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ADMIRALTY & MARITIME

ANTITRUST & TRADE REGULATION

AVIATION

APPELLATE LITIGATION

BANKING, RESTRUCTURING & CREDITORS-DEBTORS RIGHTS

BUSINESS & COMMERCIAL LITIGATION

COMMERCIAL LENDING & FINANCE

CONSTRUCTION

CORPORATE & SECURITIES

EMPLOYEE BENEFITS, ERISA, & EXECUTIVE COMPENSATION

ENERGY

ENVIRONMENTAL & TOXIC TORTS

ERISA, LIFE, HEALTH & DISABILITY INSURANCE LITIGATION

GAMING

GOVERNMENT RELATIONS

HEALTH CARE LITIGATION, TRANSACTIONS & REGULATION

INTELLECTUAL PROPERTY & E-COMMERCE

INTERNATIONAL

LABOR RELATIONS & EMPLOYMENT

MEDICAL PROFESSIONAL & HOSPITAL LIABILITY

MERGERS & ACQUISITIONS

PRODUCTS LIABILITY

PROFESSIONAL LIABILITY

PROJECT DEVELOPMENT & FINANCE

PUBLIC FINANCE

REAL ESTATE: LAND USE, DEVELOPMENT & FINANCE

TAX (INTERNATIONAL, FEDERAL AND STATE)

TELECOMMUNICATIONS & UTILITIES

TRUSTS, ESATES & PERSONAL PLANNING

VENTURE CAPITAL & EMERGING COMPANIES

WHITE COLLAR CRIME

SEC NOTICE RELATING TO FILING OF SECURITY OWNERSHIP REPORTS BY OFFICERS, DIRECTORS AND PRINCIPAL SHAREHOLDERS

By Andrew D. Pilant

On August 6, 2002, the SEC announced that it plans to adopt final rules no later than August 29, 2002 relating to amendments to Section 16(a) of the Securities Exchange Act of 1934. These rules will implement changes mandated by the Sarbanes-Oxley Act of 2002, including a two business day filing deadline for trades or transfers of a company's equity securities by a director, officer or 10% shareholder of the company (so-called "insiders").

Currently, Section 16(a) requires most security transactions by an insider 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) of the Sarbanes-Oxley Act amends Section 16(a) to require insiders to report any security transaction within two business days following the day the transaction was executed. In the final rules to be adopted no later than August 29, 2002, however, the Commission may decide to lengthen the filing deadline for narrowly specified transactions where objective criteria prevent the insider from controlling the timing of the transaction, such as:

- a transaction pursuant to a single market order executed over more than one day;
- a transaction involving a pre-existing arrangement where the timing of the transaction is unknown to the insider; and
- a transaction involving an employee benefit plan where the filing delay would be tied to notice of the transaction.

The SEC anticipates that the final rules will require certain transactions currently required to be reported only following the end of the year on Form 5 (including the issuance, regrant and cancellation of stock options) to be reported on Form 4 within two business days.

The Sarbanes-Oxley Act also requires the electronic filing of a Form 4 with the SEC – and the posting of such form on the relevant company's website – beginning July 30, 2003. Currently, the form may be filed in paper for-

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ANTITRUST & TRADE REGULATION

AVIATION

APPELLATE LITIGATION

BANKING, RESTRUCTURING & CREDITORS-DEBTORS RIGHTS

BUSINESS & COMMERCIAL LITIGATION

COMMERCIAL LENDING & FINANCE

CONSTRUCTION

CORPORATE & SECURITIES

EMPLOYEE BENEFITS, ERISA, & EXECUTIVE COMPENSATION

ENERGY

ENVIRONMENTAL & TOXIC TORTS

ERISA, LIFE, HEALTH & DISABILITY INSURANCE LITIGATION

GAMING

GOVERNMENT RELATIONS

HEALTH CARE LITIGATION, TRANSACTIONS & REGULATION

INTELLECTUAL PROPERTY & E-COMMERCE

INTERNATIONAL

LABOR RELATIONS & EMPLOYMENT

MEDICAL PROFESSIONAL & HOSPITAL LIABILITY

MERGERS & ACQUISITIONS

PRODUCTS LIABILITY

PROFESSIONAL LIABILITY

PROJECT DEVELOPMENT & FINANCE

PUBLIC FINANCE

REAL ESTATE: LAND USE, DEVELOPMENT & FINANCE

TAX (INTERNATIONAL, FEDERAL AND STATE)

TELECOMMUNICATIONS & UTILITIES

TRUSTS, ESATES & PERSONAL PLANNING

VENTURE CAPITAL & EMERGING COMPANIES

WHITE COLLAR CRIME

mat and thus is less accessible to the public.

