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[GOVERNMENT]

SEC Proposed New Regulation G on Non-GAAP Financials | Stephen Barlas, Editor

DAYS BEFORE CHAIRMAN HARVEY Pitt threw in the towel, the Securities & Exchange Commission (SEC) published another one of the proposed rules stemming from the Sarbanes-Oxley bill, the congressional legislation passed this summer aimed at tightening up corporate accounting and auditing. This particular proposed rule introduces a new Regulation G and affects public disclosure or release of material information that includes a "non-GAAP financial measure." That would be defined as a numerical measure of a company's financial performance that: (1) excludes amounts, or is subject to adjustments that have the effect of excluding amounts, that are included in the comparable measure calculated and presented in accordance with GAAP in the statement of income, balance sheet, or statement of cash flows (or equivalent statements) of the issuer; or (2) includes amounts, or is subject to adjustments that have the effect of including amounts, that are excluded from the comparable measure so calculated and presented. Statistical and operating measures would not be covered. Regulation G would prohibit material misstatements or omissions that would make the presentation of the material non-GAAP financial measure, under the circumstances in which it is made, misleading. Regulation G would provide a limited exception for foreign private issuers.

SEC Addresses Off-Balance-Sheet Accounting

Actually, the SEC is stamping out new accounting proposals like links on a Sarbanes-Oxley sausage. Of course, one continued on page 22

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[GOV'T] *cont'd from p. 19*
of the targets of the congressional accounting bill was Enron-style "off-balance sheet" accounting hijinks. The SEC's proposed rule would require a company to disclose in its annual and quarterly financial reports all material off-balance-sheet transactions, arrangements, obligations (including contingent obligations), and other relationships of the company with unconsolidated entities or other persons, which may have a material current or future effect on financial condition, changes in financial condition, results of operations, liquidity, capital expenditures, capital resources, or significant components of revenues or expenses.

These transactions and relationships would have to be disclosed in the "Management's Discussion and Analysis of Financial Condition and Results of Operations" (MD&A) section of the company's disclosure documents. The SEC had addressed MD&A disclosure in January 2002, before Sarbanes-Oxley was passed. But that legislation forced the SEC to go beyond its January 2002 requirements, particularly by replacing the January 2002 disclosure trigger—if the transaction is "reasonably likely" to have a material effect on the company—with a lower threshold, if the likelihood of the transaction having a material effect on the company is more than "remote." ■

[ETHICS] *cont'd from p. 18*
meant by his remark. Hansen answered by asking, "Do you remember when we adopted this drug-free policy and put it in our work contract two years ago? Well, about a year later I found out from the executive day gate watchman that one of the VPs used to frequently come back from lunch loaded to the gills. His excuse was he was buying 'liquid lunches' for good customers. But you all know that drinking during working hours is also covered under our glorious 'no drugs' policy." The locker room got very quiet as Hansen continued.

"The guard tells me that after doing this for over three months, he doesn't see this VP for about three or four weeks. And then, one day he shows up but parks in a different space from where he had been assigned. Also, he stops going to lunch by himself. He always has some other big brass with him, and now he comes back stone cold sober within an hour of when he left. The word the guard got was that after management told him to clean up his act, the guy kept right on doing it. And when he was gone for nearly a month, they sent him some place to dry out. When he came back, they gave him a different job.

"Guess the VP got bumped down a little, but he sure didn't lose his job. And he got a lot more than just two chances! If you guys ask me, the blue collar men that make this place go don't get the same 'fair' treatment the bigwigs do under our 'no drugs' policy. If they screw up, they get special help, and they sure don't get fired!"

By the time Hansen had finished with his story about the company's VP, it was nearly time for the second shift to begin. "One thing," Hansen said to Adams, "the union sure ought to appeal this raw deal that Brock got. If we can't get the same treatment from management for our own members, what good is having this 'no drugs' agreement in our contract? They can go out and have a four-martini lunch and call it being sociable with a customer. What's wrong with us having the same rights? Let's put this on our agenda for next week's union meeting, and try to take care of Brock!" The group broke up with a loud round of "Yeah! Let's do that!"

QUESTIONS:

1. What do you see as the major lesson that should be learned from this case? Is alcoholic use during working hours with customers more or less detrimental to the company than substance smoking on the job? Do the privacy rights of employees preclude management from searching employee desks and lockers or reviewing employees' e-mail messages at will?
2. Do you believe this case illustrates a dual standard for ethical conduct? Should the same rules exist for workers at all levels within a company's structure, or do members of management deserve special treatment? Why or why not?
3. When the union brings Brockington's dismissal appeal to XYZ's management, how should management react if they sincerely desire an effective "drug free" program in their company and an ethics policy that all persons can live by?—*Roland Madison*

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