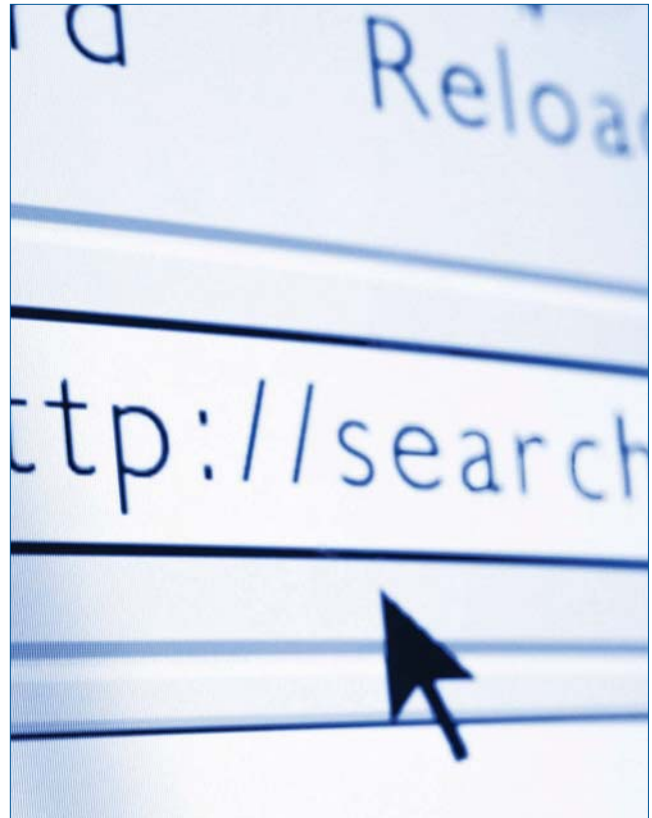


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ALERT

Staff Comments on SEC Filings Will Be Publicly Available

The SEC staff's review comments on disclosure documents initially filed after August 1, 2004, and companies' replies will be published on the SEC's Web site after the reviews are completed. The staff will consider requests to keep portions of public comment letters confidential and will ask affected companies to commit in writing not to use the SEC's comment process in a defense against related litigation.¹

The new policy responds to an increase in the number of comment letters and registrant responses obtained under the Freedom of Information Act. The SEC staff decided to make the same information available to a broader audience. The information could enable companies to learn more quickly about the current focus of staff reviews on accounting and disclosure matters.

SCOPE

The new policy will apply to all filings reviewed by the Division of Corporation Finance and the Division of Investment Management that were filed after August 1, 2004. Because related filings can be submitted before and after that date, the SEC staff will apply the published-correspondence policy according to the date of the filing that is the focus of the review.

(1) Press Release No. 2004-89, SEC Staff to Publicly Release Comment Letters and Responses, June 24, 2004, available at <http://www.sec.gov/news/press/2004-89.htm>.



For example, if a staff review of a Form 10-K filed before August 1, 2004, causes the review of a Form 10-Q or Form 8-K filed after August 1, 2004, the correspondence would not be published, because the policy’s applicability would be determined by the date of the Form 10-K. Similarly, if a staff review of a registration statement filed before August 1, 2004, causes a review of an amendment filed after August 1, 2004, the correspondence would not be published.

To take another example, the review of an amendment to an investment company’s registration statement filed before August 1, 2004, that causes the review of a Form N-CSR filed after August 1, 2004, would not be subject to the published-correspondence policy. However, if the review of a registration-statement amendment filed after August 1, 2004, leads to the review of a Form N-CSR filed before that date, the correspondence would be published.

RELEASE DATE

The SEC staff has not decided the date at which correspondence would be released under the new policy. The date will be announced “in the near future.” However, the staff has decided that correspondence will be released not fewer than 45 days after the staff has completed its filing review.

CONFIDENTIAL TREATMENT

The SEC staff will require that registrants requesting confidential treatment submit two separate documents in their responses to comment letters—the response letter without the confidential information (the “redacted version”) and the response letter including the confidential information. Rule 83 requests for confidentiality must meet two criteria. The requests must have an “appropriate basis” and may not be “overly broad.”

The redacted confidential information will remain subject to disclosure under the Freedom of Information Act.

USE IN LITIGATION BARRED

The SEC staff will ask all companies whose filings are reviewed to affirm in writing that they will not use the comment process as a defense in any securities-related litigation. The requested language is known as a “Tandy” letter.

COMMENTS REQUESTED

The policy announcement explaining the new procedures requests comments on how to make the process and transition work efficiently. Those who wish to submit comments must act quickly, because there is little time before the new policy goes into effect.

The summary statements above describing the new policy of the SEC staff should not be understood as a complete account of the press release that announced the policy or an account of the final policy by the SEC staff. Companies should consult the final policy that emerges after consideration of the comments requested by the SEC staff and if subject to the policy when it goes into effect, should evaluate their particular circumstances and consult their accounting and legal advisors.

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