

of interest they may have in providing voting recommendations.

We'll be asking about whether shareholders should be more easily able to communicate with one another.

And, finally, we'll be asking whether any rule amendments are necessary to ensure that our federal proxy rules are flexible enough to adapt to changing legal developments at the state level, such as dual record dates for annual meetings.

Disclosure Requirement Update

Finally, in the coming year, we expect to begin a comprehensive review of our line-item disclosure requirements for companies in their quarterly and annual filings. Our goal is to determine if some information we already require should be omitted, and if some information we don't require should be added. Again, our efforts will be targeted at making sure that investors are receiving the right information, and not just more information.

Conclusion

I strongly believe that proxy voting is an important tool for facilitating corporate accountability and, through that, improving investor confidence in the integrity of the equity markets. Although we have much work to do to increase the participation of all investors, these votes matter. They have legal and economic significance.

As we move forward with our ambitious agenda, I again ask you to help us improve the system. Your willingness to share your expertise and ideas is key to successful reform, and to continuing our progress in stabilizing our capital markets and making them stronger for both investors and companies.

SEC/SRO Update

SEC Charges 13 Additional Individuals and Entities in Galleon Insider Trading Case; SEC Proposed Amendments to Shed Light on Dark Pools; SEC and CFTC Issue Joint Report on Harmonization; SEC Delays Vote on Shareholder Access Proposals; SEC Proposes Amendments to E-Proxy Rules; and SEC Launches Investor Education Website

BY PETER H. SCHWARTZ &
CRYSTAL L. GORDON

Peter H. Schwartz is a partner, and Crystal L. Gordon is an associate, in the law firm of Davis Graham & Stubbs LLP in Denver, Colorado. The authors gratefully acknowledge the assistance of Beth C. Kramer in the preparation of this article. Contact: Peter.Schwartz@dgsllaw.com or Crystal.Gordon@dgsllaw.com.

SEC Charges 13 Additional Individuals and Entities in Galleon Insider Trading Case

On Nov. 5, the Securities and Exchange Commission announced additional charges in its insider trading enforcement action against Galleon Management LP and its CEO by charging 13 additional individuals and entities, including three hedge fund managers, three professional traders at a New York-based proprietary trading firm, and a senior executive at a publicly-traded, Cal-

ifornia-based developer of networking technologies.¹

The SEC's amended complaint, filed in federal court in Manhattan, names sources for the confidential insider tips to Galleon's CEO and identifies others who allegedly traded on the basis of non-public information in an alleged scheme that cumulatively generated more than \$33 million in illicit gains. The SEC previously brought charges against the CEO, Galleon, and six others on Oct. 16.²

The SEC's complaint charges each of the defendants with violations of Section 10(b) of the Securities Exchange Act of 1934 (the Exchange Act) and Rule 10b-5 promulgated thereunder, and, all of the defendants except five individuals, were charged with violations of Section 17(a) of the Securities Act of 1933. The complaint seeks a final judgment permanently enjoining the defendants from future violations of the above provisions of the federal securities laws, ordering them to disgorge their ill-gotten gains plus prejudgment interest, and ordering them to pay financial penalties. The complaint also seeks to permanently prohibit three individuals from acting as an officer or director of any registered public company.

The SEC noted in the release that its investigation was continuing.

SEC Proposed Amendments to Shed Light on Dark Pools

On Nov. 13, the SEC proposed amending the regulatory requirements of the Exchange Act that apply to non-public trading interest in National Market System (NMS) stocks, including so-called "dark pools" of liquidity.³ "Dark pools" generally consist of alternative trading systems (ATSs) that are not included in the widely disseminated, public consolidated quotation data for NMS stocks.

The proposed release adopts a three-prong approach by proposing amendments to:

- the definition of "bid" or "offer" in Exchange Act quoting requirements to apply expressly to actionable indications of interest (IOIs) privately transmitted by dark pools and other trading venues to selected market participants;
- the display obligations of ATSs in Regulation ATS under the Exchange Act, including a substantial lowering of the trading volume threshold in Regulation ATS that triggers public display obligations for ATSs from 5% of the trading volume in that particular NMS stock to 0.25%; and
- the joint-industry plans for publicly disseminating consolidated trade data to require real-time disclosure of the identity of dark pools and other ATSs on the reports of their executed trades.

The proposed amended definitions of "bid and ask" would exclude, however, IOIs for large sizes that are transmitted in the context of a targeted size discovery mechanism.

