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Corporate Securities

A bulletin designed to keep corporate executives and investment banking professionals informed on major developments in the securities industry.

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SEC PROPOSES ACCELERATED REPORTING SCHEDULE AND COMPANY REPORTING OF INSIDER TRANSACTIONS

On April 12, 2002, the SEC formally proposed the first of a series of previously announced regulatory changes intended to improve the financial reporting and disclosure systems in the wake of the Enron crisis. The SEC first announced the proposed changes in a press release issued in February 2002.

Accelerated Reporting Schedule

The SEC proposed accelerating the filing schedule for annual reports on Form 10-K to 60 days after the end of the fiscal year (from the currently required 90 days) and for quarterly reports on Form 10-Q to 30 days after the end of each of the first three fiscal quarters (from the currently required 45 days). The shortened filing deadlines would apply to most "seasoned" companies but not small business issuers. The proposed criteria for defining "accelerated filers" are:

10Ks would be due 60 days after fiscal year end; 10Qs would be due 30 days after the end of each of the first three fiscal quarters.

- a public float of at least $75 million;
- having been subject to the Exchange Act reporting requirements for at least 12 calendar months; and
- having filed at least one annual report.

In its proposal, the SEC indicated that it is "strongly considering" making conforming changes to the timeliness requirements for the inclusion of financial statements by accelerated filers in other SEC filings such as registration statements and proxy statements. This would mean information in these documents would go "stale" more quickly.

In proposing the changes, the SEC noted that the filing schedules currently in place have not changed in more than 30 years and that technological advances during this time have increased registrants' ability to capture, process and disseminate the information necessary to prepare the reports. While the SEC applauded efforts of companies in timely publishing earnings and other press releases, it noted that investors often must wait for the filing of periodic reports to receive financial statements, the accompanying notes, management's discussion and analysis and other important financial information. Shortening the reporting schedule would provide more timely disclosure to investors.

On the other hand, the SEC acknowledged the importance of allowing sufficient preparation time to ensure the accurate presentation of results and to permit the requisite review of financial information by auditors and the consideration of such information by boards of directors and their audit committees. The SEC also noted previously expressed concerns

that accelerated deadlines could result in a diminished quality of disclosure.

Transition Period. If adopted, the SEC expects to make the proposed accelerated filing schedules effective for accelerated filers as of the end of their first fiscal year ending after October 31, 2002. For calendar companies, this would require the 2002 Annual Reports on Form 10-K to be filed by March 3, 2003, and the Form 10-Q for the first quarter of 2003 would be due by April 30, 2003.

Calendar year registrants should consider whether their financial reporting systems and disclosure review procedures would permit filing the 2002 annual report on Form 10-K by March 3, 2003.

Website Posting of Exchange Act Reports

The SEC also proposed mandated disclosures about the availability of corporate reports on company websites. Accelerated filers would be required to disclose in their annual report on Form 10-K:

- that the public may read and copy the registrant's filings at the SEC's Public Reference Room and may access information electronically filed on the SEC's website at www.sec.gov;
- the registrant's website address;
- whether the registrant makes available, free of charge on its website, its annual report on Form 10-K, quarterly reports on Form 10-Q, current reports on Form 8-K, and all amendments to such reports as soon as reasonably practicable after and in any event on the same day as such material is electronically filed with, or furnished to, the SEC;
- if the registrant does not so post its filings, explain why not (which explanation may be as simple as the fact that registrant does not have a website), and state where the public can access such filings electronically immediately upon filing and whether there is a fee for such access; and
- whether the registrant will provide electronic or paper copies of its filings free of charge upon request.

Merely hyperlinking to the SEC's EDGAR system would not satisfy the proposed website posting requirements.

Merely hyperlinking to the EDGAR system would not constitute availability under the proposed rule because filings on the EDGAR website are subject to a 24-hour delay before posting. The SEC encouraged registrants providing hyperlink access to a third-party service to hyperlink directly to the registrant's reports (or a list of its reports) rather than merely to the home page of the third-party service. The SEC also reiterated its previous guidance that a reference in a registrant's SEC filing to its website would not be considered to make the website a part of the filing if the registrant took reasonable steps to ensure that the address is inactive in the EDGAR filing (for example, by removing "a href" tagging). Many registrants already specifically disclaim that the website is not a part of the filing.

