

**SEC PROPOSES RULES TO ACCELERATE DUE DATES FOR  
PERIODIC REPORTS AND TO DISCLOSE CERTAIN  
MANAGEMENT TRANSACTIONS**

On April 11, 2002, the Securities and Exchange Commission announced proposed rules (i) accelerating periodic report filing dates; (ii) requiring disclosure concerning website access to periodic reports; and (iii) mandating Form 8-K disclosure regarding certain management transactions. Each of these proposed rules, assuming they are adopted, will likely have a substantial effect on a company's reporting and disclosure obligations going forward. The following is a summary of the material terms of each of the proposed rules.

**Acceleration of Periodic Report Filing Dates**

*Description of Proposal.* This proposed rule would shorten the due date for annual reports on Form 10-K to 60 calendar days after a company's fiscal year end from the current 90 calendar days and would shorten the due date for quarterly reports on Form 10-Q to 30 calendar days after the end of each of the first three quarters of the company's fiscal year from the current 45 calendar days. The goal of the SEC is to get the more detailed information contained in these reports in the hands of the public earlier.

*Application of Proposal.* The accelerated due dates for the periodic reports would apply only to companies that meet each of the following three criteria:

- ◆ The company has a public float of \$75 million or more as of a date within no more than 60 and no less than 30 calendar days before the end of the company's last fiscal year;
- ◆ The company has been subject to the periodic reporting requirements of the Exchange Act for a period of at least 12 calendar months preceding the filing of the report; and
- ◆ The company has filed at least one annual report on Form 10-K.

Once a company meets all of the criteria, it will immediately become subject to the accelerated filing requirements. When a company becomes subject to the accelerated filing rule, it will generally remain subject to the shortened deadlines.

*Impact of Proposal.* The risk of accelerating the due dates for annual and quarterly reports is that more companies may need a filing extension or would file their reports late. Filing a late report may result in:

- ◆ Losing the availability of short-form registration for at least one year from the date of the late filing;
- ◆ Losing the availability of Rule 144 for security holder's resales of restricted and control securities; and
- ◆ Losing the availability of registration on Form S-8 for resales of employee benefit plan securities.

The SEC has indicated its intent to revise the disclosure on the cover page of the annual report on Form 10-K to assist it and investors in evaluating whether a company is subject to accelerated filing deadlines. Accordingly, companies will be required to disclose on the cover page the dollar amount of the public float computed within the time frame prescribed in the proposed rule. "Public float" is the value of a company's equity securities held by non-affiliates of the Company.

*Transition Period.* If adopted, the proposed rule would take effect for fiscal years ending after October 31, 2002. Comments on this proposed rule must be received by the SEC no later than 30 days after official publication of the proposed rule. In announcing the proposed rule, the SEC listed a number of questions and factors with respect to which it is soliciting comments.

## **Disclosure Concerning Website Access to Reports**

*Description of Proposal.* This proposed rule would require companies to disclose in their annual report on Form 10-K the following information:

- ◆ That the public may read and copy the company's filings at the SEC's Public Reference Room, and can access information electronically filed on the SEC's website;
- ◆ The company's website address, if it has one;
- ◆ Whether the company makes available free of charge on its website, if it has one, its annual report on Form 10-K, quarterly reports on Form 10-Q, current reports on Form 8-K, and all amendments to those reports as soon as reasonably practicable after, and in any event on the same date as, such material is electronically filed with or furnished to the SEC;
- ◆ If the company does not make its filings available in this manner, the reasons why it does not do so (including, where applicable, that it does not have an Internet website);

- ◆ If the company does not make its filings available in this manner, one or more locations where the public can access these filings electronically immediately upon filing, if any, and whether there is a fee for such access; and
- ◆ Whether the company voluntarily will provide electronic or paper copies of its filings free of charge upon request.

The SEC recognizes that there are a number of ways a company can provide website access to their Exchange Act reports. The SEC is encouraging companies to hyperlink directly to the company's reports instead of to the home page of a third-party service. Companies should be aware that some third party websites, including the SEC's EDGAR database, post filings after a 24-hour delay. In such a case, hyperlinking to a third-party website would not allow a company to state that it provides website access to its reports as soon as reasonably practicable after, and in any event on the same day as, those reports are filed, nor would the website qualify as a location where the filings are immediately available in electronic form.

*Application of Proposal.* The website disclosure applies only to those companies that meet the criteria set forth in the proposed rule requiring accelerated filing for periodic reports and are therefore subject to the proposed accelerated filing rule.

*Transition Period.* The SEC has determined that a transition period is appropriate and has prescribed a transition period of three months that will begin after adoption of the proposed rule. The SEC is also soliciting comments regarding this proposal, which are due no later than 30 days after official publication of the proposed rule.

