

Capital Markets and Securities

A bulletin prepared by the Capital Markets Group at Vedder Price designed to keep corporate executives and investment banking professionals informed of major developments in the securities industry.

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SEC RULES TO ACCELERATE SECTION 16 REPORTING TO BE EFFECTIVE AUGUST 29, 2002

Form 4 Reports Will Now Be Due Within Two Business Days

On August 6, 2002, the Securities and Exchange Commission announced that it will adopt new rules relating to Section 16 as directed by the Sarbanes-Oxley Act no later than August 29, 2002. The Sarbanes-Oxley Act of 2002 (the "Act"), signed into law on July 30, 2002, includes new accelerated filing deadlines under Section 16 of the Securities Exchange Act of 1934. Section 16 applies to transactions in a company's equity securities by its directors, certain officers and 10% or greater beneficial shareholders. These provisions of the Act become effective August 29, 2002 and apply to transactions on or after that date.

To assist clients in responding quickly to the changes, we have outlined below the new accelerated filing requirements under the Act as well as the proposed changes to the related rules that the SEC intends to implement. We recommend all companies notify company insiders as soon as possible of the need to comply with the new requirements.

Accelerated Filing Deadline

For **any** changes in an insider's beneficial ownership of the company's equity securities on or after August 29, 2002, a Form 4 report must now be filed ***no later than the second business day following the day on which the transaction occurred***. Previously, Form 4 reports were not due until 10 days after month end.

Assume All Transactions Will Become Subject to Immediate Reporting

- ***All*** transactions in a company's equity securities must now be reported within 2 business days on Form 4. This includes most transactions that used to be eligible for delayed reporting on Form 5 under the rules. In addition to market transactions, issuances by the Company, stock grants, option exercises and cancellations, regrants of stock options, gifts, and discretionary purchases and sales of the company's stock under employee benefit plans will now be subject to immediate reporting.

- The SEC has stated that it is considering adopting one or more exceptions from the 2-day filing rule for narrowly defined transactions that may prove difficult to report on a timely basis, but we expect these exceptions will be limited. Information on the SEC actions should be available in the next few weeks.

EDGAR Filings to Become Mandatory

By July 30, 2003, all insiders who must file reports under Section 16 will be required to file such reports with the SEC electronically via EDGAR, and companies which maintain websites must post these reports on their websites no later than the end of the business day following the filing date. The SEC is encouraging all insiders to file their Forms 4 electronically. Currently, this requires separate EDGAR filer identification numbers for each insider.

Suggested Interim Procedures

Pending finalization of the SEC rules and complete review of insider trading policies and procedures, we recommend that companies immediately undertake the following steps:

(1) Immediately notify all Section 16 reporting persons (i.e. directors and covered officers) of these accelerated reporting obligations.

(2) Require Section 16 reporting persons (including their family members) to pre-clear any and all proposed transactions, including gifts, in the company's equity securities with the CFO or general counsel. Keep in mind that administratively, this preclearance will need to be sufficiently in advance of the proposed transaction to provide enough time for the company to assist in the preparation of the Form 4.

(3) Obtain a power of attorney from each Section 16 reporting person granting the CFO or general counsel authority to sign any required report on the insider's behalf.

(4) For companies that commence a six to eight-week "black-out" period during the third month of each quarter, consider closing the window on August 29th (rather than September 1st) for this quarter. This will afford reasonable time to study the new rules and establish appropriate procedures in order to avoid delinquent reporting and filing errors.

(5) Obtain EDGAR filer access codes for each of the company's Section 16 reporting persons to facilitate the filing of the reports via EDGAR as soon as possible. Alert appropriate personnel to begin exploring website capability for postings of Section 16 reports.

(6) Consider requiring all Section 16 reporting persons to sign a certification acknowledging their understanding of, and intent to comply with, the procedures adopted in order to comply with the new deadlines.

(7) Consider updating and/or adopting new written insider trading policies and procedures to address the new regulatory environment, including procedures for

mandatory pre-clearance of all transactions by Section 16 reporting persons and procedures for company approval of insiders' 10b5-1 trading plans. Vedder Price attorneys can assist in the review and design of appropriate insider trading policies and procedures.

Note: These provisions of the Act are, and the related rules the SEC proposes to adopt will be, effective August 29, 2002. Accordingly, Form 4 transactions completed in August on or before August 28, 2002 remain eligible for reporting by September 10, 2002. However, transactions completed on or after August 29 would be subject to the 2-day accelerated reporting deadlines discussed above.

In announcing that the new Section 16 rules will be forthcoming in the next few weeks, the SEC also clarified that it will not move forward with its previously proposed rules which would have required companies to file reports on Form 8-K regarding insider transactions in company securities. The SEC is, however, continuing to consider other expanded Form 8-K disclosures proposed in its earlier releases, including immediate disclosure of related party transactions and insider adoption of 10b5-1 trading plans (these plans can serve to preclude insider trading violations for preplanned purchases or sales of company securities).

We will keep you informed as this area of the law further develops following the adoption of new rules by the SEC. Please check our website, www.vedderprice.com, for updates.

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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 attorneys in the firm's Capital Markets Group regularly represent corporations and investment bankers, both foreign and domestic, in a wide variety of matters, including:

- debt and equity offerings, including initial public offerings, structured debt financings, aircraft securitizations, dual-class equity structures, and sophisticated preferred stock instruments;
- capital formation for initial capitalization, financing ongoing operations, and acquisitions;
- corporate disclosure, periodic reporting, proxy solicitations, and insider trading and beneficial ownership compliance matters;
- private placement of securities, including Rule 144A and Regulation S transactions;
- tender offers, mergers and acquisitions, and recapitalizations and restructurings;
- international offerings of securities and compliance by foreign issuers with U.S. securities laws;
- litigation and administrative and arbitration proceedings involving various securities fraud claims, disclosure issues, and regulatory enforcement matters; and
- municipal bond financings.

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