

Client Alert: SEC to Adopt Rules to Implement Section 16 Amendments

On August 6, 2002, the SEC issued a notice of supplemental information regarding the filing of reports by insiders under Section 16(a) of the Securities Exchange Act of 1934.¹ The release outlines the rules the SEC intends to adopt to implement the Section 16(a) amendments under the Sarbanes-Oxley Act of 2002, which became law on July 30, 2002.

The SEC intends to adopt final rules that become effective no later than August 29, 2002, the effective date of the Sarbanes-Oxley Act Section 16(a) amendments. The SEC anticipates that the final rules will include:

- amendments to Form 4 to reflect that Form 4 is no longer a monthly form but must be filed **within two business days** of most transactions;
- amendments to Rule 16a-3(f) to provide that transactions exempt from Section 16(b) short-swing profit recovery (including option exercises) that currently may be reported on Form 5 within 45 days after the issuer's fiscal year end will be reportable on Form 4 within two business days of the transaction; and
- rules creating exceptions to the two-day filing deadline for narrowly defined transactions, if any, for which different Form 4 due dates will apply.

The amended Rule 16a-3(f) will require insiders to report on Form 4 all exempt transactions with the issuer, including derivative securities transactions (*e.g.*, issuances, option exercises, and cancellations and regrants of stock options, including repricings), within two business days of such transaction. Insiders and companies filing Section 16(a) reports on their behalf should take appropriate steps to ensure that procedures are in place to comply with the two-day reporting requirement by the August 29 deadline.

The SEC is considering exemptions from the two business day reporting deadline for only narrowly specified types of transactions, such as a single order executed over more than one day, transactions pursuant to pre-existing arrangements and discretionary transactions involving an employee benefit plan.

¹ See Securities and Exchange Commission Release No. 34-46313; File No. S7-31-02. A copy of the Release is available on the SEC website at: <http://www.sec.gov/rules/other/34-4613.htm>.

The release also notes that, pursuant to the Sarbanes-Oxley Act, electronic filing of Section 16(a) reports will be required not later than July 29, 2003 and encourages insiders and companies filing reports on their behalf to take steps to meet this requirement ahead of time. The SEC also noted that they will accept electronically-filed Section 16(a) reports that are not presented in the standard box format, provided that all required information is presented in the proper order.

In light of the August 29, 2002 effective date of the amendments to Section 16(a), the SEC requests that comments be received no later than August 15, 2002. Comments may be submitted electronically to rule-comments@sec.gov. All comment letters should refer to File No. S7-31-02 (in the subject line if sent electronically).

August 8, 2002

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 the Sarbanes-Oxley Act of 2002, please contact any of the following:

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