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**ALERT!**

**SEC Adopts Rules Implementing Provisions of the Sarbanes-Oxley Act  
and Accelerating Periodic Filing Deadlines**

The radical changes in our securities laws required by the recently enacted Sarbanes-Oxley Act of 2002 (the "Act") are starting to take shape. On August 27, 2002, the Securities and Exchange Commission ("SEC") adopted the much anticipated new rules that (1) implement the accelerated filing deadline applicable to "insider" trading reports, (2) require the principal executive and financial officers of a public company to certify the contents of the company's quarterly and annual reports, and (3) accelerate the filing deadlines for quarterly reports on Form 10-Q and annual reports on Form 10-K.

**Section 16 Reporting Requirements**

*General.* The SEC has adopted amendments to implement the accelerated filing deadline applicable to change of beneficial ownership reports required to be filed by officers, directors and 10% stockholders (collectively, "insiders") under Section 16(a) of the Exchange Act of 1934 (the "Exchange Act"). Previously, changes in ownership by an insider were reported on a monthly basis within 10 days after the close of each calendar month in which a change of ownership occurs or, with respect to certain transactions, on a year end Form 5. Effective August 29, 2002, Section 403 of the Act amends Section 16(a) of the Exchange Act to require reports of a change in ownership within two business days following the day on which the transaction occurs. The amendments adopted by the SEC implement the new accelerated reporting deadline.

*Continuing Exemptions.* Acquisitions pursuant to qualified plans, excess benefit plans, stock purchase plans and the reinvestment of dividends or interest pursuant to broad-based dividend or interest reinvestment plans remain exempt from Section 16(a).

*Transactions Previously Reported on Form 5.* To satisfy the Act's purpose to require immediate disclosure of insider transactions, the SEC adopted rules that provide that most transactions between officers or directors and the issuer previously reportable on an annual basis on Form 5 must now be reported within two business days on Form 4. Consequently, grants, awards and

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other acquisitions from the issuer, dispositions to the issuer and discretionary transactions pursuant to employee benefit plans may no longer be reported on a deferred basis on Form 5, but instead must be reported on Form 4. Following these amendments, derivative securities transactions reportable on Form 4 include, without limitation, issuances, exercises, cancellations, regrants and repricings of stock options regardless of whether the transaction was approved by the board or a committee that is composed solely of two or more independent directors or if the transaction was approved or ratified by the stockholders.

*Exception to the 2-day Filing Deadline.* The new SEC rules modify the Form 4 reporting deadline for certain transactions so long as the insider does not select the date of execution. For these transactions, the reports must be filed within two business days after the insider receives notice of the transaction, but the notification date may be no later than the third business day after the transaction is executed. These transactions are:

- Transactions pursuant to a contract, instruction or written plan for the purchase or sale of issuer equity securities that satisfies the affirmative defense conditions of Rule 10b5-1(c) under the Exchange Act; and
- Specified plan transactions defined as "Discretionary Transactions," such as fund-switching transactions, pursuant to employee benefit plans.

As mentioned above, the reinvestment of dividends pursuant to a broad-based dividend reinvestment plan will remain exempt from Section 16(a) reporting. In contrast, transactions pursuant to non-qualified deferred compensation plans and other dividend reinvestment plan transactions (such as acquisitions pursuant to voluntary contributions of additional funds) will be reportable on Form 4 within two business days after the date of execution, unless such a transaction satisfies the affirmative defense conditions of Rule 10b5-1(c). Accordingly, it may not be advisable for a director or executive officer to make purchases under the optional cash investment feature of a dividend reinvestment plan unless the plan can be structured to comply with Rule 10b5-1(c), which provides that the plan must be documented, bona fide and previously established (at a time when the insider did not possess inside information) and must specify the price, amount and date of trades or provide a formula or mechanism to be followed.

*Electronic Filing and Website Posting.* The Act also amends Section 16(a) to require, not later than July 29, 2003, electronic filing of change of beneficial ownership reports, and website posting of such reports by both the SEC and issuers. The SEC has publicly stated that it is proceeding expeditiously with rulemaking and system programming in this regard. In the meantime, the SEC is encouraging issuers and affected insiders to voluntarily make these filings and postings.