Comments on the proposal are due by Feb. 22, 2010.

SEC and CFTC Issue Joint Report on Harmonization

On Oct. 16, the SEC and the Commodity Futures Trading Commission (CFTC) issued a joint report identifying areas where the agencies' regulatory schemes differ and recommending actions to address those differences, where the agencies deemed appropriate (the Joint Report).⁴

In June, the White House released a White Paper on Financial Regulatory Reform calling on the SEC and CFTC to "make recommendations to Congress for changes to statutes and regulations that would harmonize regulation of futures and securities."⁵ The Joint Report includes 20 recommendations to enhance enforcement powers, strengthen market and intermediary oversight and improve operational coordination between the two agencies.

Over the past several months, the SEC and the CFTC engaged in extensive discussions, including their first ever joint public meetings last month.⁶ According to the agencies, the meetings solicited views from members of the investor community, academics, industry experts and market participants on the current regulatory scheme, harmonization of the agencies' rules and recommendations for changes to statutes and regulations. The

agencies also solicited written comments to further assist their deliberations.

SEC Delays Vote on Shareholder Access Proposals

On June 10, the SEC proposed amendments to the federal proxy rules to expand access to the board of directors' nomination process to eligible shareholders.⁷ The proposed rule changes included the addition of new Rule 14a-11 and an amendment to Rule 14a-8, which together, would allow eligible shareholders under certain circumstances to nominate directors for inclusion in a company's proxy materials and to use shareholder proposals to modify the company's nomination procedures or disclosure requirements for shareholder nominations.⁸

However, on Oct. 2, after receiving more than 500 comments, the SEC announced that it would delay its vote on amendments designed to facilitate shareholders' rights to nominate directors.⁹ Chairman Mary L. Schapiro commented that, "We have received hundreds of comments that we are reviewing to ensure our rules are fair and appropriate."¹⁰ Chairman Schapiro indicated that the SEC "hopes to finalize the rules early in 2010."¹¹

Given the delay in finalizing the amendments, it is unlikely that the rules enacted in 2010 will apply to the 2010 proxy season. SEC Commissioner Elisse B. Walter has remarked, "Although I can't give you a definite date, I expect we will likely move forward and consider an adopting release sometime in early 2010. This would mean that final rules would not be in place at the beginning of next year's proxy season."¹²

SEC Proposes Amendments to E-Proxy Rules

In connection with a number of recent proposals to the proxy solicitation process, on Oct. 14, the SEC published proposed amendments to the federal proxy rules to improve the notice and access model for furnishing proxy materials to shareholders.¹³ The amendments are intended to increase shareholder responses to proxy solicitations, particularly retail account holders, in con-

nection with the notice-only option under the notice and access model.¹⁴

The amendments would allow issuers to depart from the prescribed language currently required under Rule 14a-6(d), and address only certain topics. The SEC hopes that the flexibility will allow issuers and other soliciting persons to develop a more effective explanation of the importance of the notice and provide clearer guidance for shareholders as to how to access the proxy materials online and vote their shares.¹⁵

In addition, the SEC proposed revising its rules to allow issuers and other proxy proponents (known as "contestants") to include with the notice, explanatory materials regarding the process of receiving and reviewing proxy materials and voting. The SEC hopes that the inclusion of explanatory materials will reduce confusion and increase shareholder participation.¹⁶

Finally, the SEC proposed amending Rule 14a-16. As currently drafted, the amendment states:

"a contestant is required to send its notice within 10 days after the issuer first sends its notice or proxy statement, the practical effect of Rule 14a-16, as currently written, is to limit that person's ability to use the notice-only option. This is because Rule 14a-16(b)(4) requires the soliciting person to make a means to execute a proxy available to shareholders at the time the notice is first sent to shareholders. Rule 14a-4(f), however, prohibits a person from providing a form of proxy unless it is accompanied, or preceded, by a definitive proxy statement. Because the soliciting person may not have finished revising its proxy statement and may not have filed its definitive proxy statement with the [SEC] by that time, the notice and access rules, combined with current staff review practice, may, in many circumstances, prevent a soliciting person other than the issuer from using the notice-only option for a proxy contest if that contestant's initial proxy statement filing is made in response

to the issuer's definitive proxy statement filing."¹⁷

Accordingly, under the proposed amendments, contestants relying on the notice-only option would be required to file a preliminary proxy within 10 days after the issuer files its definitive proxy statement and send notice to shareholders no later than the date on which it files its definitive proxy statement. The proposed amendment would provide time for contestants to use the notice-only option, an option not previously available to contestants given the time constraints discussed above.¹⁸

