

Client Advisory

August 2002

New SEC Rules Implement Sarbanes-Oxley Act Provisions and Accelerate Reporting Deadlines

On Tuesday, August 27, the Securities and Exchange Commission adopted rules to implement key provisions of the Sarbanes-Oxley Act of 2002 and approved rules that will accelerate the filing deadlines for quarterly reports on 10-Q and annual reports on 10-K.

Certifications of Principal Executive and Financial Officers

The SEC adopted rules to implement Section 302 of the Sarbanes-Oxley Act, which will require that the principal executive officer and principal financial officer of each issuer certify in the issuer's quarterly and annual reports as to various matters.

Specifically, these provisions will require an issuer's principal executive and financial officers each to certify, with respect to the issuer's quarterly and annual reports filed under Securities Exchange Act of 1934, that:

- He or she has reviewed the report;
- Based on his or her knowledge, the report does not contain any untrue statement of a material fact or omit to state a material fact necessary in order to make the statements made, in light of the circumstances under which such statements were made, not misleading;
- Based on his or her knowledge, the financial statements, and other financial information included in the report, fairly present in all material respects the financial condition and results of operations of the issuer as of, and for, the periods presented in the report;
- The certifying officers (1) are responsible for establishing and maintaining "disclosure controls and procedures" for the issuer, (2) have designed such disclosure controls and procedures to ensure that material information is made known to them, (3) have evaluated the effectiveness of the issuer's disclosure controls and procedures within 90 days of the date of the report, and (4) have presented in the report their conclusions as to the effectiveness of the disclosure controls and procedures;
- The certifying officers have disclosed to the issuer's auditors and to the audit committee (or persons fulfilling the equivalent function) all significant deficiencies in the design or operation of internal controls (regarding financial reporting) that could adversely affect the issuer's ability to record, process, summarize and report financial data and have identified for the issuer's auditors any material weaknesses in internal controls, and any fraud, whether or not material, that involves management or other employees who have a significant role in the issuer's internal controls; and

- The certifying officers have indicated in the report whether or not there were significant changes in internal controls or in other factors that could significantly affect internal controls subsequent to the date of their evaluation, including any corrective actions with regard to significant deficiencies and material weaknesses.

The new rules will apply to the principal executive and financial officers of any issuer that files quarterly and annual reports with the SEC under either Section 13(a) or 15(d) of the Exchange Act, including foreign private issuers and small business issuers. The new rules will require that the certification be included in any annual report on Form 10-K, 10-KSB, 20-F or 40-F, or quarterly report on Form 10-Q or 10-QSB filed after August 29, 2002. In addition, under the new rules, each issuer will be required to establish and maintain an overall system of disclosure controls and procedures that is adequate to meet its Exchange Act reporting obligations.

Accelerated Filing Deadlines For Change of Beneficial Ownership Reports

The SEC adopted rule and form amendments to implement the accelerated filing deadline imposed by the Sarbanes-Oxley Act for reporting of changes of beneficial ownership of issuer securities by officers, directors and principal security holders under Section 16(a) of the Exchange Act. The changes to Section 16, which are effective as to transactions that occur on or after Thursday, August 29, generally require that a Form 4 be filed no later than **two business days** after the day on which a reportable transaction is effected (rather than 10 days after the end of the month in which the transaction occurred). The amendments by the SEC to the Section 16 rules:

- Conform all references to the Form 4 filing deadline to the amended statutory filing deadline;
- Require transactions between officers or directors and an issuer (for example, option grants and dispositions to the issuer) previously reportable on an annual basis on Form 5 to be reported within two business days on Form 4; and
- Modify the Form 4 reporting deadline for transactions pursuant to Rule 10b5-1 plans and “discretionary transactions,” such as fund-switching transactions, under 401(k) and other “tax-conditioned plans,” if the insider does not select the date of execution of the transaction. For these transactions, the reports must be filed within two business days after the insider receives notice of the transaction, provided that the notification date is no later than the third business day after the transaction is executed.

In substantially all other respects, the Section 16 reporting regime will remain the same. For example, other transactions or changes in holdings in issuer securities that have been eligible for delayed reporting on Form 5 (due no later than 45 days after the end of the year in which the transaction or change occurred) will continue to be so reportable. The transactions eligible for such reporting include gifts, transfers by inheritance and small acquisitions (aggregating less than \$10,000), although the rule amendments eliminate the small acquisition exception for acquisitions from the issuer. Additionally, certain transactions and changes will continue to be exempt from Section 16 entirely. These include transactions, other than “discretionary transactions,” under employee stock purchase, 401(k) and other “tax-conditioned plans” and changes in form of beneficial ownership (such as a transfer from an insider to an entity the holdings of which are attributable to the insider).

Accelerated Filing Deadlines For Quarterly and Annual Reports

The SEC adopted amendments to accelerate the filing deadlines for quarterly reports on Form 10-Q and annual reports on Form 10-K, to be phased in over three years. The annual report deadline will remain 90 days after year-end for the first year, change to 75 days for year two, and change to 60 days for year three and later years. The quarterly report deadline will remain 45 days after quarter-end for the first year, change to 40 days for year two, and change to 35 days for year three and later years. The first reductions (to 75 days for annual reports and 40 days for quarterly reports) will apply to filings for fiscal

years ending on or after December 15, 2003. The changes accelerate reporting only for domestic companies that (1) have a public float of at least \$75 million, (2) have been reporting for at least 12 months, (3) have previously filed at least one annual report, and (4) are not eligible to use the SEC's special forms for small business issuers. These companies are referred to as "accelerated filers."

The SEC also adopted new disclosure rules regarding access to reports on company Web sites. Beginning with reports for fiscal years ending on or after December 15 of this year, every accelerated filer will be required to disclose in its 10-K whether it makes its periodic and current reports available, free of charge, on its Web site as soon as reasonably practicable.

The full text of the SEC release adopting the new Section 16 rules is available at <http://www.sec.gov/rules/final/34-46421.htm>. The adopting releases concerning the other items discussed above are expected to be posted to the SEC's web site shortly.

We Can Help

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