

Client Advisory

May 2002

SEC Proposes New Disclosure Requirements

- *Accelerated Filing Deadlines for Annual and Quarterly Reports*
- *Disclosure Regarding Web Site Access to Reports*
- *Disclosure of Director and Executive Officer Transactions*

By Mark D. Wood and Ann J. Maron

Accelerated Filing Deadlines and Web Access to Periodic Reports: On April 12, 2002, the Securities and Exchange Commission published for public comment proposed rule amendments that would accelerate the filing of periodic SEC reports for companies that:

- have a public float of greater than \$75 million,
- have been filing reports for at least 12 months and
- have already filed at least one annual report on Form 10-K.

Specifically, these public companies would be required to file their quarterly reports on Form 10-Q within 30 days of quarter-end and their annual reports on Form 10-K within 60 days of year-end. In addition, these companies would be obligated to disclose in their annual reports where investors can access their annual and quarterly reports and their current reports on Form 8-K, including whether such information is available on their corporate Web sites. According to the proposing release, the proposed amendments to the filing deadlines reflect the SEC's view that the timeframes it established in 1970 have not kept pace with the technological advances that currently enable companies to gather and disseminate information rapidly to investors and the markets or with the increase in demand for such information.

Directors' and Executive Officers' Transactions: In the first SEC rulemaking action that appears to be a direct response to concerns raised by the collapse of Enron, the SEC also released for public comment on April 12, 2002, a proposed amendment to Form 8-K applicable to all companies with a class of equity securities registered under Section 12 of the Securities Exchange Act of 1934. This includes all companies with equity securities listed on the NYSE, AMEX or Nasdaq. Under the proposed amendment, any such company would be required to report on Form 8-K certain information regarding (1) directors' and executive officers' transactions in the company's equity securities, (2) establishment by directors or executive officers of arrangements for the purchase or sale of the company's equity securities for purposes of establishing an affirmative defense under Rule 10b5-1 (commonly referred to as "10b5-1 plans" or "10b5-1 arrangements"), and (3) loans to directors or officers that are made or guaranteed by the company or its affiliates.

I. Acceleration of Periodic Report Filing Dates and Disclosure Concerning Web Site Access to Reports

A. Overview

The SEC is proposing to accelerate the filing deadlines for Exchange Act quarterly and annual reports to lessen the delays between companies' earnings announcements and the filing of their periodic reports. Citing a study by its Office of Economic Analysis regarding companies' announcements of year-end and quarterly earnings over a ten-year period, the SEC noted that, on average, companies announce their year-end and quarterly earnings 43 days and 27 days, respectively, after the end of the applicable reporting periods, well in advance of the current 10-K and 10-Q filing deadlines. Accordingly, the SEC believes that companies and their auditors have developed ways to produce financial data rapidly, although the SEC acknowledges that the information disseminated in earnings announcements is less extensive than the disclosures required in periodic reports. The SEC believes that shortening the filing timeframes for Exchange Act reports will have several beneficial results for investors and capital markets, including (1) more rapid dissemination of information, (2) a decrease in information gaps caused by lengthy delays between the time that companies publicly announce their earnings and file their periodic reports, (3) an increase in the speed with which investors will be able to compare a company's informal statements against the disclosures in its Exchange Act reports, and (4) an increase in the relevance of disclosures in Exchange Act reports to investors' decisions, which may lead to the greater use and scrutiny of companies' disclosures by investors.

The SEC originally solicited comments on whether it should move up the filing deadlines for annual and quarterly reports in its November 1998 "aircraft carrier" release proposing sweeping reform of the securities registration process. At that time, the SEC received a significant number of comments on this issue, with many commentators noting that accelerated filing deadlines would be overly burdensome on companies and likely result in less accurate filings. Other commentators objecting to the shortened deadlines argued that the advances in technology since 1970 have been offset by an increase in the number and complexity of reporting requirements. Although the SEC generally abandoned the "aircraft carrier," certain of its elements, including the acceleration of reporting deadlines, have turned up in recent rulemaking actions.

