

SEC ISSUES FINAL RULES REQUIRING ELECTRONIC FILING AND WEBSITE POSTING OF FORMS 3, 4 AND 5

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On May 7, 2003, the SEC issued its final rules under Section 403 of the Sarbanes-Oxley Act of 2002 *requiring* electronic filing and website posting of beneficial ownership reports filed by insiders on Forms 3, 4 and 5. ([Click here to link to the full text of the SEC's final rules.](#)) Highlights of the SEC's final rules, which become effective June 30, 2003, are as follows.

Required Electronic Filing of Forms 3, 4 and 5

Forms 3, 4 and 5 filed on or after June 30, 2003 must be filed electronically. A filing date adjustment will be available in the rare instance when an electronic filing is attempted in good faith, but the filer experiences unanticipated technical difficulties that prevent the timely preparation and submission of the electronic filing.

Extended Filing Hours

Forms 3, 4 and 5 submitted electronically on or before 10:00 p.m. Eastern Standard Time will be deemed filed on the date of filing. The SEC is in the process of making adjustments to the EDGAR system to accommodate this new filing deadline.

Required Website Posting of Forms 3, 4 and 5

Each company that maintains a corporate website will be required to post on its website all Forms 3, 4 and 5 filed with respect to its equity securities by the end of the business day after filing. In lieu of maintaining and providing direct access to the forms, a company could satisfy the posting requirement by hyperlinking to the reports via a third-party service, including the SEC's EDGAR database, if the following conditions are met:

- the forms are made available in the required time frame;
- access to the reports is free of charge to the user;
- the display format allows retrieval of all information in the forms;

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- the medium to access the forms is not so burdensome that users cannot effectively access the information;
- the access includes any exhibits or attachments;
- the forms are accessible for at least a 12-month period;
- access to the forms is through the website address the company normally uses for disseminating information to investors; and
- any hyperlink is directly to the Section 16 forms (or to a list of the Section 16 forms) as opposed to the home page or general search page of the third-party service.

Companies are encouraged to post Section 16 reports on their websites before the effective date.

Relief from Proxy Statement Disclosure of Late Filings

Pursuant to Item 405 of Regulation S-K, companies are required to report delinquent Forms 3, 4 and 5 in their proxy or information statements (or on Form 10-K, if no proxy statement is filed). Because the transition to electronic filing may result in technical difficulties causing unintended late filings, the SEC has granted limited relief from disclosure of delinquent Form 4 filings if the Form 4 is:

- filed not later than one business day following the regular due date, and
- filed during the period from July 1, 2003 through June 30, 2004.

Please remember that these legal principles may change and vary widely in their application to specific factual circumstances. You should consult with counsel about your individual circumstances. For further information regarding these issues you may contact the head of our Corporate and Securities practice group:

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