

Client Alert

SEC Proposes New Rules on Mandated Electronic Filing and Website Posting of Section 16 Filings

Mandated Electronic Filing and Website Posting

On December 20, 2002, the SEC proposed rules that would implement §403 of the Sarbanes-Oxley Act of 2002 (SOA) regarding the mandatory electronic filing of reports with the SEC pursuant to Section 16(a) of the Securities Exchange Act of 1934 on or before July 30, 2003.¹ Officers, directors and beneficial owners of more than 10% of any class of registered equity security (“insiders”) will be required to file Forms 3, 4 and 5 on the SEC’s EDGAR system.

The SEC proposal would also require each issuer that maintains a corporate website to post on that website by the end of the business day after filing a copy of any Form 3, 4 or 5 filed by its insiders. An issuer can satisfy this requirement by providing access to the forms directly on its website or by hyperlinking to the forms via a third-party service (including the SEC’s website) if the following conditions are met:

- the forms are made available in the appropriate time frame;
- access to the reports is free of charge to the user;
- the display format allows retrieval of all information in the forms;
- the medium to access the forms is not so burdensome that the intended users cannot effectively access the information provided;
- the access includes any exhibits or attachments;
- the forms are accessible for at least 12 months;
- access to the forms is through the website address the issuer normally uses for disseminating information to investors; and

¹ Securities and Exchange Commission Release Nos. 33-8170; 34-47069; 35-27627; IC-25872; File No. S7-52-02. A copy of the Release is available on the SEC website at <http://www.sec.gov/rules/proposed/33-8170.htm>

- any hyperlink is directly to the Section 16 forms (or to a list of the Section 16 forms) and not to the home page or general search page of the third-party service.

Section 16(a), as amended by SOA §403, requires the SEC to adopt final rules by July 30, 2003; however, the SEC has indicated that it intends to implement the new rules as soon as reasonably practicable.

Electronic Filing Procedure

The SEC proposal states that before the mandatory electronic filing rules are implemented, a new on-line system for the electronic filing of Forms 3, 4 and 5 will be effective. This system, which is intended to make electronic filing easier, will allow filers to access and file these forms on the SEC website.

Under the SEC's proposed filing system, filers must first obtain a valid EDGAR access code to log onto the SEC website. Menu features will allow filers to create on-line Forms 3, 4 or 5, or amendments to these forms. Because the system will not provide a way to save an incomplete form on-line from session to session, and the data must be entered into the system quickly enough to avoid timeouts that end the session, filers will need to have all the information necessary to complete these forms available before logging onto the SEC's system. Filers will be able to correct errors, verify the accuracy of the information, download and print the filing and add attachments before submitting a filing on the SEC's electronic filing system.

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The SEC has requested that comments on the proposed rules be received no later than February 10, 2003. Comments may be submitted electronically to rule-comments@sec.gov. All comment letters should refer to File No. S7-52-02 (in the subject line if sent electronically).

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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. If you have any questions regarding this proposal, please contact any of the following:

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