SEC Launches Investor Education Website

On Oct. 22, the SEC launched a new website devoted exclusively to investor education, www.investor.gov.¹⁹ According to the press release, the new website includes "in-depth information and "top tips" on how to invest wisely, plan for the future, and avoid being scammed."²⁰ The site includes, among other things, sections for those people getting started in investing, looking for information on saving for a child's education, and planning for retirement.²¹

In addition, the investor.gov website offers a section exclusively in Spanish. "The 'En Español' portion presents information about what to do if an investor feels that he or she has been a fraud victim, as well as a Spanish-language podcast explaining the history and functions of the SEC."²²

The investor.gov website is the latest in a series of social media initiatives undertaken by the SEC.²³ In addition to the investor.gov website, "investors may receive information and instant e-mail alerts on more than 80 topics of interest to investors as well as other market participants."²⁴ The SEC reaches investors through other social media channels such as Twitter and YouTube as well. Some examples of these types of communications are:

- Investor Information: www.twitter.com/SEC_Investor_Ed.

- News Releases and Alerts: www.twitter.com/SEC_News.
- Enforcement Actions: www.twitter.com/SEC_Actions.
- Careers at the SEC: www.twitter.com/SEC_Jobs.
- You Tube channel: www.YouTube.com/SEC_Views.

NOTES

1. See SEC. Lit. Rel. No. 21284, available at <http://www.sec.gov/litigation/litreleases/2009/lr21284.htm>. See also SEC Press Rel. No. 2009-235 (Nov. 5, 2009), available at <http://www.sec.gov/news/press/2009/2009-235.htm>. On the same day, the SEC brought insider trading charges against nine defendants in a related case involving alleged serial insider trading by a ring of Wall Street traders and hedge funds (including the same proprietary trading firm and certain of its personnel) who made over \$20 million trading ahead of corporate acquisition announcements using inside information allegedly provided by an attorney in exchange for kickbacks. See SEC. Lit. Rel. No. 21283, available at <http://www.sec.gov/litigation/litreleases/2009/lr21283.htm>. See also SEC Press Rel. No. 2009-236 (Nov. 5, 2009), available at <http://www.sec.gov/news/press/2009/2009-236.htm>.
2. See SEC. Lit. Rel. No. 21255, available at <http://www.sec.gov/litigation/litreleases/2009/lr21255.htm>. See also SEC Press Rel. No. 2009-221 (Oct. 16, 2009), available at <http://www.sec.gov/news/press/2009/2009-221.htm>.
3. See SEC Rel. No. 34-60997 (Nov. 13, 2009), available at <http://www.sec.gov/rules/proposed/2009/34-60997.pdf>. See also SEC Press Rel. No. 2009-223 (Oct. 21, 2009), available at <http://www.sec.gov/news/press/2009/2009-223.htm>.
4. See *Joint Report of the SEC and the CFTC on Harmonization of Regulation*, available at <http://www.sec.gov/news/press/2009/cftcjoint-report101609.pdf>. See also SEC Press Rel. No. 2009-218 (Oct. 16, 2009), available at <http://www.sec.gov/news/press/2009/2009-218.htm>, and SEC Press Rel. No. 2009-211 (Sept. 30, 2009), available at <http://www.sec.gov/news/press/2009/2009-211.htm>.
5. See Financial Regulatory Reform: A New Foundation – Rebuilding Financial Supervision and Regulation, at 7, available at <http://www>.

