

## Client Alert: New SEC Rules Implement Section 16 Amendments

On August 27, 2002, the SEC adopted final rules and amendments to Forms 4 and 5 to implement the accelerated deadline for filing reports by insiders under Section 16(a) of the Securities Exchange Act of 1934, as amended by the Sarbanes-Oxley Act of 2002. The rules are effective on August 29, 2002. Insiders must now report transactions in their company's securities effected on or after August 29, 2002 within two business days of the transaction, with certain limited exceptions. Transactions effected prior to August 29, 2002 may be reported under the existing rules.

### Two-Day Reporting Requirement

Form 4 must now be filed by officers, directors and 10% stockholders within two business days of most transactions in their company's securities. The SEC has provided relief from the two-day reporting deadline for two types of transactions in which the insider does not select the date of execution:

- transactions pursuant to Rule 10b5-1(c) arrangements; and
- specified plan transactions defined as "Discretionary Transactions", such as fund-switching transactions, pursuant to employee benefit plans.

In each of the above cases, the date on which the executing broker, dealer or plan administrator notifies the insider of the execution of the transaction will be deemed the date of execution, so long as the notification date is not later than the third business day after the trade date. The insider must report the transaction on Form 4 within two business days after the deemed execution date.

### Most Transactions Previously Reportable At Year-End On Form 5 Now Reportable On Form 4

Insiders must now report within two business days on Form 4 most transactions which were previously reported on Form 5 within 45 days after their company's fiscal year end. This includes:

- grants, awards and other acquisitions from the issuer, including derivative securities transactions (*e.g.*, grants, exercises, cancellations and regrants of stock options, including repricings);

- dispositions to the issuer; and
- Discretionary Transactions pursuant to employee benefit plans (subject to the relief described above).

#### Transactions That Remain Exempt From Section 16(a) Reporting

Except for Discretionary Transactions, acquisitions pursuant to Rule 16b-3(c) exempt plans, such as 401(k) and other qualified plans, excess benefit plans and 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) reporting.

#### Reporting Mechanics

In addition to reporting transactions on Form 4, insiders must also include on Form 4 their aggregate holdings of their company's securities immediately after giving effect to the reported transaction. Aggregate holdings include changes resulting from transactions exempt from Section 16(a) reporting. Insiders may rely on their last plan statement when reporting holdings pursuant to Rule 16b-3(c) exempt plans.

Until amended Forms 4 and 5 conforming to the new reporting requirements are available, insiders may continue to use the existing forms with appropriate modifications to report transactions, holdings, trade dates and deemed execution dates, if applicable.

The Sarbanes-Oxley Act requires electronic filing and posting on a company's website of Section 16(a) reports not later than July 29, 2003. The SEC encourages insiders and companies filing Section 16(a) reports on their behalf to take steps to meet these requirements ahead of time.

Only one EDGAR access code is required for each insider who plans to file electronically, even if that person is an insider of more than one company. Companies applying for EDGAR access codes on behalf of insiders should coordinate with the insider and other companies of which he or she is an insider to ensure that each insider applies for only one EDGAR access code.

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For Additional Information

This client alert can be found, together with other recent Chadbourne & Parke LLP client alerts, at [http://www.chadbourne.com/publications/sub\\_Publications.html](http://www.chadbourne.com/publications/sub_Publications.html). If you have any questions regarding the Section 16(a) amendments, please contact any of the following:

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