The SECâ€™s December Agenda

In-House News:

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The U.S. Securities and Exchange Commission (SEC) will hold an open meeting on December 13 to vote on proposals that would make delisting from U.S. stock exchanges easier for foreign companies and to clarify laws governing proxy fights.

Currently, foreign companies that want to remove their securities from U.S. stock exchanges must have fewer than 300 U.S. shareholders. However, companies based overseas argue that the law is impractical because it is too difficult to verify the residency of such a specific number of shareholders.

The proposed change would allow large foreign companies with minimum market capitalizations of $700 million to delist if 10 percent or less of their total shares are held by U.S. investors and if the average amount of daily trading in the United States is less than five percent of the average amount of daily trading in their home markets. The change, which was proposed last December, would also allow smaller companies to delist if no more than five percent of their total shares are held by U.S. investors.

Even though the proposed change would make it easier for companies to delist, it might actually encourage more listings. Right now, many companies are reluctant to list because they are worried they will not be able to exit U.S. stock markets later, which is why European trade organizations are strong advocates of the change.

The SEC unanimously approved a draft of the foreign company delisting rule last year, and the final rule is expected to be approved.

During the December meeting, the Federal Communications Commission (FCC) also plans to finalize a proposal that would allow corporate proxy materials to be posted online. "This will permit discussion of how the Internet can advance the dissemination and exchange of information among shareholders and companies, and thereby improve the entire proxy process," SEC Chairman Christopher Cox said.

Currently, parties involved in proxy campaigns must mail solicitations to investors. The proposed change would eliminate the costs associated with mailing, making the process easier for dissident shareholders involved in proxy fights against management. Since all five commissioners approved the draft rule in August, the final rule is expected to be approved.

The SEC will also introduce new shareholder proxy rules that will clarify companies' obligations and require them to discuss dissident initiatives on corporate proxies at the meeting.

The revisions to the shareholder proxy proposal rules were prompted by a recent federal appeals court decision. The court overturned the SEC's decision to let American International Group, Inc., exclude shareholder proposals relating to elections from corporate proxy materials.

The SEC initially announced that it would consider the shareholder proxy proposal on October 18. However, SEC Commissioner Annette Nazareth told CNN reporters, "We've decided not to do some quick fix next week." Nazareth said she thinks the delay will allow the agency to consider a broader approach to the issues raised by the September court decision, although postponing action until December makes it unlikely that any changes will be implemented in time for the 2007 corporate proxy season.

In addition, the SEC will provide guidance on implementation for Section 404 of the Sarbanes-Oxley Act of 2002 at the upcoming meeting. Section 404 is a controversial provision that requires companies to publicly report information regarding their financial records. Companies must also have outside auditors review and evaluate the records.

The SEC plans to discuss ways to help corporate managers comply with the requirements. "The Commission's proposed guidance to management is an important next step in making Section 404 of the Sarbanes-Oxley Act cost-effective and risk-based," Cox said.

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