We believe this proposal suggests significant movement by the SEC in recognizing the broad availability of the internet to the investing public. In adopting Regulation FD in 2000, the Commission stopped short of blessing website postings as an effective means of public communication. While this proposal does not require registrants to maintain a website or to post SEC reports on their site, it is likely most companies will feel pressured to do so after the rule change.

Transition Period. If adopted, the SEC proposes to make the new disclosure requirement effective three months after the date of adoption.

Company Disclosure of Insider Transactions

In a separate release, the SEC proposed amending Form 8-K to require current reporting by registrants of certain management transactions. If adopted, a new Item 10 would be added to Form 8-K to require public companies to make current disclosure about certain transactions and arrangements entered into by their directors and executive officers, specifically, their personal securities transactions in company equity securities or loans to them made or guaranteed by registrants or their affiliates. The proposals are intended to provide the public more prompt and complete information about insider transactions that reveal shifts in the alignment between management's and stockholders' economic interests, transactions that might be construed as severing the link between executive compensation and stock performance, or that reflect management's views of the registrant's prospects, and loan arrangements that may result in the payment of *de facto* additional executive compensation. Currently, it is only the insiders who are obligated to make filings, under Section 16, regarding their personal securities transactions, and companies would ordinarily address insider security ownership and insider loan transactions only on an annual basis in proxy statements and annual reports.

Director and executive officer stock transactions and loans in excess of $100,000 would be reportable within two business days.

The proposal would mandate corporate disclosure of:

- Each director's and executive officer's transactions in any class of the registrant's equity securities, including the acquisition and disposition of derivative securities (such as option grants), and the exercise, termination or settlement of derivative securities (such as option exercises);
- Each director's and executive officer's adoption, modification or termination of pre-planned disposition programs, commonly referred to as "10b5-1 plans." These are arrangements in the form of a contract, instruction or written plan providing for the purchase or sale of the registrant's equity securities that are intended to satisfy the affirmative defense conditions of Exchange Act Rule 10b5-1(c) to protect against insider trading violations; and
- Each loan of money to a director or executive officer made or guaranteed by the registrant or an affiliate of the registrant.

Model Form 8-K disclosure under proposed Item 10 has been prepared by the SEC and is attached as Annex A.

As proposed, certain transactions would be exempt from the mandated Form 8-K disclosures "because they do not generally appear to reflect management's views of the company's prospects or sever the link between executive compensation and company equity securities performance." Included in the types of transactions proposed to be exempt are stock dividends, regular dividend reinvestment plan purchases, changes in form of ownership, inheritance, acquisitions under broad-based employee stock purchase plans, and certain transactions as executor of an estate. It is important to note that many transactions that are currently eligible for deferred reporting by insiders under Section 16(a) would, under proposed Item 10, be subject to current reporting by the registrant. Such transactions include gifts of securities and most transactions directly with the registrant, including those that may be exempt from Section 16(b) under Rule 16b-3.

Timing of Disclosure. As proposed, the Form 8-K disclosure would be required to be filed on the following time schedule:

- Transactions or loans with an aggregate

value of $100,000 or more with respect to a director or executive officer, other than a grant or award pursuant to an employee benefit plan, would be reportable within two business days.

- Employee benefit plan grants and awards, transactions and loans with an aggregate value less than $100,000, and Rule 10b5-1 arrangements generally would be reportable not later than the close of business on the second business day of the week following the week in which the event occurred.

- Transactions or loans 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.

The date of a reportable event would be the date on which the parties enter into, modify or terminate an agreement related to the event.

The new Form 8-K requirements would apply only to transactions involving directors and executive officers and, unlike Section 16 reporting, would not apply to principal security holders. The SEC noted that the timing for filing reports under Section 16(a) of the Exchange Act is too slow for the public to obtain maximum benefit from the information. However, because the timing requirements for filing such reports are prescribed by statute, the SEC could not accelerate filing of Section 16 reports. The SEC also noted that such reports are not always readily accessible because they are not required to be filed electronically. Mandating such disclosure on Form 8-K avoids such limitations. A registrant's Form 8-K, Item 10 disclosures would not relieve directors and executive officers from their obligations to file under Section 16 and Forms 144 as applicable.