To avoid placing an undue burden on smaller companies, the SEC has proposed to limit the application of the proposed accelerated deadlines to companies that meet certain minimum public float and reporting history requirements, which are based largely on the current eligibility requirements for the registration of primary offerings for cash on Form S-3. The SEC believes that companies that satisfy the applicable tests are least likely to find the accelerated deadlines overly burdensome and that the proposed deadlines are appropriate for such companies because they are eligible for short-form registration (e.g., use of Form S-3), which consequently entitles them to certain benefits, such as incorporation by reference and easier access to the capital markets through shelf registration.

The proposed amendment requiring companies to disclose in their annual reports on Form 10-K whether they make available their periodic reports on their Web sites and other information regarding investor access to such reports reflects the SEC's belief that technological advances in recent years require recognition of the critical role the Internet plays in disseminating information rapidly to investors and the markets. The SEC is seeking to ensure that Exchange Act reports will be easily accessible to investors in a variety of locations promptly after filing.

B. Acceleration of Periodic Report Filing Dates

1. Covered Companies

The SEC is proposing to accelerate the filing deadlines for annual reports and quarterly reports for companies that meet certain size and seasoning requirements. Specifically, a company would be categorized as an “accelerated filer” and therefore be subject to the shortened deadlines if it has:

- A “public float” of \$75 million or more as of a date within no more than 60 and no less than 30 days before the end of the company’s last fiscal year;
- Been subject to the reporting requirements of Section 13(a) or 15(d) of the Exchange Act (i.e., been required to file 10-Ks, 10-Qs and 8-Ks) for a period of at least 12 calendar months; and
- Filed at least one annual report pursuant to Section 13(a) or 15(d) of the Exchange Act (i.e., a 10-K).

Public float is the aggregate market value of a company’s outstanding voting and non-voting common equity, or market capitalization, held by persons who are not affiliates of the company (i.e., persons who control, are controlled by or are under common control with the company, which may include directors, executive officers and greater than 10% stockholders). Public float is a factor used to determine eligibility for short-form registration under the Securities Act and is set forth on the cover of every 10-K. Under the proposal, a company that was not previously an accelerated filer would calculate its public float as of a date no more than 60 days and no less than 30 days before the end of its fiscal year. The company would determine the exact calculation date, so if it could compute a public float of less than \$75 million on any one of the possible calculation dates, it could avoid classification as an accelerated filer. Under the proposed amendments, the cover of Form 10-K would require presentation of the company’s public float as of the calculation date or, if the company is already a public filer, as of any date within the period beginning on the 60th day and ending on the 30th day prior to the end of the fiscal year to which the 10-K relates.

Once a company has a public float of \$75 million or more as calculated by the company prior to the beginning of any year, it would qualify as an accelerated filer if, on the public float determination date or at any time through the end of the next fiscal year, it has been subject to the Exchange Act reporting requirements for 12 calendar months and has previously filed at least one annual report. The company would be required to meet the new filing requirements for any periodic reports due after the date on which it qualifies as an accelerated filer. Once a company becomes an accelerated filer, the company would at all times remain subject to the shortened filing requirements, unless it later becomes eligible to submit its annual and quarterly reports on Forms 10-KSB and 10-QSB as a “small business issuer” or is no longer an Exchange Act reporting company.

2. The Filing Deadlines

For companies that meet the public float and reporting history requirements, the SEC is proposing to accelerate the Exchange Act filing deadlines as follows:

- For annual (and transition) reports on Form 10-K, from 90 days to 60 days after the end of the fiscal year; and
- For quarterly (and transition) reports on Form 10-Q, from 45 days to 30 days after the end of the fiscal quarter.

The SEC is not, however, proposing to shorten the 120-day period which a company has to file its definitive annual meeting proxy statement to allow the incorporation by reference into the annual report

on Form 10-K of the information required by Part III of that Form (i.e., information regarding directors and executive offices, executive compensation, security ownership and related party transactions).

In the proposing release, the SEC indicates that it is “strongly considering” adopting conforming changes for accelerated filers with respect to financial statements to be included in registration statements and proxy and information statements. This would mean that, for example, if an “accelerated filer” were to file a registration statement in which financial statements were required to be included (rather than incorporated by reference), year-end financial statements would be considered “stale” after 60 days, and quarterly financials after 30 days, for purposes of being declared effective by the SEC.

