

May 19, 2003

**SEC FINALIZES RULES CONCERNING SECTION 16(a) REPORTS:  
ELECTRONIC FILING AND WEBSITE POSTING**

The SEC issued final rules eliminating the use of paper forms and mandating the electronic filing of beneficial ownership reports for “insiders” under Section 16(a) of the Exchange Act. Additionally, companies with websites must provide access to these forms via their website by the end of the business day after filing by the insider.

***Background***

Section 16 applies to every person who is a beneficial owner of more than 10% of any class of equity security registered under Section 12 of the Exchange Act and each officer and director of the issuer. Until now, these “insiders” or “reporting persons” were required to file Forms 3, 4 and 5 either in paper form or electronically on EDGAR. Initial filings were required when the person first became subject to these rules, and subsequent changes in the person’s beneficial ownership were required to be filed by the tenth day of the following month.

As required by the Sarbanes-Oxley Act, Section 16(a) was amended in August 2002 to require shorter filing deadlines for Forms 3, 4 and 5, i.e., generally within two business days.<sup>1</sup> Under the new rules, the SEC has eliminated paper filings and is now mandating that these forms be filed electronically on EDGAR and posted on company websites. The effect of these changes is to achieve earlier public notification of insiders’ transactions and wider public availability of information about those transactions.

***Electronic Filing***

In order to effectuate these changes, the SEC has implemented a new on-line filing system which can be used instead of existing third-party filing systems. The new system, available on the SEC’s website, was activated and went live on May 5, 2003. It requires each insider to have a Central Index Key (CIK) and CIK Confirmation Code (CCC) for validation. These codes can be acquired by submitting a Form ID application to the SEC. Once the proper identification is entered, the insider will have the option to create an on-line Form 3, 4 or 5, or an amendment to any of these forms. The system is designed to be easy to use and thus, temporary hardship exemptions that delay filings will not longer be available for Forms 3, 4 and 5.

Item 405 requires a company to disclose in its proxy or information statement any non-compliance with Section 16 filing deadlines. Temporary limited relief from this disclosure will

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<sup>1</sup> See our August 28, 2002 letter, “SEC Finalizes Rules on Ownership Reports and Trading By Officers, Directors and Principal Security Holders. [www.fwcook.com/alert\\_letters/8-28-02SECFinalizesRulesOwnership](http://www.fwcook.com/alert_letters/8-28-02SECFinalizesRulesOwnership)

be permissible for a Form 4 filing that is filed no later than one business day following the regular due date and filed during the first 12 months following the effective date of these rules.

In addition, the SEC extended the filing deadline for these forms to 10 p.m. Eastern time from the currently acceptable time of 5:30 p.m. Eastern time. All forms filed electronically on or before 10 p.m. will be deemed filed as of that day.

### ***Website Posting***

These rules also require companies that maintain corporate websites to post Forms 3, 4 and 5 on their websites by the end of the business day after filing. Companies can satisfy this requirement by either providing the forms on their website or by hyperlinking to a third-party service (such as EDGAR), provided that:

- 1) The complete forms (including any exhibits or attachments) are made available in the required time frame and in a medium that is not burdensome to the user,
- 2) Access to the reports is free of charge to the public,
- 3) Access to forms is through the company website address the company normally uses for disseminating information to investors, and
- 4) Any hyperlink is directly to the Section 16 forms (or a list of the Section 16 forms) relating to the posting company instead of just to the home page or general search page of the third-party service.

The forms must be accessible for at least a one-year time period from the time that the form is posted. Note that forms filed on EDGAR will be available indefinitely.

### ***Compliance Date***

Reporting persons and companies must comply with the reporting rules and website posting requirements for reports filed on or after June 30, 2003; however, the SEC encourages companies to post Section 16(a) reports on their websites before the implementation date.

Copies of the new rules can be found on the SEC website at [www.sec.gov](http://www.sec.gov).

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General questions about this letter can be addressed to Louis C. Taormina in our New York office at 212-986-6330 or by e-mail at [lctaormina@fwcook.com](mailto:lctaormina@fwcook.com). As this client letter merely summarizes the new rules and should not be considered or relied upon as legal advice, specific questions about the applicability of the new rules to a particular individual or company's situation should be addressed to corporate counsel. Copies of this letter and published materials are available on our website at [www.fwcook.com](http://www.fwcook.com).