

SEC update

SEC Proposes Shorter Deadlines for Periodic Reports, Company Disclosure of Insider Transactions, and Website Access to Company Reports April 15, 2002

On April 11, the Securities and Exchange Commission approved the issuance of proposals that would accelerate the filing of quarterly and annual reports, require companies to disclose insider transactions, and promote website access to their periodic reports. The SEC's proposing releases, which describe the proposals in greater detail, prescribe a 30-day period for public comment on the proposals to accelerate filing deadlines and promote website disclosure and a 60-day period for public comment on the proposal to require disclosure of insider transactions.

Accelerated Filing Deadlines for Annual and Quarterly Reports

The SEC is proposing to require public companies that have more than \$75 million in market capitalization, have been reporting companies for at least twelve months and have filed at least one annual report on Form 10-K during the 12 months or more that they have been reporting, to file their 10-K reports within 60 days after the end of their fiscal year (rather than 90 days), and to file their quarterly reports on Form 10-Q within 30 days after the close of the quarter (rather than 45 days). The determination of market capitalization would be based on the market value of shares held by non-affiliates on a date selected by the company that is 30 to 60 days prior to the filing date. Once subject to the accelerated reporting requirements, a company could exit the accelerated reporting system only if it would qualify for use of Form 10-KSB rather than Form 10-K. To qualify for use of Form 10-KSB after filing on Form 10-K, a company must have a market capitalization no greater than \$25 million and revenues of less than \$25 million for two consecutive years.

Corporate Reporting of Insider Transactions

The SEC also is proposing to add a new Item 10 to Form 8-K that would require companies to disclose:

- **Insider Transactions.** In response to criticism that reports by insiders of their transactions on Forms 4 and 5 often are stale, the SEC also would require companies (as opposed to insiders) to disclose these transactions, but on a much more prompt basis on Form 8-K.
- **Rule 10b5-1 Trading Plans.** Companies also would be required to disclose the establishment, amendment or termination of plans adopted by insiders under Rule 10b5-1 for trading company securities, thereby providing information about an area of insider trading that largely has escaped public scrutiny.

- **Loans to Insiders.** Loans of money to a director or executive officer made or guaranteed by the company, which typically are disclosed after the close of the fiscal year, would be required to be disclosed much earlier.

The deadlines for reporting the insider transactions and loans to insiders would vary, depending on the size of the transaction. Transactions with an aggregate value of \$100,000 or more would be reportable within two business days. Transactions with an aggregate value between \$10,000 and \$100,000 would be reportable by the second business day of the following week. And transactions with a value of less than \$10,000 would not be reportable until the aggregate amount of unreported transactions reached \$10,000.

Website Disclosures

In an effort to make periodic reports by companies more readily available to investors, the SEC is proposing to require public companies to indicate their Internet web site address in their Form 10-K and to indicate whether or not they make available their Exchange Act reports on that web site at the same time the reports are filed with the SEC. A company that does not provide access to these reports on its website would have to state the reasons for not doing so, and indicate where investors could immediately access electronic copies of the reports (including any charges for gaining such access). Companies also would be required to state whether they will voluntarily provide electronic or paper copies of their Exchange Act reports free of charge upon request.

Planning for the Inevitable

Because the proposals are a high priority for the SEC, it is likely that they will be adopted quickly after the comment period closes. While the final rules may differ from the proposals in some respects in order to accommodate legitimate concerns raised in the public comments, we do not anticipate substantial changes. Accordingly, we recommend that companies begin thinking now about the measures that may be necessary to meet both the shortened deadlines for annual and quarterly reports and the requirement to file on a timely basis the many additional reports on Form 8-K that will be required to disclose insider transactions.

At the least, companies should begin discussions with their accountants about what will be necessary to avoid delays in receiving audited 10-K financials and obtaining SAS-71 reviews of quarterly financials. Internally, companies should be considering procedures that will help assure that insiders provide them with sufficient notice of their transactions to meet the 8-K reporting deadlines. One sure method of promoting compliance with the deadlines is to require preclearance of all transactions by executive officers and directors, so that the company will be forewarned of the need to prepare an 8-K.

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