3. Initial Reaction to the Proposal

A number of public companies, accountants, securities lawyers and other interested parties have already expressed serious reservations about this proposal to shorten the reporting timeframes. Despite the technological advance over the past few decades, at least some of the companies subject to the new requirements, including those with widely dispersed and international operations, may find it difficult to meet the accelerated filing deadlines and may incur significantly increased costs in attempting to do so. A significant percentage of companies may issue their earnings releases in advance of the new filing dates; however, as the SEC seems to recognize, there is much more involved in preparing periodic reports than in producing the financial data necessary for earnings releases and related conference calls. For example, annual reports typically require a lengthy series of detailed and complex financial statement footnotes, the preparation of which has often not even begun at the time of the year-end earnings release. Furthermore, the proposed filing date changes come at a time when companies’ financial disclosures are receiving increasing scrutiny from investors and regulators and when the SEC itself is asking for enhanced disclosure, particularly in the Management’s Discussion and Analysis of Financial Condition and Results of Operations (MD&A). Within the past few months, the SEC has issued releases advising companies to provide expanded disclosure regarding critical accounting policies, liquidity, off-balance sheet financing and related party transactions, and the SEC has indicated that it plans to propose new rules regarding disclosure in MD&A of critical accounting policies within the next several weeks. Rather than continuing this new focus on improved disclosure, the proposed accelerated filing deadlines could result in disclosures that are in fact less accurate, complete and meaningful. There would be less time for accounting staff and management to compile and review the financial information and prepare the related disclosure, for the auditors to complete their audits and reviews that serve as vital checks on the accuracy and completeness of the financial information, for in-house and outside counsel to review the disclosure and provide input, and for already heavily burdened audit committees to review the information and disclosure with the auditors and management. The proposed amendment, if approved, could also lead to an increase in the number of late filings (as well as requests by companies for extensions under Exchange Act Rule 12b-25). A late filing may have serious consequences for a company. Under current rules, a company that files a periodic report late is ineligible for short-form registration for a period of one year. A late filing could also render Securities Act Rule 144 temporarily unavailable for security holders’ resales of restricted and control securities, and make Form S-8 registration temporarily unavailable for employee benefit plan securities. Many companies may need to invest in, or rely on, additional resources, including technology and personnel, to comply with the accelerated filing deadlines, if the amendments are adopted as proposed.

C. Disclosure Concerning Web Site Access to Reports

The SEC is also proposing that every company that is subject to the accelerated filing deadlines be required to disclose in its annual report on Form 10-K:

- The availability of the company's filings at the SEC's public reference room and on the SEC's Web site;
- The company's Web site address (provided it has one);
- Whether the company provides free access on its Web site (directly or through hyperlink to a service provider) to its annual, quarterly, and current reports and all amendments to those reports, as soon as reasonably practicable after and, in any event, on the same day as the material is electronically filed with the SEC, and, if not, (1) the reasons it does not do so and (2) information as to locations where the filings can be accessed electronically upon filing and as to any fees for such access; and
- Whether the company will provide free electronic or paper copies of its filings upon request.

Companies that provide hyperlinks on their Web sites to their Exchange Act reports through third parties are encouraged by the SEC to hyperlink directly to the companies' reports rather than to the home page of the service provider. Due to a 24-hour delay (which the SEC intends to eliminate eventually) between the filing of a report with the SEC and the report's subsequent posting to the SEC's EDGAR Web site, a company that provides only a hyperlink to that Web site would not be able to state that it provides immediate access to its reports upon filing unless the company provides investors with an alternative means of accessing its reports immediately after filing. The SEC is recommending that companies provide access to their filings on their Web sites for a period of at least 12 months.

