

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.

June 2003

REMINDER: ELECTRONIC FILING AND WEBSITE POSTING OF SECTION 16 REPORTS BECOMES MANDATORY ON JUNE 30, 2003

In addition to accelerated reporting of insider transactions, the Sarbanes-Oxley Act of 2002 also mandated the electronic filing via EDGAR of beneficial ownership reports required to be filed by officers, directors and principal security holders under Section 16 of the Securities Exchange Act (*i.e.* Forms 3, 4 and 5). Under its rulemaking to implement these provisions, the SEC requires companies that maintain websites to post Section 16 reports on the company's website within one business day of the filing. ***The new requirements become effective on June 30, 2003.***

Please consider the following practical tips to be sure you are ready to assist insiders with their Section 16 compliance and to meet the Section 16 webposting deadline:

- You must utilize the new online filing system that the SEC has created to file Forms 3, 4 and 5 electronically via EDGAR; paper filings are no longer permitted. To access the new online filing system, go to <https://www.onlineforms.edgarfiling.sec.gov>
- Section 16 reports will be accepted for filing via EDGAR until 10:00 p.m. Eastern time, and if received before that time, will be deemed filed on that same business day.
- ***Each*** insider needs his or her own EDGAR access codes. It is not permissible to use the company's filing numbers. You should obtain codes now for any insiders who do not yet have them.
- The SEC's online filing system has certain weaknesses and limitations and may not be compatible with some third-party filing software. You should submit test filings well in advance of the compliance deadline to test system compatibility in order to avoid glitches that might cause a filing to be delayed.
- For reports filed on behalf of an insider using a power of attorney, the power of attorney must be filed electronically as Exhibit 24, unless the power of attorney has already been filed with the SEC with a previously filed report.
- The website posting can be a direct posting of the forms, or a hyperlink to a third-party website (such as EDGAR) that contains the forms. The hyperlink must lead directly to the filed forms, or to a list of the forms in reverse chronological order. The website posting must remain accessible for at least 12 months.
- For the first year of mandatory Section 16 EDGAR filings, there is a one-day grace period regarding disclosure of delinquent filings. Until June 30, 2004, issuers will not be required to make proxy statement disclosure regarding

insiders' delinquent Section 16 filings as long as the filing is no more than one day late. The insider's form is still deemed filed late, however, from a compliance perspective if not filed by the due date. Form 4's now are generally due no later than the second day after the reportable transaction.

Requesting EDGAR Filing Access Codes

EDGAR access codes can be obtained by filing a Form ID with the SEC by or on behalf of the insider. Based on recent conversations with the SEC, it is currently taking between 7-10 days to obtain the codes once requested from EDGAR filer support, so insiders and companies who are filing on their behalf should plan ahead. If the insider is also an insider at another company, he or she may already have EDGAR access codes, and those codes should be used for all of that insider's Section 16 filings. Requesting new codes will cancel the prior codes, and any filing attempted on the insider's behalf at the other company may be delayed because the old access codes won't work.

Please call Jennifer Durham King at 312-609-7835, or any other Vedder Price attorney contact, for assistance in obtaining EDGAR access codes, or if you have any other questions or need help in filing Section 16 reports electronically.

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If you have any questions regarding material in this issue of *Capital Markets and Securities* or suggestions for a specific topic you would like addressed in a future issue, please contact the executive editor, Steven J. Gray, at 312/609-7528 or at sgray@vedderprice.com.

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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.

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