

II. 2003 Conference

The Commission and NASAA are planning the 2003 Conference on Federal-State Securities Regulation, scheduled to be held on April 7, 2003 in Washington, DC. The 2003 conference will be the twentieth such conference to be held pursuant to the directive in section 19(d) of the Securities Act. At the conference, Commission and NASAA representatives will divide into working groups in the areas of corporation finance, market regulation and oversight, investment management, investor education, and enforcement. Each group will discuss methods to enhance cooperation in securities matters and improve the efficiency and effectiveness of federal and state securities regulation. Generally, to encourage open and frank discussion, only Commission and NASAA representatives may attend the conference. Each working group, however, in its discretion may invite specific self-regulatory organizations ("SROs") to attend and participate in certain sessions.

The Commission and NASAA are preparing the conference agenda. We invite the public, securities associations, SROs, agencies, and private organizations to participate by submitting written comments on the issues set forth below. In addition, we request comment on other appropriate subjects. We will make the comments available to all conference attendees.

III. Tentative Agenda and Request for Comments

The tentative agenda for the conference includes the topics discussed below in the areas of corporation finance, market regulation, investment management, investor education and assistance, and enforcement.

(1) Corporation Finance Issues

A. Commission Rules Implementing the Sarbanes-Oxley Act and other Recent Rulemaking; Impact on Smaller Companies

In the wake of a series of corporate and accounting scandals, President George W. Bush signed into law the Sarbanes-Oxley Act of 2002 (the "Sarbanes-Oxley Act") on July 30, 2002.⁶ Among other things, the Act directs the Commission to promulgate rules and regulations that will improve the quality of corporate disclosure and financial reporting, strengthen the independence of auditing firms, and

increase the responsibility of management for corporate disclosures and financial statements.

The Sarbanes-Oxley Act specified that many of the new rules had to be effective within 180 days of enactment. We have already issued a number of final rules under the Sarbanes-Oxley Act and intend to issue the remaining final rules within the mandated time frames.

The final rules relevant to the 19(d) conference include the following:⁷

- Release 34-46421—August 27, 2002—Ownership Reports and Trading by Officers, Directors, and Principal Security Holders.
- Release 33-8124—August 28, 2002—Certification of Disclosure in Companies' Quarterly and Annual Reports.
- Release No. 33-8176—January 22, 2003—Conditions for Use of Non-GAAP Financial Measures.
- Release No. 34-47225—January 22, 2003—Insider Trades During Pension Fund Blackout Periods.
- Release No. 33-8177—January 23, 2003—Disclosure Required by Sections 406 and 407 of the Sarbanes-Oxley Act of 2002.
- Release No. 33-8182—January 28, 2003—Disclosure in Management's Discussion and Analysis about Off-Balance Sheet Arrangements and Aggregate Contractual Obligations.
- Release No. 33-8183—January 28, 2003—Strengthening the Commission's Requirements Regarding Auditor Independence.
- Release 33-8185—January 28, 2003—Implementation of Standards of Professional Conduct for Attorneys.

Smaller companies have expressed concerns with respect to several of the Commission's recent proposed and final rules, including:

- The ability of smaller companies to meet the evaluation and reporting requirements for a company's internal controls and procedures for financial reporting and its disclosure controls and procedures with respect to annual and quarterly reports.
- The requirement relating to including an audit committee financial expert on a company's audit committee, given the difficulty small companies have in finding qualified board members.
- The increase in Form 8-K filings that would result from adoption of the Commission's proposed release on Form 8-K disclosure requirements, which

would add 11 new items to the current list of items requiring the filing of a Form 8-K, accelerate the filing requirement to two days, move two disclosure items currently required to be included in companies' annual and quarterly reports to Form 8-K and amend several of the existing Form 8-K disclosure items.⁸

- The additional audit costs that may result from adoption of the Commission's proposed rules on disclosure of critical accounting policies.⁹

- The additional costs and obligations imposed under the Commission's new rule on auditor independence and proposed rule on standards relating to listed company audit committees.¹⁰

Since many of these concerns result from recent actions, their cumulative effects on smaller public companies are difficult to assess. We expect the agenda for the conference to include a discussion of the impact of the Sarbanes-Oxley Act and other recent corporate governance and disclosure reforms on smaller public companies and whether accommodations are necessary or desirable. Conferees are encouraged to discuss initiatives aimed at improving the financial reporting and disclosure system. The Division may take the information developed in these discussions into account in determining whether and how to consider the impact of the Sarbanes-Oxley Act on smaller companies.

B. Transactions Involving "Qualified Purchasers"

Under section 18 of the Securities Act, transactions involving "qualified purchasers" are subject to registration under the federal securities laws only and not under state securities laws.¹¹ The term "qualified purchaser" is not defined in the statute and must be defined by the Commission. On December 19, 2001, we published a release proposing a definition for the term "qualified purchaser." The release proposed to add the definition as an amendment to Rule 146 under the Securities Act.¹² As proposed, "qualified purchaser" would be defined to have the same meaning as the term "accredited investor" under Rule 501 of Regulation D.¹³ If adopted, securities

⁶ Release No. 33-8106 (June 17, 2002) [67 FR 42914].

⁹ Release No. 33-8098 (May 10, 2002) [67 FR 35620].

¹⁰ Release Nos. 34-47137 (January 8, 2003) [68 FR 2638], 33-8183 (January 28, 2003) [68 FR 6006].

¹¹ 15 U.S.C. 77r.

¹² Release No. 33-8041 (Dec. 19, 2001) [66 FR 66839].

¹³ 17 CFR 230.501.

⁶ Sarbanes-Oxley Act of 2002, Pub. L. 107-204, 116 Stat. 745 (July 30, 2002).

⁷ The Commission also adopted rules that would accelerate the periodic reporting filing dates and require disclosure concerning Web site access to reports. Release No. 33-8128 (Sept. 5, 2002) [67 FR 58480].