The SEC indicates that it believes that this amendment, if adopted, will offer several benefits to investors, including providing investors with information regarding the availability of resources necessary for investment and valuation decisions, fostering the rapid dissemination and widespread access of information to investors and the markets, and fostering a uniform practice to assist investors in their search for timely information. It is apparent that what the SEC is really attempting to do is to push all companies subject to the new disclosure requirement to post their filings on the Web sites (and thereby avoid the mandatory alternative disclosure) even though the SEC may not have authority to simply require the inclusion of Exchange Act reports on corporate Web sites. This approach is consistent with SEC Chairman Pitt's expressed belief in the value of Web site disclosure. Additionally, there are already Web sites, such as www.freedgar.com, which provide investors with nearly instantaneous access to SEC filings. The adoption of this proposed amendment would impose fairly insignificant burdens on most affected companies, and, as a result, this proposal is expected to be relatively noncontroversial. Its adoption would, however, seem likely to benefit investors and the markets only marginally. According to the SEC's own study, cited in the proposing release, of 152 surveyed companies with at least a \$75 million public float, all had Web sites and approximately 83% were already providing some form of access to their Exchange Act reports through their Web sites. The proposed amendment would encourage a practice that already appears to be well on its way to adoption.

D. Effective Date

The SEC is proposing to make the accelerated filing date amendments effective for any company that meets the public float and reporting history requirements as of the end of its first fiscal year ending after October 31, 2002, and to make the new Web site disclosure requirement effective three months after the date of its adoption.

E. Persons From Whom the SEC is Specifically Soliciting Comments

The SEC is specifically requesting comments on these proposals from companies that would be subject to the accelerated filing deadlines and new Web site disclosure requirements. It is also specifically soliciting comments from investors, users of Exchange Act information and facilitators of capital formation.

These proposed amendments will be open for public comment only until May 23, 2002.

II. Addition of a New Form 8-K Item

A. Overview

The proposed amendment to Exchange Act Form 8-K would require companies to provide prompt public disclosure about trades in a company's securities and other transactions by or with the company's management. According to the SEC, this disclosure would provide investors with information about (1) executive compensation paid in the form of securities, (2) the alignment of management's economic interests with those of the company's shareholders through equity ownership, (3) management transactions and relationships with the company that could affect management performance, and (4) management's views of the company's performance and prospects. This proposal appears to be, in large part, a reaction to the perceived slowness of public disclosure regarding stock sales by members of Enron management while they possessed information regarding the circumstances that led to Enron's collapse. Current federal securities laws require companies to report directors' and officers' beneficial ownership of company voting securities in their annual reports on Form 10-K or annual meeting proxy statements. In addition, directors and officers themselves must report their transactions involving company equity securities under Section 16(a) of the Exchange Act, but such reporting is not required to be made electronically and is often made on a substantially delayed basis. The deadline for filing a Section 16(a) report is generally 10 days following the end of the month in which the reportable transaction occurred, and, in certain circumstances, disclosure is not required until 45 days after the end of the company's fiscal year. For example, Enron's chief executive officer, apparently acting in accordance with current requirements, did not file a Section 16 report until mid-February of this year to disclose that he sold approximately \$70 million in stock back to the company during 2001, including over \$25 million after he had received the now infamous Sherron Watkins memo warning him about an impending accounting disaster. Furthermore, current federal securities laws do not require any disclosures with respect to 10b5-1 plans or loan guarantees made by a company for its management, and only impose limited, annual disclosure requirements with respect to loans made by a company to its management. Therefore, investors very often do not have timely access to this information, which may be relevant to their decisions to purchase or sell company securities.

B. The Addition of Item 10 to Form 8-K

1. Generally

The SEC has proposed the addition of Item 10 to Form 8-K, which would require companies with a class of equity securities registered under Section 12 of the Exchange Act to report on Form 8-K:

- Directors' and executive officers' transactions in company equity securities, regardless of whether such securities are of the class registered under Section 12, as well as their acquisition and disposition of derivative securities, and the exercise, termination or settlement of derivative securities;
- Directors' and executive officers' arrangements for the purchase or sale of company equity securities intended to satisfy the affirmative defense conditions of Exchange Act Rule 10b5-1; and
- Loans of money to a director or executive officer made or guaranteed by the company or its affiliates.

Proposed Item 10 applies only to transactions by directors and "executive officers" (as defined in Exchange Act Rule 3b-7), rather than the slightly more broadly defined category of "officers" subject to the reporting requirements under Section 16(a) of the Exchange Act. In most cases, however, the same officers who are subject to Section 16(a) would also meet the definition of an executive officer under proposed Item 10. However, unlike Section 16(a)'s filing requirements, proposed Item 10 does not require disclosures with respect to major (i.e., 10% or greater) shareholders.