## **Form 8-K Disclosure of Certain Management Transactions**

*Description of Proposal.* This proposed rule would amend the current report on Form 8-K to add Item 10, which would require reporting companies to report on Form 8-K the following information:

- ◆ Each director's and executive officer's transactions in company equity securities (whether or not of the publicly-held class), including the acquisition and disposition of derivative securities, and the exercise, termination or settlement of derivative securities;
- ◆ Each director's and executive officer's adoption, modification or termination of a contract, instruction or written plan for the purchase or sale of company equity securities intended to satisfy the affirmative defense conditions of Exchange Act Rule 10b5-1(c); and
- ◆ Each loan of money to a director or executive officer made or guaranteed by the company or an affiliate of the company.

### *Application of Proposal.*

Transactions to be reported. The transactions subject to reporting under paragraph (a) of Item 10 would include transactions in any class of company equity security, including derivative securities. The company would report any transaction in which the director or executive officer has a pecuniary interest, including transactions with third parties as well as transactions with the company. The reportable transaction would be substantially similar to those an insider is required to report on Forms 3, 4 and 5 under Section 16 of the Exchange Act.

Content and Format of the Reports. In the event of an acquisition or disposition of company securities, the company would be required to report:

- ◆ The name and title of the director or executive officer;
- ◆ The date of the transaction;
- ◆ The title and number of securities acquired or disposed of;
- ◆ The per share acquisition or disposition price, if any;
- ◆ The aggregate value of the transaction;
- ◆ The nature of the transaction (e.g., open market sale or purchase, sale to or purchase from the company, gift); and
- ◆ Any other material information regarding the transaction.

Covered Persons. Every director and "executive officer," of a company, as defined by Exchange Act Rule 3b-7, would be required to report under the proposed Item 10. Rule 3b-7 defines "executive officer" as any president, vice president in charge of a principal business unit, division or function, or any other officer who performs a policy making function, or any other person who performs similar policy making functions for the registrant. Executive officers of subsidiaries may be deemed executive officers of the registrant if they perform such policy making functions for the registrant.

Reporting Deadlines. The proposed rule would make most Item 10 events reportable early in the week following the event. Events of heightened significance to investors would be reportable on an accelerated basis, and de minimis events would be reportable on a deferred basis. Specifically:

- ◆ An Item 10 Form 8-K would be due within two business days following a transaction or loan 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;
- ◆ Employee benefit plan grants and awards, transactions and loans with an aggregate value of 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; and

- ◆ The report of a transaction or loan 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.

*No Sanctions Imposed.* The general instruction to the proposed rule provides that the SEC will not impose a sanction on a company that is in violation, if:

- ◆ 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;
- ◆ At the time of the violation, the company followed those procedures; and
- ◆ As promptly as reasonably practicable, the company made a filing to correct any violation.

It should also be noted that as with other Section 13(a) violations, no private right of action will arise under the proposed rule.

*Filing Status.* The Item 10 Forms 8-K would be deemed "filed" for purposes of liability under Section 18 of the Exchange Act. As a result, Item 10 information would be incorporated by reference in Securities Act registration statements on Forms S-2, S-3, S-8 and S-4. The SEC is proposing amendments to the registration statement form instructions and Securities Act Rule 144 so that an Item 10 Form 8-K delinquency will not affect Rule 144 eligibility.

*Application to Exchange Act Rule 10b5-1 Arrangements.* The proposed rule would require a company to report that a director or executive officer has entered into a plan for the purchase or sale of company equity securities intended to satisfy the affirmative defense conditions of Exchange Act Rule 10b5-1.

*Application to Company Loans.* The proposed rule would require a company to report the loan of money to, or lending arrangement with, a director or executive officer by the company or an affiliate of the company. A guarantee or similar arrangement in favor of a third party making such a loan would also be required to be reported.

*Transition Period.* This proposal would become effective 60 days following publication of the final rule, and transactions occurring on and after that date would be reportable. In the case of derivative securities transactions that exceed \$100,000, for the first 60 days following the effective date, such transactions will be reportable not later than the close of business on the second business day of the week following the week in which the transaction occurred.

The SEC is also soliciting comments on this proposed rule, which are due no later than 60 days after official publication of the proposed rule.

**Submission of Comments to SEC**

We will be pleased to assist clients in submitting comments on these proposed rules to the SEC. Although, in our judgment, these proposed rules are likely to be adopted in some form, the comments received by the SEC may lead to modifications to the proposed rules in their final adoption.

**Questions Regarding the Proposed Rules**

Questions regarding the application of and compliance with the proposed rules and questions relating to the submission of comments to the SEC should be addressed to any of the following attorneys in our firm (or to any other attorney in our Corporate Finance Group):

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