Registrants should adopt and strictly enforce a "pre-clearance" policy to comply with proposed Item 10 of Form 8-K.

"Pre-clearance" Policies Will Become Necessary to Comply with Proposed Rule. In light of these new corporate reporting obligations, it will become imperative for registrants to be immediately informed of all insider personal securities transactions. Those registrants which have not already done so would be well advised to adopt and strictly enforce a "pre-clearance" requirement under their insider trading policies for all insider transactions in company securities and adoptions of, or changes to, 10b5-1 plans. Many registrants already require "pre-clearance" to facilitate Section 16 compliance and monitor trading by directors and those executives most likely to be aware of material, non-public information. Such procedures would be well suited to ensure timely compliance with proposed Item 10, and may help registrants avoid sanctions for failing to comply with the proposed requirements.

"Filed", not "Furnished." Unlike Item 9 added to Form 8-K when the SEC adopted Regulation FD, disclosure under proposed Item 10 would be deemed "filed" with the SEC and so would be subject to Exchange Act Section 18 liability and would be incorporated by reference into Securities Act filings on Forms S-2, S-3, S-8 and, where applicable, S-4.

Consequences for Violating Item 10 Requirements. The SEC concurrently proposed amendments to Rule 144(c) and the eligibility requirements for Forms S-2, S-3, and S-8, which would provide that a delinquent filing of Item 10 disclosure would not render Rule 144 unavailable to the registrant's securityholders or impair the registrant's eligibility for using such forms. In addition, the general instruction to Item 10 would include a Commission finding that it is not in the public interest to impose any sanction on a company, notwithstanding a violation, that demonstrates that:

1. at the time of the violation, it had designed procedures and a system for applying

such procedures sufficient to provide reasonable assurances that Item 10 events are timely reported;

2. at the time of the violation, the company followed those procedures; and

3. as promptly as reasonably practicable, the company made a filing to correct any violation.

This provision is intended to provide protection against sanctions for companies that experience isolated failures to comply notwithstanding appropriate procedures. A private right of action would not arise merely by virtue of such a failure.

Conclusion

Even though the Commission has requested comments on many specific issues in the releases, the SEC staff has indicated that they expect the Commission to move quickly to adopt these proposals following the comment periods. The comment period on the first proposal is only 30 days and expires on May 23, 2002. The comment period on the proposed changes to Form 8-K runs through June 24, 2002. Vedder Price securities attorneys are prepared to assist registrants desiring to submit comments. Particularly if you anticipate significant difficulties in meeting the accelerated filing schedules, you should consider submitting a comment letter to the SEC. The releases can be found at www.sec.gov under "Regulatory Actions – Proposed Rules."

While it is not yet certain that the accelerated filing time frame will be adopted as proposed, there is a strong possibility that this will occur. In order to be prepared to meet the shortened reporting schedule by next year, registrants should begin to evaluate internal financial reporting systems and disclosure processes, including the timing of the required SAS 71 review of interim financial information by the outside auditor. Completing such a review within 30 days may be difficult for those registrants who have recently changed auditors.

We also recommend that all registrants revisit their existing insider trading policies as soon as possible to ensure that policies and procedures are in place to enable the company to comply with the

ANNEX A

Proposed Item 10. Transactions by Directors and Executive Officers - Sample 8-K Disclosure

(a)(1) Acquisitions/Dispositions of Equity Securities

Name and Title of Director/ Executive Officer	Date of Transaction	Title and Number of Securities Involved in Transaction	Per Share Acquisition/ Disposition Price	Aggregate Value of Transaction	Description of Nature of Transaction
John Jones/CEO	2/19/02	25,000 shares common stock	$14.10	$352,500	Sold shares in open market transaction
Jane Smith/ Director	2/20/02	4,000 shares Series A preferred stock	$30.00	$120,000	Purchased shares in open market transaction