2. Reporting Deadlines

In most instances, an 8-K would be required to be filed early in the week following a reportable event. The date when parties reach an agreement would be the date of the reportable event. An 8-K filed for this purpose could cover multiple transactions, including transactions by more than one director or executive officer. The proposed reporting deadlines are as follows:

Type of Event	Filing Deadline for Item 10 of Form 8-K
Transaction or loan with an aggregate value of \$100,000 or more, other than a grant or award pursuant to an employee benefit plan	Within 2 business days following the event
Employee benefit plan grant or award	Not later than the close of business on the second business day of the week following the week in which the event occurred
Transaction or loan with an aggregate value of less than \$100,000	Not later than the close of business on the second business day of the week following the week in which the event occurred
Rule 10b5-1 arrangement (establishment, modification or termination)	Not later than the close of business on the second business day of the week following the week in which the event occurred
Transaction or loan with an aggregate value not exceeding \$10,000	Reporting may be deferred until the aggregate cumulative value of unreported transactions and loans with respect to the same director or officer exceeds \$10,000

3. Reportable Events

The reportable securities transactions under proposed Item 10 are substantially similar to, although not exactly the same as, the items reportable under Section 16(a). However, a company's Form 8-K report of a transaction would not relieve a director or officer of the obligation to report that transaction under Section 16(a) on Form 4 or Form 5, or to file a notice of proposed sale on Form 144. Under paragraph (a) of proposed Item 10, a company would be required to report any transaction in company equity securities in which a director or an executive officer has a pecuniary (or profit) interest, including transactions with third parties as well as transactions with the company.

a. Securities Transactions

The following transactions by a director or executive officer would be reportable events under paragraph (a) of proposed Item 10 and would require disclosure of the listed information:

Type of Transaction	Required Disclosures
Acquisition or disposition of any equity security, whether or not of a class registered under Section 12 of the Exchange Act;	<ul style="list-style-type: none">• Name and title of the director or executive officer;• Date of the transaction;• Title and number of securities acquired or disposed of;• Per share acquisition or disposition price;• Aggregate value of the transaction;• 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.
Acquisition or disposition of, or entering into a contract that involves any derivative security with respect to the company, whether or not the derivative security was issued by the company and whether or not the derivative security has a fixed exercise or conversion price (even though a derivative security without a fixed exercise or conversion price is not required to be disclosed under Section 16(a)), including, for example: <ul style="list-style-type: none">• options granted pursuant to company-sponsored employee benefit plans (as well as surrenders of those options and replacement grants);• other options on company securities, including exchange-traded options;• warrants;• convertible or exchangeable preferred stock;• convertible or exchangeable debt; security-based swap agreements;• security futures products (when authorized for trading); and• performance-based units.	In addition to the information described above for other equity securities transactions: <ul style="list-style-type: none">• Per share exercise or conversion price (or other price, such as a notional price, used in the terms of the derivative security);• Date(s) on which derivative security becomes exercisable (or subject to termination), and its date of expiration (or final termination);• Title and number of underlying securities (or cash equivalent) that would be acquired or disposed of upon exercise, conversion, termination or settlement;• Nature of the transaction (e.g., option grant, sale or purchase of call option, sale or purchase of put option, entering into a swap or futures contract), indicating whether the transaction involves a collar or other hedge, and if so describing all material terms; and• Any other material information regarding the transaction, including contingencies applicable to exercise.
Exercise, conversion, termination, settlement or expiration of a derivative security	<ul style="list-style-type: none">• Name and title of the director or executive officer;• Date of the exercise, conversion, termination or settlement;• Per share price used for exercise, conversion, termination or settlement;• Title and number of underlying securities (or cash equivalent) acquired or disposed of;• Nature of the transaction (e.g., exercise of option, settlement of swap agreement), indicating whether the transaction involves a collar or other hedge, and if so describing all material terms; and• Any other material information regarding the transaction.

