

Charles C Shulman, Esq, LLC

917.747.2541 or 646.350.0615

cshulman@ebeclaw.com

www.EBEC Law.com

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SEC Form 8-K - New Developments

Form 8-K Generally. An SEC Form 8-K is required to be filed within four business days of material events, e.g., adoption or amendment of material definitive agreements not made in the ordinary course, bankruptcy, completion of acquisition or disposition, public disclosure of material non-public information regarding the company's results of operations or financial condition, deregistering from a securities exchange, changes in accountants or non-reliance on previously issued financial statements, departures of directors or senior executive officers, new directors or senior executive officers, material contracts for the executive officer, entering into (or materially modifying) material compensation plan or arrangement with the senior executive officers and material grants or awards to such executive officers, etc. If a press release is to be issued about appointment of a senior executive officer, the company can delay filing Form 8-K until the press release is issued.

NYSE Eliminates the Need for Press Releases if Information Made Public in Form 8-K or Otherwise. The New York Stock Exchange on April 8, 2009 issued a proposal to the SEC, which the SEC made immediately effective in 74 Fed. Reg. 20516 (May 4, 2009), <http://www.smartpdf.com/register/2009/may/04/E9-10119.pdf>, that eliminates the requirement under NYSE Listed Company Manual § 202.06 to file a press release for any news or information that that might reasonably be expected to materially affect the market for its securities (immediate release policy). Instead, the requirement to release such information to the public can be satisfied with filing a Form 8-K or other public disclosure permitted under Regulation FD.

Minor Revisions to Form 8-K C&DIs. On April 24, 2009 the SEC made the following minor revisions to its Compliance & Disclosure Interpretations (C&DIs) regarding Form 8-K, <http://www.sec.gov/divisions/corpfin/guidance/8-kinterp.htm>: (i) Q&A 106.07 was added, providing that preliminary earnings releases must be disclosed on Form 8-K pursuant to Item 2.02; and (ii) a cross-reference in Q&A 117.12 was corrected. (Q&A 117.12, as added April 2, 2008, provides that where an annual non-equity incentive award is disclosed pursuant to Item 5.02(e), the specific target levels do not have to be disclosed if they would result in competitive harm to the company.)

Minor Revisions to Regulation S-K C&DIs. Minor revisions were also made on April 24, 2009 to the Compliance & Disclosure Interpretations (C&DIs) regarding Regulation S-K, <http://www.sec.gov/divisions/corpfin/guidance/regs-kinterp.htm>. The changes relate to: (i) Item 10, new Q&A 102.05 regarding non-GAAP financial measures; (ii) Item 301, new Q&A 108.01 regarding acceptable source of exchange-rate information; and (iii) Item 215, new Q&A 215.02 regarding management report on internal controls over financial reporting after a reverse acquisition. There were no changes from the July 3, 2008 C&DIs with regard to Item 402 – Executive Compensation Disclosure.