

## SEC Mandates Electronic Filing and Web site Posting of Forms 3, 4 and 5 Effective June 30, 2003

The SEC recently adopted a final rule requiring that all beneficial ownership reports on Forms 3, 4 and 5 be filed electronically and that issuers post copies of these reports on their websites within one business day after the reports are filed. The rule will be effective for beneficial ownership reports filed on or after June 30, 2003. This rule implements Section 403 of the Sarbanes-Oxley Act.

### Electronic Filing Requirement

Beginning June 30, 2003, all Section 16 reports must be filed electronically. All Section 16 reporting persons should either become familiar with the SEC's new online reporting system, accessible at <https://www.onlineforms.edgarfiling.sec.gov>, or establish a relationship with a third-party provider to arrange for the filing of Section 16 reports.

Reporting persons will need CIK, CCC and password codes to log in to the system. Those who have not already been assigned codes may obtain them by faxing a completed Form ID to EDGAR Filer Support at (202) 504-2474. This should be done in advance of any filing requirement since the SEC has been taking up to a week to process the requests. It is important to determine whether the filer already has CIK and CCC codes obtained in connection with service to another issuer. If so, those CIK and CCC codes can be used for all filings for all issuers. Any attempt to obtain new CIK and CCC codes will likely terminate the prior codes which could cause reports filed in respect of the other issuer to be rejected.

First time users of the SEC's on-line system should be aware of the following potential pitfalls:

- A user may not save a partially complete form on the system for later completion; and
- The system will automatically log off users who are on the system for one hour without activity (i.e., entering or changing information). These automatic time-outs are *not* preceded by an on-screen warning to the user.

The SEC has published a list of Section 16 Electronic Reporting Frequently Asked Questions that provide detail about how certain line items of the forms should be completed. The FAQs may be found at [www.sec.gov/divisions/corpfin/sec16faq.htm](http://www.sec.gov/divisions/corpfin/sec16faq.htm).

The EDGARLink system is no longer available for Section 16 filings. Thus a reporting person must now use the SEC's on-line system, a third party service, or, until June 30, file a paper copy of the form.

Under the new rule, electronic submissions of Forms 3, 4 and 5 will be accepted with a same-day filing date until 10 p.m. on the date of filing and will be disseminated the same evening. Unfortunately, the programming for this change is not expected to be complete until the end of July 2003. Until then, filings

made between 5:30 p.m. and 10 p.m. will be deemed filed on the date of receipt even though they will actually be accepted as of the next day.

Two current exemptions from the timing requirements were eliminated from the new rule and will not apply after June 30, 2003:

- The “deemed timely filed” exemption under Rule 16-3(h), for filers who made a timely delivery of forms to a third-party providing delivery services in the ordinary course of business with guaranteed delivery on the required filing date; and
- The temporary hardship exemption under Rule 201 of Regulation S-T, for electronic filers who experience unanticipated technical difficulties and then follow up with a paper copy under cover of Form TH the following business day.

Filers unable to complete filings on time due to technical difficulties should seek filing date adjustments under Rule 13(b) of Regulation S-T.

Item 405 of Regulation S-K requires each issuer to disclose, in its annual meeting proxy or information statement, any failures by its reporting persons under Section 16 to make timely filings of Section 16 reports. During the 12-month period beginning June 30, 2003, disclosure will not be required under Item 405 for Forms 4 that are filed within one business day following the due date.

### Web site Posting of Section 16 Reports

Issuers with company websites will be required to post all Forms 3, 4 and 5 filed by the end of the business day following each filing. Rather than posting the forms, an issuer may satisfy this requirement by providing a hyperlink on its website to reports using a third-party service, provided:

- The forms are available within the time required;
- Access to the reports is free of charge to the user;
- The format displays all information in the forms, and includes exhibits and attachments;
- The medium is not so burdensome to preclude effective access;
- Access is through the issuer website address normally used to disseminate information to investors; and
- The hyperlink is *directly* to Section 16 forms relating to the issuer (rather than any page requiring a broader search).

Hyperlinking to the required forms in the EDGAR database on the SEC website will meet the posting requirement provided that the other (issuer-controlled) conditions are met. For example, inserting the issuer’s CIK code into the following link: [http://www.sec.gov/cgi-bin/browseedgar?company=&CIK=\[ \]&owner=only&action=getcompany](http://www.sec.gov/cgi-bin/browseedgar?company=&CIK=[ ]&owner=only&action=getcompany), will take the user to a list of all Section 16(a) reports filed by reporting

persons of that issuer. Issuers using links to a third-party service may include a disclaimer as to the accuracy of the third-party service.

Forms (or an effective hyperlink thereto) must be maintained on the issuer's website for at least one year.

### **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.