b. 10b5-1 Arrangements

For purposes of establishing insider trading liability, Rule 10b5-1 sets a standard of “awareness” with respect to material, non-public information. The general rule is that a purchase or sale is made on the basis of material, non-public information if the person “was aware of” the information when he or she made the trade. However, Rule 10b5-1 provides a person with an affirmative defense against this presumption if, prior to becoming aware of the material, non-public information, the person entered into a contract, provided instructions or adopted a written plan for trading the company’s securities that did not permit the person to exercise influence over how, when or whether to effect purchases or sales, and the purchase or sale of the company’s securities occurred pursuant to the contract, instructions or written plan.

The proposed disclosure with respect to any such 10b5-1 arrangements would apply based on the director’s or executive officer’s pecuniary interest in the securities subject to the contract, instruction or written plan. The disclosure would not apply to a director’s or executive officer’s enrollment in a broad-based employee benefit plan for the acquisition of company equity securities through payroll deductions. However, disclosure would be required of transactions in these plans that are voluntary transfers into or out of a fund consisting of the company’s equity securities, or a cash distribution funded by a voluntary sale of equity securities of the company, unless the transaction is made in connection with the director’s or executive officer’s death, disability, retirement or termination of employment, or is required to be made available to plan participants pursuant to the Internal Revenue Code.

Paragraph (b) of proposed Item 10 would require a company to report the following information with respect to directors’ and executive officers’ Rule 10b5-1 arrangements:

Type of Event	Required Disclosures
Entering into any 10b5-1 arrangement	<ul style="list-style-type: none">• Date on which the director or executive officer entered into the contract, instruction or written plan; and• Description of the contract, instruction or written plan, including its duration, the aggregate number of securities to be purchased or sold, and the name of the counterparty or agent.
Termination or modification of any 10b5-1 arrangement	<ul style="list-style-type: none">• Name and title of the director or executive officer;• Date of the termination or modification; and• Description of the modification, including any modification to the duration, the aggregate number of securities to be purchased or sold, the interval at which securities are to be purchased or sold, the number of securities to be purchased or sold in each interval, the price at which securities are to be purchased or sold, and the identity of the counterparty or agent.

c. Loans and Guarantees

Lastly, under paragraph (c) of proposed Item 10, a company would be required to report the following information regarding any loan to a director or executive officer made or guaranteed by the company or an affiliate of the company:

Type of Transaction	Required Disclosures
Loan of money to, or entering into lending arrangement with, a director or executive officer by the company or an affiliate of the company	<ul style="list-style-type: none">• Name and title of the director or executive officer;• Date of each agreement (or guarantee or similar arrangement) or loan thereunder;• Dollar amount and other material terms of the agreement or loan, and, if applicable, guarantee or similar arrangement, including interest rate, terms of repayment, and any provisions with respect to forgiveness;• The number and class of any securities pledged as collateral; and• The material terms of any pledge, including whether it is made with or without recourse.
Guarantee or similar arrangement entered into by the company or an affiliate in favor of a third party making a loan to, or entering into lending arrangement with, a director or executive officer	Same information as required for loans and other lending arrangements
Forgiveness of a loan or the company's payment on its guarantee or similar arrangements, or foreclosure on collateral	<ul style="list-style-type: none">• Name and title of the director or executive officer; and• Date on which the forgiveness, payment or foreclosure occurred, and the dollar amount of forgiveness or payment and the number and class of any securities foreclosed upon.

d. Excluded Transactions

The SEC has specifically excluded the following transactions from disclosure under proposed Item 10:

- Receipt of stock dividends (including stock splits) and pro rata rights;
- Acquisitions pursuant to regular reinvestment of dividends or interest through a broad-based reinvestment plan;
- Acquisitions or dispositions pursuant to domestic relations orders;
- Transactions as executor of an estate or similar fiduciary during the 12 months following appointment;
- Transactions that change the form of beneficial ownership without changing the director's or executive officer's pecuniary interest in the equity securities;
- Routine acquisitions (e.g., through payroll deduction) pursuant to broad-based, tax-conditioned employee benefit plans and related excess benefit plans;
- Transfers by will or the laws of descent and distribution;
- Acquisitions or dispositions pursuant to holding company formations and similar corporate reclassifications and consolidations;
- Deposits or withdrawals of equity securities from voting trusts; and
- Trust transactions that would not be reportable under Section 16(a).