### **CEO/CFO Certifications**

The SEC adopted rules to implement Section 302 of the Act requiring a company's principal executive officer and principal financial officer to certify the company's quarterly and annual reports.

## *Contents of Certification*

A company's principal executive and financial officers are each required to certify 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;
- he or she and the other certifying officers:
  - are responsible for establishing and maintaining "disclosure controls and procedures" (a newly-defined term reflecting the concept of controls and procedures related to disclosure) for the issuer;
  - have designed such disclosure controls and procedures to ensure that material information is made known to them, particularly during the period in which the periodic report is being prepared;
  - have evaluated the effectiveness of the issuer's disclosure controls and procedures within 90 days of the date of the report; and
  - have presented in the report their conclusions about the effectiveness of the disclosure controls and procedures based on the required evaluation;
- he or she and the other certifying officers have disclosed to the issuer's auditors and to the audit committee of the board of directors (or persons fulfilling the equivalent function):
  - all significant deficiencies in the design or operation of internal controls (a pre-existing term relating to internal controls regarding financial reporting) which 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

- he or she and the other 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 certification must be in the exact form as prescribed by the SEC and may not be changed in any respect (even if the change would appear to be inconsequential in nature). The certification must follow immediately after the signature section of the Exchange Act report to which it relates and may not be signed pursuant to a power of attorney. 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 small business issuers.

### *Disclosure Controls and Procedures*

Newly adopted Rules 13a-15 and 15d-15 under the Exchange Act will require an issuer to establish and maintain an overall system of disclosure controls and procedures that is adequate to meet its Exchange Act reporting obligations. Disclosure controls and procedures include, without limitation, controls and procedures designed to ensure that information required to be disclosed by an issuer in its Exchange Act reports is accumulated and communicated to the issuer's management, including its principal executive and financial officers, as appropriate to allow timely decisions regarding required disclosure. These rules are intended to complement existing requirements for reporting companies to establish and maintain systems of internal controls with respect to their financial reporting obligations.

### *Request for Comments - Certification of Proxy Statements*

The SEC is soliciting comments as to whether the certification requirement should be extended to other documents filed under the Exchange Act such as definitive proxy and information statements and registration statements on Forms 10 and 10-SB. The SEC will decide whether to act on this proposal after review of the comments received.

### **Accelerated Periodic Report Filing Deadlines**

The SEC adopted amendments to accelerate the filing deadlines for quarterly reports on Form 10-Q and annual reports on Form 10-K required under the Exchange Act. These changes apply to domestic companies that:

- Have a public float of at least \$75 million;
- Have been reporting for at least 12 months;
- Have previously filed one annual report; and
- Are not eligible to use the SEC's special forms for small business issuers.

The changes to filing deadlines will be phased in over three years. Currently, annual reports on Form 10-K must be filed within 90 days after the end of the fiscal year covered by the report and quarterly reports on Form 10-Q must be filed within 45 days after the end of the first three fiscal

quarters of each fiscal year. As amended, the annual report deadline will change to 75 days for the company's fiscal year ending on or after December 15, 2003 and will change to 60 days for the company's fiscal year ending on or after December 15, 2004 and thereafter. Likewise, the quarterly report deadline will change to 40 days for year two, and to 35 days for year three and thereafter.

A company will be required to disclose in its Form 10-K, beginning with reports for fiscal years ending on or after December 15 of this year, whether the company makes its periodic and current reports available, free of charge, on its Internet website as soon as reasonably practicable after such material is electronically filed with, or furnished to, the SEC.

Originally, the SEC proposed to accelerate annual reports deadlines from 90 to 60 days and quarterly reports from 45 to 30 days, each without a phase-in or transition period. The SEC received many responses to its proposal and ultimately attempted to strike a balance between the market's need for information with the time companies need to prepare that information. Regardless, the SEC's amendments adopted this week are sure to make the timely collection and reporting of financial and other information a critical concern to public companies.

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The information in this Alert is intended for general information purposes only and should not be considered legal advice or opinion on any specific facts or circumstances. You are urged to contact a professional advisor concerning any specific question you may have relating to your own situation. The discussion with respect to the accelerated filing deadlines for Forms 10-Q and 10-K is based upon public statements by the SEC and the SEC's adopting releases may contain additional requirements of which we are not presently aware.

If you would like to discuss the matters presented in this Alert you may contact:



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