

**SEC ADOPTS RULES IMPLEMENTING
SARBANES-OXLEY CHANGES TO SECTION 16
REPORTING REQUIREMENTS**

September 2002

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On August 27, 2002, the SEC adopted rules implementing Section 403 of the Sarbanes-Oxley Act of 2002, which amended the reporting requirements under Section 16(a) of the Securities Exchange Act of 1934. Section 16(a) includes a requirement that officers, directors and ten percent shareholders of most domestic public companies file reports of changes in beneficial ownership of the company's equity securities (including the purchase or sale of security-based swap agreements involving such equity securities). Section 403 of Sarbanes-Oxley amended Section 16(a) by requiring that changes in beneficial ownership be reported "before the end of the second business day following the day on which the subject transaction has been executed, or at such other time as the [SEC] shall establish, by rule, in any case in which the [SEC] determines that such 2-day period is not feasible."

Prior to the effectiveness of the Sarbanes-Oxley amendment to Section 16(a), all changes in beneficial ownership resulting from transactions that were not exempt from the short-swing profit provisions of Section 16(b), as well as exercises or conversions of derivative securities (such as the exercise of stock options), were required to be reported on a Form 4 within ten days following the month in which the transactions occurred. All other transactions were either reportable on Form 5 up to 45 days following the fiscal year in which the transaction occurred, or were not reportable at all based on exemptions from the reporting requirements under Section 16(a). As a result of Sarbanes-Oxley and the new SEC rules, all transactions formerly reportable on Form 4, as well as all transactions between a company and its directors and executive officers formerly reportable on Form 5, will be subject to accelerated reporting. The accelerated reporting requirements, as well as other aspects of the new rules, are addressed in more detail below.

Revisions to Reporting Requirements

The Sarbanes-Oxley amendment to Section 16(a), as implemented by SEC rules, results in the following changes to the prior reporting regimen:

1. Reports filed on Form 4 prior to the new rules – These reports will continue to be filed on Form 4, but under the accelerated schedule requiring a filing no later than two business days following the date of execution of the transaction rather than ten days following the end of the month in which the transaction occurred. For the purposes of the filing, the trade date, not the settlement date, is the date of execution of the transaction. There is a limited exception, discussed below, for transactions that the SEC has concluded meet the conditions for the "not feasible" exception.

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2. Transactions reportable on Form 5 prior to the new rules – The new reporting scheme may be divided into the following three categories:

(i) Transactions between an issuer and its officers and directors exempt under Rules 16b-3(d) and 16b-3(e) – These include, among others, grants of stock options and stock appreciation rights, awards of restricted stock, and surrender of company stock in payment of tax withholding obligations or in payment of the exercise price of stock options. These transactions are now reportable on Form 4 no later than two business days following the date of the transaction.

(ii) “Discretionary Transactions” exempt under Rule 16b-3(f) – A Discretionary Transaction is an employee benefit plan transaction resulting in an intra-plan transaction into or out of a company stock fund or resulting in a cash distribution funded by the disposition of company stock (subject to several exceptions). As discussed in more detail below, an extended filing deadline may be applicable to these transactions unless the reporting person has selected the date of transaction execution, in which case the standard two-business day reporting requirement will apply.

(iii) All other transactions reportable on Form 5 prior to the new rules – The few remaining types of transactions reportable on Form 5 (such as gifts and certain small acquisitions) will continue to be reportable on an annual basis on Form 5. An acquisition by a reporting person of company equity securities not exceeding \$10,000 in market value and satisfying certain other conditions is still reportable on Form 5, although a transaction between the company and the reporting person must now be reported on Form 4 even if it involves less than \$10,000. If the aggregate amount of other small acquisition transactions during a six month period exceeds \$10,000 or if a disposition occurs within six months after the acquisition, a Form 4 must be filed within two business days following the occurrence of the event that renders the exemption no longer available.