4. Liability

To address companies' concerns about potential exposure to liability for Item 10 violations, the SEC has stated that it will not sanction a company that violates Item 10 if the company can prove that (1) at the time of the violation, the company had designed procedures and a system for applying such procedures sufficient to provide reasonable assurances that Item 10 events would be reported within the required deadlines; (2) the company was following those procedures at the time the violation occurred; and (3) the company filed a report to correct the violation as soon as reasonably practicable. The SEC indicates in the proposing release, however, that this provision may not be available to companies that incur repeated violations. In addition, the SEC could proceed against a director or executive officer individually, although an Item 10 violation would not give rise to a private right of action. To allay concerns about the potential difficulties associated with timely filing Item 10 information, the SEC is also proposing changes to the instructions for certain registration statement forms and Securities Act Rule 144. Although a company would be liable under Section 18 of the Exchange Act for Item 10 misstatements and omissions, the SEC is proposing to change the instructions to the short-form registration statements and Rule 144 to prevent an Item 10 violation from affecting a company's eligibility to use the short-form registration statement or its current reporting status under Rule 144(c).

Item 10 on Form 8-K would be considered to be filed for purposes of establishing liability under Section 18 of the Exchange Act. Consequently, such information would be incorporated by reference in registration statements on Forms S-2, S-3, S-4 and S-8 (if Form S-2 or S-3 level disclosure is used).

5. Complying with this New Rule

New Item 10 seems likely to be adopted largely as proposed, especially because it addresses an Enron-related concern. To comply with the new rule, with its short filing deadlines, affected companies will need to develop new procedures for quickly collecting information with respect to their directors' and executive officers' reportable transactions. They will also need to reexamine their insider trading policies, considering the much greater and immediate visibility that will be provided with respect to insider stock trades. Many companies, if they do not already do so, may want to require that their directors and executive officers report their planned transactions in company securities, in advance, to designated point persons. Such a reporting requirement could enable companies to comply more easily with the new reporting requirements in the short timeframes provided and serve as an efficient mechanism for preventing 10b-5 insider trading violations. Additionally, companies will need to review any policies they may have regarding 10b5-1 arrangements. For example, a company may wish to reconsider a policy that permits insiders to terminate 10b5-1 trading arrangements while in possession of material, non-public information. Although the SEC has expressly stated that such terminations are generally permissible, the newly required disclosure about any such action could lead to unwanted and potentially damaging speculation about company activities, possibly forcing the company to make premature disclosure about a material event.

C. Effective Date and Transition Period

If proposed Item 10 is adopted as proposed, it would become effective 60 days after the final rule is published in the Federal Register. Transactions occurring on and after that date would be reportable under paragraph (a) of Proposed Item 10. With respect to derivative securities transactions, the SEC expects to delay for an additional 60 days compliance with the obligation to report these transactions within two business days if the transaction's aggregate value is \$100,000 or more. For the first 60 days after the effective date, transactions involving derivative securities would 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, regardless of aggregate value.

Rule 10b5-1 arrangements and loans entered into before the effective date and remaining in effect on the effective date would be required to be reported on or within a short period after the effective date.

D. Persons From Whom the SEC is Specifically Soliciting Comments with Respect to the Proposed Amendment to Form 8-K.

The SEC has specifically requested comments on this proposal from investors, companies that would be required to file Item 10 information, directors and executive officers, broker-dealers, portfolio managers and other fiduciaries.

These proposed amendments will be open for public comment until June 22, 2002.

III. We Can Help

Katten Muchin Zavis Rosenman is available to discuss further the proposed amendments and their potential implications. If you have concerns regarding the proposed amendments, we encourage you to submit written comments to the SEC and are available to assist you in this regard. Please note the short 30-day comment period for the proposals regarding accelerated annual and quarterly report filing deadlines and disclosure concerning Web site access to SEC list for future Client Advisories on other securities topics, please contact one of the following co-chairs of our Securities Group:

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