceutical Paying $519 Million to Settle FCPA Charges* (Dec. 22, 2016), https://www.sec.gov/news/pressrelease/2016-277.html; SEC Press Release, *SEC Charges Brazil-Based Petrochemical Company with FCPA Violations* (Dec. 21, 2016), https://www.sec.gov/litigation/litreleases/2016/lr23705.htm; SEC Press Release, *JPMorgan Chase Paying $264 Million to Settle FCPA Charges* (Nov. 17, 2016), https://www.sec.gov/news/pressrelease/2016-241.html; SEC Press Release, *Och-Ziff Hedge Fund Settles FCPA Charges* (Sept. 29, 2016), https://www.sec.gov/news/pressrelease/2016-203.html; SEC Press Release, *VimpelCom to Pay $795 Million in Global Settlement for FCPA Violations* (Feb. 18, 2016), https://www.sec.gov/news/pressrelease/2016-34.html.

37 U.S. Sec. & Exch. Comm'n v. Jensen, 835 F.3d 1100 (9th Cir. 2016).

38 *See* SEC's 2016 Annual Report to Congress on the Dodd-Frank Whistleblower Program (Nov. 15, 2016), https://www.sec.gov/whistleblower/reportspubs/annual-reports/owb-annual-report-2016.pdf.

39 SEC Press Release, *$22 Million Whistleblower Award for Company Insider Who Helped Uncover Fraud* (Aug. 30, 2016), https://www.sec.gov/news/pressrelease/2016-172.html.

40 SEC Press Release, *SEC Issues $17 Million Whistleblower Award* (June 9, 2016), https://www.sec.gov/news/pressrelease/2016-114.html.

41 SEC Press Release, *SEC Issues $20 Million Whistleblower Award* (Nov. 14, 2016), https://www.sec.gov/news/pressrelease/2016-237.html.

42 SEC Press Release, *SEC Awards $3.5 Million to Whistleblower* (Dec. 5, 2016), https://www.sec.gov/news/pressrelease/2016-255.html.

43 SEC Press Release, *SEC Awards Nearly $1 Million to Whistleblower* (Dec. 9, 2016), https://www.sec.gov/news/pressrelease/2016-260.html.

44 *See, e.g.*, SEC Press Release, *Company Settles Charges in Whistleblower Retaliation Case* (Dec. 20, 2016), https://www.sec.gov/news/pressrelease/2016-270.html; SEC Press Release, *Company Violated Rule Aimed at Protecting Potential Whistleblowers* (Dec. 19, 2016), https://www.sec.gov/news/pressrelease/2016-268.html; SEC Press Release, *SEC Charges Anheuser-Busch InBev With Violating FCPA and Whistleblower Protection Laws* (Sept. 28, 2016), https://www.sec.gov/news/pressrelease/2016-196.html; SEC Press Release, *Company Punished for Severance Agreements that Removed Financial Incentives for Whistleblowing* (Aug. 16, 2016), https://www.sec.gov/news/pressrelease/2016-164.html; SEC Press Release, *Company Paying Penalty for Violating Key Whistleblower Protection Rule* (Aug. 10, 2016), https://www.sec.gov/news/pressrelease/2016-157.html; SEC Press Release, *Merrill Lynch to Pay $415 Million for Misusing Customer Cash and Putting Customer Securities at Risk* (June 23, 2016), https://www.sec.gov/news/pressrelease/2016-128.html.

45 SEC Press Release, *SEC: Casino-Gaming Company Retaliated Against Whistleblower* (Sept. 29, 2016), https://www.sec.gov/news/pressrelease/2016-204.html; *see also* SEC Press Release, *Company Settles Charges in Whistleblower Retaliation Case* (Dec. 20, 2016), https://www.sec.gov/news/pressrelease/2016-270.html.

46 https://www.sec.gov/divisions/corpfin/guidance/nongaapinterp.htm.

47 *See* Questions 240.11, 240.15-16, https://www.sec.gov/divisions/corpfin/guidance/securitiesactrules-interps.htm; Questions 126.06, 126.42-44, https://www.sec.gov/divisions/corpfin/guidance/safinterp.htm.

48 *See* Questions 182.12-14, https://www.sec.gov/divisions/corpfin/guidance/securitiesactrules-interps.htm#182.12.

49 *See* Question 256.34, https://www.sec.gov/divisions/corpfin/guidance/securitiesactrules-interps.htm#182.12.

50 *See* Question 301.03, https://www.sec.gov/divisions/corpfin/guidance/regulation-ab-interps.htm.

51 https://www.sec.gov/divisions/corpfin/guidance/form-abs-ee-interps.htm.

52 https://www.sec.gov/divisions/corpfin/abs020916.pdf.

53 *See* Questions 128C.01-05, https://www.sec.gov/divisions/corpfin/guidance/regs-kinterp.htm#128c.01.

54 https://www.sec.gov/divisions/corpfin/guidance/exchange-act-rule-14a-4a3-301.htm.

55 *See* Questions 140.02, 240.04 (withdrawn), https://www.sec.gov/divisions/corpfin/guidance/regs-kinterp.htm.

56 https://www.sec.gov/divisions/corpfin/guidance/reg-crowdfunding-interps.htm.

57 *See* Question 103.11, https://www.sec.gov/divisions/corpfin/guidance/reg13d-interp.htm.

58 *See* Question 125.13, https://www.sec.gov/divisions/corpfin/guidance/safinterp.htm.

59 *See* Questions 138.05-10, https://www.sec.gov/divisions/corpfin/guidance/securitiesactrules-interps.htm.

60 *See* Questions 110.03-07, https://www.sec.gov/divisions/corpfin/guidance/exchangeactforms-interps.htm; Questions 110.02-08, https://www.sec.gov/divisions/corpfin/guidance/exchangeactrules-interps.htm; Questions 203.17-23, https://www.sec.gov/divisions/corpfin/guidance/securitiesactrules-interps.htm.