

SEC Adopts Rule and Form Amendments Relating to the Filing of Security Ownership Reports by Officers, Directors and Principal Shareholders

By Margaret F. Murphy and Celeste E. Rasmussen

On August 27, 2002, the SEC adopted final rules implementing the accelerated two-business day filing deadline imposed by Section 403(a) of the Sarbanes-Oxley Act of 2002 on reports of trades or transfers of a company's equity securities by a director, officer, or 10% shareholder (so-called "insiders").

Section 403(a) of the Sarbanes-Oxley Act amends Section 16(a) of the Securities Exchange Act of 1934 to require insiders to report most security transactions within two business days following the day the transaction was executed. The effective date of this amendment is August 29, 2002. Under the prior version of Section 16(a), most security transactions by an insider were required to be reported on a monthly basis on Form 4 within 10 days after the close of each calendar month in which the transaction occurred.

Section 403(a) also gave the SEC leeway to adopt rules lengthening the filing period for narrowly specified transactions where the insider is prevented from controlling the timing of the transaction.

The rules adopted by the SEC:

- amend the Section 16(a) forms to conform to the new filing deadline;
- require employee benefit plan and other transactions between officers /directors and issuers exempted from Section 16(b) short-swing profit recovery that were previously reportable on an annual basis on Form 5 to be reported within two business days on Form 4;
- modify the filing deadline for two types of transactions where the SEC determined that the two-business day filing deadline was not feasible:
 - for transactions pursuant to "Rule 10b5-1 Trading Plans" where the reporting person does not select the date of execution of the transaction, a Form 4 must be filed within two business days after the insider receives notice of the trans-

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action from the executing broker, dealer, or plan administrator, so long as the notification date is not later than the third business day following the trade date; and

- for specified employee benefit plan transactions defined as “Discretionary Transactions,” such as fund-switching transactions where the reporting person does not select the date of execution, a Form 4 must be filed within two business days after the insider receives notice from the plan administrator, so long as the notification date is not later than the third business day following the trade; and
- require that transactions through certain non-qualified deferred compensation plans (such as directors' deferred compensation plans) and voluntary purchases through a dividend reinvestment plan be reported by the two-business day deadline.

The rule and form amendments apply to transactions executed on or after August 29, 2002. The amended Forms 3, 4 and 5, however, have not yet been published. Until the revised forms are available, reporting persons are instructed to modify Box 4 on the current Form 4 to reflect the date of the transaction rather than the month in which the transaction occurred and to disclose by footnote the date that triggered the filing deadline for transactions under Rule 10b5-1 Trading Plans and employee benefit plans, where the filing deadline has been extended.

The SEC has requested comments as to whether there are other types of transactions, besides the ones mentioned above, that require regulatory changes to make it feasible for insiders to report them within the two-business day deadline. Any comments on this topic should be delivered to the SEC no later than September 30, 2002.

Section 403(a) of the Sarbanes-Oxley Act also amended Section 16(a) to require the electronic filing of a Form 4 with the SEC – and the posting of such form on the relevant company’s website – beginning no later than July 30, 2003. Currently, the form may be filed in paper format. Although the SEC has not yet issued rules implementing this requirement, it assures that such rules are forthcoming and encourages reporting persons and companies filing Section 16(a) reports on their behalf to begin making these filings electronically before the statutory deadline. To do so, insiders should submit a Form ID in order to obtain a CIK number, which is a unique identification number used to identify filers on the EDGAR system.

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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