

**SEC ACCELERATES
FILING OF SECTION 16 REPORTS**

On August 27, 2002, the SEC issued final rules which:

- Accelerate Form 4 reporting to 2 business days following the transaction; and
- Significantly increase the types of transactions that must be reported on Form 4.

In addition, the SEC acted to accelerate the filing of 10-Ks and 10-Qs for companies meeting specified criteria, including public float in excess of \$75 million, over a 3 year phase-in period. The SEC also implemented the requirement under Section 302 of the Sarbanes-Oxley Act that quarterly and annual reports include certifications of principal executive officers and principal financial officers. We will provide a detailed summary of the final rules relating to these two matters as soon as the rules are released by the SEC, which we expect may occur later today.

Section 16 Accelerated Reporting

- New Due Date; Filing Mechanics. Forms 4 must now be filed within *two* business days of the underlying securities transaction. This means that paper filings will need to be sent by overnight courier on the day following the transaction in order to be considered timely filed. The SEC has encouraged insiders to file these reports electronically and will accept reports in any format that contains all of the required information in the proper order. The SEC will not permit electronic filings on behalf of insiders to be made under the company's Edgar filing codes; filing codes for each of the insiders would need to be obtained.
- More Transactions Now Reportable on Form 4. Transactions between an issuer and its officers and directors, many of which were reportable on Form 5, must now be reported on Form 4, including:
 - acquisitions from and dispositions to the issuer;
 - derivative securities transactions, such as option grants, exercises, cancellations and repricings; and
 - small acquisitions from the issuer (below \$10,000).

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- Limited exceptions to 2 day filing requirement. The SEC has adopted the following narrow exceptions to the two business day filing requirement:
 - Transactions under plans complying with Rule 10b5-1, so long as the insider does not select the date of execution; and
 - Discretionary transactions under employee benefit plans (such as trades in or out of a company stock fund in a 401(k) plan), so long as the insider does not select the date of execution.

In these two situations, insiders will be required to file notice of such transactions within 2 business days following their receipt of notice from the executing broker, dealer or plan administrator that a transaction has occurred, as long as the notification date is on or before the third business day following the trade date.

Rule 10b5-1 plans, referred to in the SEC's first exception, include plans in which the insider has created a binding formula for making purchases or sales and plans which do not permit the insider to exercise any influence over how, when or whether to effect purchases or sales. The SEC acknowledged in its release that reportable transactions under employee benefit plans and dividend and interest reinvestment plans may be eligible for the exception to the 2 day filing requirement, so long as the plans meet the criteria of a Rule 10b5-1 plan.

- Amended Forms. The SEC will amend Forms 4 and 5 to reflect the new rules, but the new forms will not be immediately available. Until the new forms are released, filers must make the following changes to their Form 4 filings:
 - The level of beneficial ownership (Box 5 of Table I and Box 9 of Table II) must be calculated as of immediately following the reported transaction, rather than as of month-end;
 - Box 4 of Form 4 should state the month, day and year of the transaction, not the month in which the transaction occurred;
 - Forms 4 filed for transactions fitting one of the exceptions to the 2-day rule must add an asterisk to "transaction date" (Box 2 of Table 1 and Box 3 of Table II) and footnote the deemed execution date (i.e. the date the insider received notice).

In calculating the amount of their current holdings, the SEC has confirmed that insiders may rely on their last plan statement with respect to holdings under 401(k) and other exempt employee benefit plans.

- Other Section 16 rules and interpretations not affected. The SEC has confirmed that, unless specifically amended by the new rules, SEC rules and interpretations on Section 16 remain unaffected. As a result, transactions such as gifts, inheritances and small acquisitions (other than from the issuer) remain reportable on Form 5. Transactions that are currently exempt from filing, such as certain acquisitions under employee stock purchase plans and DRIPs, will remain exempt.

- Effective Date. These new rules are effective on August 29, 2002. Any transactions that occurred prior to August 29, 2002 remain reportable under the former rules. For example, an open market purchase of stock on August 28 is not reportable until September 10, while an open market purchase occurring on August 29 is reportable on September 3.
- Recommendations. In order to be prepared to comply with these new rules, we recommend that companies:
 - consider adopting policies requiring insiders to pre-clear all transactions with the company;
 - remind insiders to have their brokers provide relevant trade information immediately following a transaction, as filings will be due prior to the issuance of the written trade confirmation;
 - in connection with 10b5-1 plans and discretionary transactions, make specific arrangements for brokers and plan administrators to provide notice of transactions within three business days of the trade date;
 - obtain powers of attorneys from insiders permitting the execution and filing of Section 16 reports on their behalf; and
 - consider the electronic filing of Section 16 reports, which the SEC strongly encourages and will make mandatory within the next year. This would require the company to obtain Edgar filing codes for each insider.

Many companies are also considering the use of a single broker to facilitate insiders' trading activity, with whom the company has made specific arrangements with respect to providing prompt notice of any transaction to the insider and the company.

Contact Information

If you have any questions or would like to learn more about the new rules, please contact the lawyer who normally represents you, or any of the lawyers listed below involved in the preparation of this SEC Alert.

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