(a)(2) Acquisitions/Dispositions of Derivative Securities

Name and Title of Director/ Executive Officer	Date of Transaction	Number of Derivative Securities Involved in Transaction	Per Share Exercise/ Conversion Price	Price (if any) of Derivative Security	Exercisability/ Expiration Dates of Derivative Security	Title and Number of Underlying Securities	Description of Nature of Transaction
Norman Young /CAO	2/19/02	(1)	$14.00	(1)	Exercisable commencing 2/19/02; Expiring 2/19/03	10,000 shares of common stock	Agreement to sell securities - hedging transaction (1)
Theresa White/Vice President	2/20/02	2,500	$14.25	0	(2)	2,500 shares of common stock	Received employee stock option grant

(1) On February 19, 2002, Norman Young, the Chief Accounting Officer of the registrant, entered into a "swap" agreement with XYZ Brokerage Firm ("XYZ") pursuant to which, on February 19, 2003, XYZ will be required to pay to Mr. Young an amount equal to the current market value of 10,000 shares of registrant's common stock, or $140,000, and Mr. Young will be required to pay XYZ an amount equal to the then-current market value of 10,000 shares of the registrant's common stock. In addition, Mr. Young has agreed to pay XYZ, as a fee, an amount equal to ¼ of one percent of the current market value of the 10,000 shares of registrant's common stock subject to the agreement and that, to the extent that the registrant declares and pays any dividend on its common stock during the term of the agreement, any such amounts will be paid to XYZ. XYZ has agreed to pay to Mr. Young an amount equal to the "prime" interest rate on $140,000 during the term of the agreement.

(2) Employee stock option is exercisable in four equal annual installments, beginning on the first anniversary of the date of grant. The option will expire on February 19, 2012.

ANNEX A (continued)

(a)(3) Exercises/Conversions of Derivative Securities

Name and Title of Director/ Executive Officer	Date of Transaction	Number of Derivative Securities Involved in Transaction	Per Share Exercise/ Conversion Price	Title and Number of Underlying Securities	Description of Nature of Transaction
John Jones/CEO	2/19/02	5,000	$4.50	5,000 shares of common stock	Exercised employee stock option

(b)(1) Rule 10b5-1 Plans

On February 20, 2002, Tom Johnson, the Chief Financial Officer of the registrant, entered into a plan with ABC Brokerage Firm, pursuant to which ABC will undertake to sell 25,000 shares of the common stock of the registrant currently owned by Johnson at specified intervals through the end of 2002.

On February 22, 2002, Donald Cummings, the registrant's Vice-President for sales, modified a previously reported sales plan with XYZ Brokerage Firm to decrease the number of shares of registrant common stock subject to sale on a monthly basis pursuant to the plan, and to decrease the limit order price at which the shares may be sold under the plan. These modifications will reduce to 18,000 the aggregate number of shares that may be sold by Mr. Cummings pursuant to the plan.

On February 22, 2002, Patricia Brown, the registrant's vice-president for administration, terminated her previously reported sales plan with LMN Brokerage Firm.

(c) Loans

On February 19, 2002, the registrant agreed to loan Sandra Green, a member of the registrant's board of directors, $50,000 for the purpose of purchasing 10,000 shares of the registrant's common stock through the exercise of a stock option previously granted to Ms. Green on May 1, 1999. The loan, which is immediately available, will bear interest at the rate of four percent per annum and will be evidenced by a written promissory note containing the following terms. Interest will accrue during the term of the loan, which is five years. Principal and accrued interest will be due and payable at the expiration of the loan term. The loan will be non-recourse. Under the provisions of the note, the registrant's board of directors has the discretion to forgive any repayment of principal and interest if the board deems such action to be in the best interests of the registrant. The 10,000 shares of the registrant's common stock to be acquired with the loan proceeds will secure repayment of the loan. These shares will be held in escrow for the benefit of the registrant pending repayment or substitution of additional or different collateral in form and amount satisfactory to the registrant.

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If you have any questions regarding material in this issue of *Corporate Securities* or suggestions for a specific topic you would like addressed in a future issue, please contact the executive editor, Jennifer R. Evans at 312/609-7686 or at jevans@vedderprice.com.

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Vedder, Price, Kaufman & Kammholz is a national, full-service law firm with more than 200 attorneys in Chicago, New York City and Livingston, New Jersey. The firm's corporate finance and securities attorneys regularly represent underwriters and issuers, both foreign and domestic, in a wide variety of matters, including:

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