

SEC Provides Interim Guidance for Form 8-K Reporting of Pension Blackout Periods and Earnings Information

Because the SEC has not completed the necessary programming to the EDGAR system to accommodate the Form 8-K disclosure requirements for pension fund blackout periods (new Item 11) and earnings releases (new Item 12), it has adopted the temporary procedures outlined below. We have previously sent Securities Alerts that describe the new regulations. Those Securities Alerts and others are available at our website at www.ropesgray.com under “News and Events”.

Pension Plan Blackout Dates

New Item 11 of Form 8-K, which became effective March 31, 2003, requires an issuer to provide notice of a pension fund blackout period. Issuers have been required to provide this notice since January 26, 2003, when the new rules regarding pension fund blackout periods became effective. The SEC’s interim procedure called for disclosure of the required information under Item 5 of Form 10-Q or 10-QSB in the first quarterly report filed after commencement of the blackout period. Issuers should continue this procedure in lieu of filing a Form 8-K. The text of Item 5 should indicate that the information is being provided under Item 11 of Form 8-K.

Earnings Releases

New Item 12 requires an issuer to furnish, within five business days of any release or public announcement of material non-public information about a completed fiscal year or quarter, a Form 8-K containing such release or announcement. The requirement applies to any earnings release or similar announcements made after March 28, 2003. For now, issuers should furnish the Item 12 information under Item 9 (Regulation FD Disclosure) of Form 8-K. The caption in the Form 8-K should indicate that the information is being provided under Item 12, or under Items 9 and 12, if both items apply.

Effective Date and Duration

The interim guidance went into effect on March 28, 2003 and will remain effective until the EDGAR system permits issuers to file or furnish information using the Item 11 and 12 designations. The interim guidance does not affect the legal obligations or consequences of providing the information under Items 11 or 12. For example, information provided under Item 12 will still be considered to be “furnished” rather than “filed.”

Contact Information

If you have any questions or would like to learn more about the new regulations or interim guidance, please contact the lawyer who normally represents you.