3. Transactions exempt from reporting under Section 16(a) prior to the new rules – The SEC did not change the regulations relating to transactions exempt from Section 16 reporting. Therefore, transactions (other than Discretionary Transactions) in a so-called “Tax-Conditioned Plan” will continue to be exempt from reporting. These plans include a “Qualified Plan” (a plan, such as a 401(k) plan, that satisfies the coverage and participation requirements of Sections 410 and 401(a)(26) of the Internal Revenue Code), a “Stock Purchase Plan” (a plan satisfying the coverage and participation requirements of Sections 423(b)(3) and 423(b)(5), or Section 410, of the Internal Revenue Code) and an “Excess Benefit Plan” (a plan that is operated in conjunction with a Qualified Plan and provides only the benefits or contributions that would be provided under a Qualified Plan but for any benefit or contribution limitations in the Internal Revenue Code). In addition, stock splits, stock dividends, most dividend or interest reinvestment plans, transactions under domestic relations orders and other transactions currently exempt from Section 16(a) reporting continue to be exempt.

4. Transactions now provided with special reporting deadlines – In its release adopting the new rules, the SEC noted that the standard two-business day Form 4 filing

requirement would not be feasible with respect to “two narrowly defined types of transactions where objective criteria prevent the reporting person from controlling the trade date.” The transactions specifically referenced by the SEC are:

(i) A transaction pursuant to a contract, instruction or written plan for the purchase or sale of company equity securities that satisfies the affirmative defense conditions of Rule 10b5-1(c) under the Exchange Act (a “Rule 10b5-1(c) Arrangement”), provided that the reporting person does not select the date of transaction execution – This would include not only so-called Rule 10b5-1 plans, but also a broad class of transactions satisfying the affirmative defense conditions, including transactions under employee benefit plans and dividend or interest reinvestment plans that are not exempt from Section 16 reporting. For these types of transactions, the date of execution is deemed to be the date on which the executing broker, dealer or plan administrator notifies the reporting person that the transaction has been executed, as long as the notification date is no later than the third business day following the trade date. If the notification is received after the third business day following the trade date, such third business day will be deemed the notification date, and the Form 4 must be filed no later than five business days following the trade date to be considered timely. The SEC stated that “[b]y deeming the notification date to be the third business day following the trade date if actual notification does not occur by then, the rule limits the potential delay permitted for reporting these transactions on a timely basis.”

(ii) A “Discretionary Transaction,” provided that the reporting person does not select the date of transaction execution – The new rules provide that the date of execution for reporting purposes will be deemed to be the date on which the plan administrator notifies the reporting person that the transaction has been executed. Here again, the three-business day limit applies, so that if the notification date is later than the third business day following the trade date, the date of execution is deemed to be such third business day.

5. Potential Form 3 filing anomaly – Each person who becomes a director or officer of a company that has a class of securities registered under Section 12 of the Exchange Act is required to file an initial report of beneficial ownership on Form 3 within ten days. Because of the new accelerated filing deadline for Form 4, it is possible that the Form 3 could be filed on a timely basis after a Form 4 is filed. The SEC stated that “[i]n this situation, we encourage the reporting person to file the Form 3 along with the Form 4 at the time the Form 4 is due.” Presumably, where one or more Forms 4 are due before the Form 3, the SEC would prefer that the Form 3 be filed at the time the first Form 4 is filed.

6. Transactions prior to August 29 – The new rules do not affect the pre-August 29 filing requirements. However, in order to rationalize transaction reporting and post-transaction holdings information, reporting persons should consider including, on their first Form 4 covered by the new rules, all pre-August 29 transactions otherwise reportable on Form 4 by September 10 and all pre-August 29 transactions that are reportable on Form 5 but would be reportable on Form 4 had they occurred on or after August 29 (e.g., stock option grants).

Amendments to Form 4

The SEC amended Form 4 by adding a new column to require reporting of the deemed execution date for Rule 10b5-1(c) Arrangements and Discretionary Transactions (a similar change will be made to Form 5). In addition, Form 4 is being modified to reflect that it is no longer a monthly form and that the holdings columns must include holdings following the reported transaction or transactions. The SEC stated that, pending its publication of the new forms, reporting persons should modify box 4 of Form 4 to state the month, date and year of a transaction. In addition, for those transactions where a deemed execution date is relevant, the reporting person should insert an asterisk next to the trade date in the transaction date column, and add a footnote to disclose the deemed execution date.

Treatment of Stock Options

A potentially significant development was addressed in the release adopting the new rules. Specifically, the SEC asked for comment on whether “any changes are required in the treatment of stock options under Section 16(a) and 16(b).” Among the issues raised by the SEC was “whether and how the six-month period of Section 16(b) should be applied and calculated in connection with stock options, exercises and the sale of the underlying stock.”¹ Among other things, the SEC specifically asked whether a six-month holding period should be required as a mandatory condition to the exemption for stock option grants.

