

Frederic W. Cook & Co., Inc.

New York • Chicago • Los Angeles

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**ADDITIONAL FORM 8-K DISCLOSURE REQUIREMENTS
AND ACCELERATION OF FILING DATE**

As mandated by the Sarbanes-Oxley Act of 2002, the SEC finalized rules, which are effective August 23, 2004, regarding expanded Form 8-K disclosure and acceleration of its filing date. In addition to other items, companies will now have to promptly report on Form 8-K changes in top management and directors (i.e., elections, resignations, departures) as well as the adoption of or amendment to employment contracts and other material executive compensation or benefits arrangements. Filing deadlines have been shortened to four business days after the occurrence of the event in most cases.

Background

Historically, Form 8-K has required companies to report significant corporate events. However, most events did not require a Form 8-K filing and instead delayed filing was permitted in a periodic report (Form 10-Q or 10-K). In an effort to get more information to the investment public in a shorter period of time, the SEC has expanded Form 8-K filings to include a broader range of items and accelerated the filing deadline.¹ These actions are consistent with the requirements of Sarbanes-Oxley, which mandates that public companies disclose “on a rapid and current basis” material information about changing financial and operating conditions.

Reorganization of Form 8-K Items

Due to the expanded disclosure under Form 8-K, the SEC has organized the reportable items into nine distinct topical categories. With regard to executive compensation, the following items in Sections 1 and 5 are noteworthy:

Section 1 - Registrant's Business and Operations

Item 1.01 Entry into a Material Definitive Agreement

Item 1.02 Termination of a Material Definitive Agreement

Section 5 - Corporate Governance and Management

Item 5.02 Departure of Directors or Principal Officers; Election of Directors;
Appointment of Principal Officers

¹ For a complete discussion on the new rule, refer to the SEC website: <http://www.sec.gov/rules/final/33-8400.htm> and <http://www.sec.gov/rules/final/33-8400a.htm>

Section 1 – Material Definitive Agreements

- Companies must disclose entry into, amendments to and termination of material definitive agreements that are not made in the ordinary course of business²
 - Information required to be disclosed would include the date on which the agreement was entered into, amended or terminated, the identity of the parties to the agreement (and the extent to which there is a material relationship between the parties) and a brief description of the terms and conditions of the agreement
 - In regard to termination of material definitive agreements, companies must also disclose a brief description of the material circumstances surrounding the termination and any material early termination penalties incurred by the company
- Employment agreements, compensation and retirement plans and agreements and deferred compensation plans covering executive officers and directors must be disclosed pursuant to Section 1, subject to certain exceptions
- Although information about the plans and agreements must be disclosed in the Form 8-K filing, copies of the actual plans and agreements do not have to be filed as exhibits until the next periodic report on Form 10-Q or 10-K

Section 5 – Corporate Governance and Management

- Companies must disclose when a director resigns or refuses to stand for re-election due to a disagreement or is removed for cause
- Companies must disclose when certain officers retire, resign or are terminated and disclose when a director retires, resigns, is removed or refuses to stand for re-election for any reason other than as a result of a disagreement or for cause
- Companies must disclose when certain new officers are appointed or a new director is elected

Shortened Filing Deadline

The new rules require current reports on Form 8-K to be filed within four business days of a triggering event, subject to an exception for public announcements of the appointment of new officers.

Effective Date

Companies must conform to these new rules beginning on August 23, 2004.

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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 ltaormina@fwcook.com. Copies of this letter and published materials are available on our website at www.fwcook.com.

² This definition parallels Item 601(b)(10) of Regulation S-K with regard to the types of agreements covered.