In light of the Section 16(a) amendments discussed above, the SEC stated it does not intend to implement the proposed rules discussed in its April 12, 2002 release that would have required companies to report directors' and executive officers' securities transactions on Form 8-K within two business days. The SEC will, however, continue to consider the other rules proposed in its April release. *(Click here to link to our E*Zine regarding the SEC's April release.)*

Any comments on the SEC's Section 16(a) rulemaking should be delivered to the SEC no later than August 15, 2002.

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ADMIRALTY & MARITIME

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AVIATION

APPELLATE LITIGATION

BANKING, RESTRUCTURING & CREDITORS-DEBTORS RIGHTS

BUSINESS & COMMERCIAL LITIGATION

COMMERCIAL LENDING & FINANCE

CONSTRUCTION

CORPORATE & SECURITIES

EMPLOYEE BENEFITS, ERISA, & EXECUTIVE COMPENSATION

ENERGY

ENVIRONMENTAL & TOXIC TORTS

ERISA, LIFE, HEALTH & DISABILITY INSURANCE LITIGATION

GAMING

GOVERNMENT RELATIONS

HEALTH CARE LITIGATION, TRANSACTIONS & REGULATION

INTELLECTUAL PROPERTY & E-COMMERCE

INTERNATIONAL

LABOR RELATIONS & EMPLOYMENT

MEDICAL PROFESSIONAL & HOSPITAL LIABILITY

MERGERS & ACQUISITIONS

PRODUCTS LIABILITY

PROFESSIONAL LIABILITY

PROJECT DEVELOPMENT & FINANCE

PUBLIC FINANCE

REAL ESTATE: LAND USE, DEVELOPMENT & FINANCE

TAX (INTERNATIONAL, FEDERAL AND STATE)

TELECOMMUNICATIONS & UTILITIES

TRUSTS, ESATES & PERSONAL PLANNING

VENTURE CAPITAL & EMERGING COMPANIES

WHITE COLLAR CRIME

NASD PROPOSES NEW IPO ALLOCATION RULES

By Amos J. Oelking III

On July 28, 2002, the NASD announced the approval of new rules governing the allocation of initial public offering (IPO) securities by broker-dealers. The proposed rules will soon be made available for public comment, after which they will be submitted to the SEC for approval.

Specifically, the proposed rules would prohibit broker-dealers from:

- allocating IPO securities in exchange for excessive brokerage commissions or excessive compensation for other investment banking services (so-called "quid pro quo" agreements);
- requiring additional secondary market (*i.e.*, post-IPO) purchases of the IPO securities at progressively higher prices in return for the allocation of securities in the IPO (so-called "laddering" arrangements);
- allocating IPO securities to an executive officer or director of a company (i) on the condition that the officer or director direct the company's investment banking business to the firm, or (ii) as consideration for investment banking services previously rendered (so-called "spinning" arrangements); and
- penalizing registered representatives whose retail customers have "flipped" IPO securities when similar penalties have not been imposed with respect to flipping done by institutional customers ("flipping" involves the purchase of securities in an IPO and the nearly immediate sale thereafter of such securities for a profit).

The proposed rules would also require broker-dealers that participate in IPOs to implement compliance procedures.

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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APPELLATE LITIGATION

BANKING, RESTRUCTURING & CREDITORS-DEBTORS RIGHTS

BUSINESS & COMMERCIAL LITIGATION

COMMERCIAL LENDING & FINANCE

CONSTRUCTION

CORPORATE & SECURITIES

EMPLOYEE BENEFITS, ERISA, & EXECUTIVE COMPENSATION

ENERGY

ENVIRONMENTAL & TOXIC TORTS

ERISA, LIFE, HEALTH & DISABILITY INSURANCE LITIGATION

GAMING

GOVERNMENT RELATIONS

HEALTH CARE LITIGATION, TRANSACTIONS & REGULATION

INTELLECTUAL PROPERTY & E-COMMERCE

INTERNATIONAL

LABOR RELATIONS & EMPLOYMENT

MEDICAL PROFESSIONAL & HOSPITAL LIABILITY

MERGERS & ACQUISITIONS

PRODUCTS LIABILITY

PROFESSIONAL LIABILITY

PROJECT DEVELOPMENT & FINANCE

PUBLIC FINANCE

REAL ESTATE: LAND USE, DEVELOPMENT & FINANCE

TAX (INTERNATIONAL, FEDERAL AND STATE)

TELECOMMUNICATIONS & UTILITIES

TRUSTS, ESATES & PERSONAL PLANNING

VENTURE CAPITAL & EMERGING COMPANIES

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