

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.

September 2002

SEC ADOPTS RULES TO IMPLEMENT ACCELERATED SECTION 16 REPORTING

Form 4 Reports Now Due Within Two Business Days

On August 27, 2002, the Securities and Exchange Commission adopted new rules relating to Section 16 as directed by the Sarbanes-Oxley Act, including new accelerated filing deadlines. Section 16 applies to transactions in a public company's equity securities by its directors, certain officers and 10% or greater beneficial shareholders. The new rules became effective on August 29, 2002 and apply to transactions on or after that date. The significant rule changes are outlined below. We recommend all companies notify company insiders as soon as possible of the need to comply with the new requirements.

Two-Business Day Accelerated Filing Deadline

Subject to only very limited exceptions, a Form 4 report must now be filed ***no later than the second business day following the day of any transaction*** which changes an insider's beneficial ownership of the company's equity securities. For example, if a transaction is executed on Tuesday, September 3rd, the Form 4 must be filed by the close of business on Thursday, September 5th.

Certain Form 5 Transactions Now Subject to Immediate Reporting on Form 4

- Beyond the two-day accelerated deadline, another significant effect of the new rules is to require that certain transactions previously eligible for delayed reporting on year-end Form 5 ***must now be reported on Form 4 within two business days***. These include *grants* of stock options and restricted stock awards, cancellations, regrants and/or repricings of stock options, acquisitions from and sales of stock to the issuer, and discretionary purchases and sales of the company's stock under employee benefit plans, as well as transactions pursuant to non-qualified deferred compensation plans. These transactions join option exercises and market transactions on the list of transactions now subject to two-business day reporting on Form 4. Other than these transactions, all of which fall within Rule 16b-3, transactions that were eligible for deferred reporting on Form 5 continue to be eligible, including gifts and transactions that are deemed to be a change in the form of beneficial ownership.

- In addressing the accelerated reporting on Form 4, please note the following:
 - (1) we believe that the transaction date with respect to option grants is the date that the exercise price of the option is set, usually the date of board or committee approval of the grant;
 - (2) the transaction date with respect to restricted stock awards is the date the number of shares is determined and allocated to the insider, again, usually the date of board or committee approval of the award; and
 - (3) in the case of deferred compensation plans, the acquisition of the reportable interest is the date that the number of shares are allocable to the insider.
- Transactions involving company stock under tax-qualified employee benefit plans and stock purchase plans, to the extent currently exempt from Section 16 reporting, will remain exempt from Section 16 reporting, although such holdings must still be included in the beneficial ownership amounts reported on either Form 4 or Form 5. (For example, employee elections to direct new contributions into the employer stock fund of an employee benefit plan will continue to be exempt from reporting. Only changes in the selected investment alternative that move money in or out of the stock fund will trigger a reporting event. The number of shares owned in the employer stock fund must be included in the insider's beneficial ownership on the Form).

Limited Exceptions to the Two-Day Filing Requirement

The new rules provide that two types of transactions will be afforded a somewhat longer timeframe for Form 4 reporting, as follows:

- (1) transactions under Rule 10b5-1 plans, where the date the transaction is executed is not selected by the insider; and
 - (2) discretionary transactions by an employee benefit plan, where the date the transaction is executed is not selected by the insider (a discretionary transaction involves an intra-plan transfer of previously invested assets into or out of a plan's company stock fund, or a cash-out from such fund).
- These transactions must be reported on Form 4 no later than the second business day after the transaction is deemed to have occurred. For these types of transaction, the date on which the transaction will be deemed to have occurred is the earlier of (a) the date on which the broker, dealer or plan administrator notifies the insider that the transaction occurred, or (2) the third business day following the actual trade date (even if the insider is unaware the transaction occurred).
 - The SEC plans to publish amended Forms 4 and 5 as soon as possible. In the meantime, insiders should continue to use the old forms, indicating the date on which the reportable transaction occurred rather than the month to which the Form relates. Period-end holdings should be reported to reflect beneficial ownership immediately following the transaction rather than month end and transactions pursuant to Rule 10b5-1 plans and discretionary

employee benefit plan transactions should list the transaction date as the trade date with a footnote referencing the “deemed execution date.”

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. Further rulemaking by the SEC in this regard will be forthcoming. The SEC is encouraging all insiders to file their Forms 4 electronically. Each insider must obtain their own unique EDGAR filer identification numbers from the SEC.

Note: These provisions of the Act and the new SEC rules are 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, reportable transactions completed on or after August 29 are subject to the 2-day accelerated reporting deadlines discussed above.

In the release adopting the new rules, the SEC 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 Rule 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. Please check our website, www.vedderprice.com, for updates.

© 2002 Vedder, Price, Kaufman & Kammholz. This memorandum is published by the law firm of Vedder, Price, Kaufman & Kammholz. It is intended to keep our clients and interested parties informed on recent legal developments. It is not a substitute for professional advice.

Vedder Price is a national, full-service law firm with more than 200 attorneys in Chicago, New York and New Jersey. Please contact your Vedder Price contact attorney with any questions or if you need any assistance.

VEDDER, PRICE, KAUFMAN & KAMMHOLZ

About Vedder Price

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.

Principal Members of the Capital Markets Group:

Steven R. Berger (<i>New York</i>)	212/407-7714
John T. Blatchford	312/609-7605
Thomas P. Desmond	312/609-7647
Jennifer R. Evans	312/609-7686
Robyn B. Goldman	312/609-7662
Steven J. Gray (<i>Chair</i>)	312/609-7528
Jennifer Durham King	312/609-7835
James W. Morrissey	312/609-7717
Meeghan O'Donnell	312/609-7529
Jason K. Zachary	312/609-7757

Participating Members of the Capital Markets Group:

James A. Arpaia	312/609-7618
William J. Bettman	312/609-7776
Deborah B. Eades	312/609-7661
Karin Jagel Flynn	312/609-7805
Dean N. Gerber	312/609-7638
Dan L. Goldwasser (<i>New York</i>)	212/407-7710
Douglas M. Hambleton	312/609-7684
John T. McEnroe	312/609-7885
Daniel C. McKay II	312/609-7762
Maureen A. Miller	312/609-7699
Robert J. Moran	312/609-7517
Michael A. Nemeroff	312/609-7858
Cathy G. O'Kelly	312/609-7657
Daniel O'Rourke	312/609-7669
John R. Obiala	312/609-7522
Ronald Scheinberg (<i>New York</i>)	212/407-7730
Guy E. Snyder	312/609-7656
Robert J. Stucker	312/609-7606
David A. Sturms	312/609-7589
Dalius F. Vasys	312/609-7623
Donald A. Wassall (<i>New York</i>)	212/407-7707
Richard L. Williams III	312/609-7588