- financialstability.gov/docs/regs/FinalReport_web.pdf.
6. See SEC Press Rel. No. 2009-190 (Sept. 1, 2009), available at <http://www.sec.gov/news/press/2009/2009-190.htm> and SEC Press Rel. No. 2009-186 (Aug. 20, 2009), available at <http://www.sec.gov/news/press/2009/2009-186.htm>.
 7. See Facilitating Shareholder Director Nominations, SEC Release No. 9046 (June 10, 2009), available at <http://sec.gov/rules/proposed/2009/33-9046.pdf>.
 8. See Facilitating Shareholder Director Nominations.
 9. See US SEC Won't Finalize Proxy Access Until Early 2010, available at, <http://www.reuters.com/article/americasRegulatoryNews/idUSN0213181320091002>.
 10. See US SEC Won't Finalize Proxy Access Until Early 2010.
 11. See US SEC Won't Finalize Proxy Access Until Early 2010.
 12. *SEC Rulemaking—"Advancing the Law" to Protect Investors*, Address at the 48th Annual Corporate Counsel Institute by Commissioner Elisse B. Walter (Oct. 2, 2009), available at <http://www.sec.gov/news/speech/2009/spch100209ebw.htm>.
 13. SEC Proposed Rule, Amendments to Rules Requiring Internet Availability of Proxy Materials, Release Nos. 33-9073 and 34-60825 (October 14, 2009).
 14. SEC Proposed Rule, Amendments to Rules Requiring Internet Availability of Proxy Materials.
 15. SEC Proposed Rule, Amendments to Rules Requiring Internet Availability of Proxy Materials.
 16. SEC Proposed Rule, Amendments to Rules Requiring Internet Availability of Proxy Materials.
 17. SEC Proposed Rule, Amendments to Rules Requiring Internet Availability of Proxy Materials.
 18. SEC Proposed Rule, Amendments to Rules Requiring Internet Availability of Proxy Materials.
 19. See *SEC Launches Investor.gov*, SEC Release 2009-224 (October 22, 2009), available at, <http://www.sec.gov/news/press/2009/2009-224.htm>.
 20. See *SEC Launches Investor.gov*, SEC Release 2009-224 (October 22, 2009), available at, <http://www.sec.gov/news/press/2009/2009-224.htm>.
 21. See *SEC Launches Investor.gov*, SEC Release 2009-224 (October 22, 2009), available at, <http://www.sec.gov/news/press/2009/2009-224.htm>.
 22. See *SEC Launches Investor.gov*, SEC Release 2009-224 (October 22, 2009), available at, <http://www.sec.gov/news/press/2009/2009-224.htm>.
 23. See *SEC Launches Investor.gov*, SEC Release 2009-224 (October 22, 2009), available at, <http://www.sec.gov/news/press/2009/2009-224.htm>.
 24. See *SEC Launches Investor.gov*, SEC Release 2009-224 (October 22, 2009), available at, <http://www.sec.gov/news/press/2009/2009-224.htm>.

West Legalworks™ offers your more

With over 400 events annually, West Legalworks gives you opportunities to learn from our over 2,000 world-class speakers and faculty. Choose from any one of our events covering business of law, practice of law, and other legal and business topics.

More conferences. More experts. More choices.

Conferences

West Legalworks offers events throughout the United States, with speakers and faculty from some of the country's premier law firms and government entities

Webcasts

Catch up on breaking news and developments in the legal industry through our partnership with West LegalEdcenter, the nation's leading continuing legal education (CLE) service

Publications

Stay ahead of changes to the legal industry with books and newsletters covering current topics that affect you and your profession

Government Contract Training

Access training on government and commercial contracting, international principles, construction programs, and related intellectual property issues through Federal Publications Seminars

You choose the topic area that's relevant to you

Corporate Representation & Governance
Employment/Labor Law
Financial Services
Intellectual Property
Professional Development/Business of Law
Employee Benefits/Pensions

Securities
Ethics
Government Contracting
Litigation
Technology

See what we have in store for you.
Visit us at westlegalworks.com/events.

WEST®

Wall Street LAWYER

West Legalworks
195 Broadway, 9th Floor
New York, NY 10007

FIRST CLASS
U.S. POSTAGE

PAID
WEST

Wall Street LAWYER

West Legalworks

195 Broadway, 9th Floor, New York, NY 10007

Phone: 212-337-8444 or 800-308-1700

Fax: 212-337-8445

E-mail: west.legalworksregistration@thomsonreuters.com

Web: www.westlegalworks.com

WEST®

YES! Rush me *Wall Street Lawyer* and enter my one-year trial subscription (12 issues) at the price of \$564.00. After 30 days, I will honor your invoice or cancel without obligation.

Name _____

Company _____

Street Address _____

City/State/Zip _____

Phone _____

Fax _____

E-mail _____

METHOD OF PAYMENT

Check enclosed (to West Legalworks)

BILL ME VISA MASTERCARD AMEX

Account # _____

Exp. Date _____

Signature _____

Postage charged separately. All prices are subject to sales tax where applicable.