Foreign Private Issuers

Rule 3a12-3(b) under the Exchange Act exempts foreign private issuers from Section 16 reporting. This exemption remains in effect.

¹ Prior to 1991, the exercise of a stock option was considered a non-exempt purchase and, therefore, reporting persons would be subject to Section 16(b) liability if a sale of the class of stock subject to the option occurred within six months following the exercise. As a result of amendments to the Section 16 rules adopted in 1991 and 1996, exercises of stock options are generally exempt from the short-swing profit provisions of Section 16(b). In addition, following the 1996 rule adoption, the grant of a stock option can also be exempt from Section 16(b) liability if the grant is approved in advance by the company’s board of directors, by a committee of two or more non-employee directors (as defined in Rule 16b-3) or by the company’s shareholders (shareholders also may ratify the grant no later than the date of the following annual meeting of shareholders). Alternatively, the exemption will apply if the options are held for at least six months or if the combined holding period of the options and the underlying securities received on exercise of the options is at least six months. Therefore, under the current rules, where a stock option grant has been approved in accordance with Rule 16b-3, an officer or director could exercise the option and sell the underlying shares immediately after the grant.

Electronic Filing of Section 16 Reports

Section 403 of Sarbanes-Oxley requires that not later than July 30, 2003, all change in ownership reports be filed electronically and be posted on the company's website (if it has one) by the end of the business day following the filing. The SEC stated that it is "proceeding expeditiously with rulemaking and related system programming to assure adoption within the one-year period mandated by [Sarbanes-Oxley]." (In fact, SEC staff representatives have stated that they will seek to have the electronic filing requirements in place well in advance of the July 30, 2003 deadline.) In the meantime, the SEC stated that it will accept electronically filed reports under Section 16(a) "that are not presented in the standard box format and omit the horizontal and vertical lines separating information items, so long as the captions of the items and all required information are presented in the proper order." The SEC also suggested that reporting persons intending to use EDGAR submit Forms ID requesting EDGAR access codes as soon as possible. We hope that, in connection with its system programming efforts, the SEC undertakes significant changes that will make EDGAR more user-friendly for the thousands of persons who will become subject to the electronic filing requirement.

Proxy Statement Disclosure

The SEC has not changed the requirement that a company disclose late filings of Section 16 reports in its proxy statement.

Status of Related Form 8-K Proposal

On April 12, 2002, the SEC issued a release proposing that companies disclose, on an accelerated basis in Form 8-K, information relating to certain transactions involving their directors and executive officers, including transactions by directors and officers in company equity securities. In light of the Sarbanes-Oxley amendments to Section 16(a), the SEC does not intend to consider further Form 8-K disclosure of such transactions in company securities. However, the SEC stated that it will continue to consider Form 8-K disclosure relating to directors' and executive officers' Rule 10b5-1(c) Arrangements and company loans to or guaranties for the benefit of directors and executive officers that are not prohibited by Section 402 of Sarbanes-Oxley.

Four Things to Do Now

Many commentators have issued fairly extensive lists of procedures to follow in anticipation of the new rules. However, in order to promptly enhance their ability to comply with the new rules, we believe issuers should focus on a few steps now, if they have not already done so:

1. Inform directors and officers about the new two-business day filing requirement – A memorandum is useful, but we believe that direct verbal communication will be the most effective means of making sure directors and officers are aware of the new requirements. Remind the officers and directors that transactions by immediate family members sharing the same household, as well as controlled corporations, family partnerships, trusts and other entities with respect to which the directors and officers are

deemed to have a pecuniary interest, are also subject to Section 16 reporting.

2. Require preclearance of all transactions in company securities by directors and officers – This should be addressed in the communication informing the directors and officers of the two-business day requirement (a board of directors resolution, or resolution of an appropriate board committee, may be helpful in enforcing this requirement).

3. Request assistance from the brokers – As part of the new procedures, directors and officers should instruct their brokers, in writing, that the brokers must immediately advise the company of any trades they have made.

4. Obtain powers of attorney – The ability to timely file reports will be enhanced if several company officials are given the power to execute Section 16 reports on behalf of reporting persons.

For more information on the new SEC rules, please contact any of the following:

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