

# SEC ADOPTS NEW RULES ON PUBLIC SHELLS

The SEC recently adopted new rules relating to filings by public shell companies. Generally, the new rules provide, among other matters, for the following:

- require shell companies to report on Form 8-K when they cease to be shell companies and to include in that report the information that would otherwise be required in a registration statement on Form 10;
- prohibit shell companies from using Form S-8 until sixty days after such companies cease to be shell companies and file “Form 10” information; and
- add a box on the cover page of each annual and quarterly report that every company must mark to indicate whether it is a “shell company.”

## Amendments to Form 8-K

The SEC’s new rules added Items 2.01(f) and 5.01(a)(8) of Form 8-K. These new disclosure obligations require a shell company, after completing an acquisition or a change in control, file a Form 8-K disclosing the information that would be required in a registration statement on Form 10 or Form 10-SB. The report, along with the required financial statements, must be made within four business days of closing the transaction.

The new rules also add a new Item 5.06 to Form 8-K requiring a shell company ceasing to be a shell company after completion of a transaction to report the material terms of the transaction.

## Amendments to Form S-8

The SEC also adopted limits on the use of Form S-8. Now, a company may use Form S-8 to register offerings of securities pursuant to employee benefit plans only if:

- immediately before the time of filing the registration statement, the company is subject to the requirement

to file reports pursuant to Exchange Act Section 13 or Section 15(d);

- the company has filed all reports and other materials required to be filed by Exchange Act Section 13 or Section 15(d) during the preceding 12 months (or for such shorter period that the company was required to file such reports and materials);
- the company is not a shell company and has not been a shell company for at least 60 days before filing the registration statement; and
- if the company has been a shell company at any time, it has filed current “Form 10” information with the SEC reflecting its status as an entity that is not a shell company.

The new rules are modified for shell companies that were formed solely for the purposes of changing a company’s domicile or effecting a merger or business combination.

## Definition of “shell company”

The SEC defined a “shell company” as a company, other than an asset-backed issuer, with:

- no or nominal operations; and
- either:
  - no or nominal assets;
  - assets consisting solely of cash and cash equivalents; or
  - assets consisting of any amount of cash and cash equivalents and nominal other assets
- The amendments take effect August 22, 2005, except for new Form 8-K Item 5.06, which takes effect November 7, 2005