SEWARD & KISSEL LLP

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- On September 14th, the SEC's Division of Corporate Finance published its Compliance and Disclosure Interpretations (the "CDI") relating to Sections 13(d) and 13(g) under the Securities Exchange Act of 1934. In addition to providing new guidance, the CDI also replaces the SEC's prior interpretations relating to these sections. The CDI now states that the only filer who can switch from a 13D to a 13G is one that was initially "eligible" to file on Schedule 13G and was later required to file a 13D. A filer that was initially required to file a 13D is not permitted to switch to a 13G unless it first exits the reporting system and becomes "eligible" to re-enter the reporting system on a 13G.
- The House Financial Services Committee voted in favor of new rules for the OTC derivatives market. The legislation would require swap dealers and major swap participants to register with regulators and requires clearing organizations to provide transaction information to appropriate regulators. The bill also provides for public disclosure of aggregate data on swap trading volumes and positions in a way that protects the business transactions and market positions of individuals. This bill is not yet scheduled to go to the House floor for a vote.
- Managers are reminded that the 13F filing deadline for the 3rd quarter is November 16, 2009.
- A proposed amendment to the newly adopted NY Power of Attorney law is being circulated in Albany. The proposal would amend the law to provide exclusions from the definition of "power of attorney," including excluding routine powers of attorney commonly utilized in commercial transactions.
- On August 3rd, the SEC published for comment a new Rule 206(4)-5 under the Investment Advisers Act to prohibit "pay to play" arrangements by most investment advisers. The proposed rules would bar investment advisers from receiving compensation for managing public pension programs for two years if they make political contributions and ban placement agents and other third-parties from soliciting public pension funds. On October 6th, S&K submitted a comment letter to the SEC regarding the pay to play rules, a copy of which may be found on the SEC's website at http://www.sec.gov/comments/s7-18-09/s71809.shtml.
- On September 17th, the SEC voted unanimously to propose a rule amendment to prohibit the practice of flashing marketable orders. If adopted, the proposed amendment would effectively prohibit all markets, including equity exchanges, options exchanges, and alternative trading systems, from displaying marketable flash orders.

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