

SEC PROPOSES ACCELERATED 10-Q AND 10-K FILING DATES AND DISCLOSURE REGARDING INTERNET ACCESS TO PERIODIC REPORTS

By Amos J. Oelking III

On April 12, 2002, the SEC formally proposed accelerated due dates for the filing of Forms 10-Q and 10-K. As proposed, the accelerated filing dates would only apply to companies:

- with a public float (total market value of common stock held by non-affiliates) of \$75 million or more;
- that have been subject to the periodic reporting requirements of the Securities Exchange Act of 1934 for at least 12 months; and
- that have filed at least one Form 10-K pursuant to the Exchange Act.

For companies meeting these requirements, the SEC has proposed accelerating the filing date for annual reports on Form 10-K from 90 days to 60 days after the company's fiscal year end, and the due date for quarterly reports on Form 10-Q from 45 days to 30 days after the end of each of the first three quarters of the company's fiscal year. The SEC believes these accelerated filing dates will lessen the delay that currently exists between earnings announcements and the filing of more detailed information in periodic reports and, thus, provide more timely disclosure to investors and the market.

If adopted, the SEC anticipates that these accelerated filing dates will be effective for each subject company as of the end of its first fiscal year ending after October 31, 2002 (*e.g.*, December 31, 2002 for a company with a calendar year fiscal year).

In addition, the SEC proposal would require companies that would be subject to the accelerated filing dates to disclose the following information in their Forms 10-K:

- that the public may read and copy the company's filings at the SEC's public reference room and also access information about the company on the SEC's website;
- the company's website address (if any);

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- whether the company makes available on its website its periodic reports on the same day such reports are filed with the SEC;
- if the company does not make its filings available in this manner, (1) the reasons why it does not do so (*e.g.*, because it does not have a website), (2) one or more locations (if any) where the public can access these filings electronically immediately upon filing and (3) whether there is a fee for such access; and
- whether the company will voluntarily provide free of charge electronic or paper copies of its filings upon request.

The SEC proposes to make the new disclosure requirements effective three months after the date of adoption. The SEC encourages companies to provide website access to all of their SEC filings, including proxy statements and registration statements, and to do so via a hyperlink directly to the company's filings or a list of filings. The SEC also encourages companies, at a minimum, to provide website access to all reports filed during the preceding 12-month period.

Comments on the proposal should be delivered to the SEC no later than May 23, 2002.

SEC PROPOSES REQUIRING PROMPT COMPANY DISCLOSURE OF CERTAIN MANAGEMENT TRANSACTIONS

By Margaret F. Murphy and Amos J. Oelking III

Also on April 12, 2002, the SEC proposed an amendment to Form 8-K to require public companies to promptly report certain transactions by their directors and executive officers, as follows:

- each director's and executive officer's transactions in or relating to the company's equity securities, including options, warrants, and other derivative securities;
- each director's and executive officer's adoption, amendment or termination of a pre-arranged trading plan for the purchase or sale of the company's equity securities intended to satisfy Rule 10b5-1

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(c) under the Exchange Act and provide the director or officer with an affirmative defense against insider trading liability; and

- each loan to a director or executive officer made or guaranteed by the company or an affiliate.

The transactions required to be reported would be substantially similar to the transactions required to be reported by executive officers and directors under Section 16(a) of the Exchange Act on Forms 4 and 5, but the proposed Form 8-K filing would not relieve officers and directors of the obligation to report their transactions on Form 4 or 5.

These events, which would be reportable pursuant to a new Item 10 of Form 8-K, would be subject to the following reporting deadlines:

- a Form 8-K report regarding a transaction or loan with an aggregate value of \$100,000 or more, other than a grant or award pursuant to an employee benefit plan, would be due within two business days following the transaction;
- a Form 8-K report regarding a grant or award pursuant to an employee benefit plan, a transaction or loan with an aggregate value less than \$100,000, or a Rule 10b5-1 arrangement would be due not later than the close of business on the second business day of the week following the week in which the event occurred; and
- a Form 8-K report of a transaction or loan with an aggregate value not exceeding \$10,000 could be deferred until the aggregate cumulative value of unreported transactions and loans with respect to the same director or executive officer exceeds \$10,000.

In the event of a delinquent filing or other violation under Item 10, the SEC's proposal provides for a "safe harbor" from sanctions, provided that:

- at the time of the violation, the company had procedures in place to ensure that Item 10 events are timely and accurately reported;
- those procedures were followed at the time of the violation; and
- as promptly as possible, the company made a filing to correct any violation.

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In addition, a violation of proposed Item 10 would not create a private of action, nor affect the company's eligibility to use a particular registration statement form (such as Form S-3) or the ability of stockholders to sell securities under Rule 144.

The SEC believes this proposal will provide investors with more timely information regarding management's view of the company's current and future performance and prospects and, therefore, promote fair dealing in the company's securities and enable investors to make investment and voting decisions on a more timely and informed basis.

Comments on the proposal should be delivered to the SEC no later than June 24, 2002.

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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