

July 3, 2003

Frequently Asked Questions: Complying With Rules Regarding Mandatory Electronic Filing and Website Posting for Forms 3, 4 and 5

The SEC recently adopted rule and form amendments to mandate the electronic filing and website posting by issuers with corporate websites, of beneficial ownership reports filed by officers, directors and principal security holders under Section 16(a) of the Securities Exchange Act of 1934, generally as required by Section 403 of the Sarbanes-Oxley Act of 2002. These amendments change how and when an issuer's insiders file their reports of beneficial ownership on Forms 3, 4 and 5 in a number of important respects.

Do I still have the option of filing my reports with the SEC on paper?

No. Effective June 30, 2003, an issuer's insiders are no longer permitted to report on paper their transactions in securities of the issuer to the SEC on Forms 3, 4 and 5. Electronic filing of these reports, which had been optional since 1995, is now mandatory for all insiders. Any related correspondence and supplemental information relating to the reports are also required to be filed electronically, although any such documents will not be disseminated publicly.

How do I file my reports electronically?

Forms 3, 4 and 5 may no longer be filed with the SEC via the standard EDGAR filing system used for other reports, although users will still be able use EDGAR to retrieve copies of Forms 3, 4 and 5. There are now two principal means of filing Section 16 reports electronically. One way is to use the SEC's own, free web-based platform that has been designed specifically to accept filings of Forms 3, 4 and 5 (see <http://www.onlineforms.edgarfiling.sec.gov>). Most issuers and insiders are likely to prefer the second means of filing, which is to engage a third-party service provider to first process the transaction information into a format acceptable by the SEC's new filing system and subsequently make the filings on their behalf.

What will I need in order to file reports electronically?

In order to file Section 16 reports on the SEC's new web-based system, persons will need the same Central Index Key (CIK), CIK Confirmation Code (CCC) and password as are required to file on the standard EDGAR filing system. Persons can acquire the codes only by submitting a Form ID to the SEC. Companies and other third party filing agents with appropriate access codes will continue to be able to submit forms on behalf of insiders. The SEC has urged insiders to file Forms ID well in advance of when they expect to need codes, to keep track of their codes once they are issued and to advise issuers for which they later become insiders of their existing codes. In addition, issuers and other third parties involved in the filing process are advised to inquire whether an insider already has codes before submitting a Form ID on the insider's behalf.

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What is the deadline for electronically filing Section 16 reports with the SEC?

The rule and form amendments do not change the accelerated filing deadlines implemented in August 2002. For example, Forms 4 are still required to be filed with the SEC by the end of the second business day after the reportable transaction. The SEC has, however, extended the end of the business day from 5:30 p.m. to 10:00 p.m. (Eastern time) so that any Form 3, 4 or 5 transmitted before 10:00 p.m. will be deemed filed on the same day.

What happens if I file late?

Late filing of a Form 3, 4 or 5 is a violation of Section 16(a) of the Exchange Act. Additionally, insiders that do not timely file their Section 16 reports trigger a disclosure obligation of the issuer to disclose the identities of any delinquent filers in its proxy statement and 10-K. The SEC has, however, extended temporary limited relief from this disclosure requirement in the case of any *Form 4* that is filed no later than one business day following the regular due date. This relief will expire on June 30, 2004. The availability of this disclosure relief does not change the fact that any Form 3, 4 or 5 filed later than the applicable due date violates Section 16(a) and could, therefore, result in an SEC enforcement action against the insider.

If a filer attempts in good faith to file a document with the SEC in a timely manner but the filing is delayed due to technical difficulties beyond the filer's control, the filer may request an adjustment of the document's filing date. The staff may grant the request if it appears that the adjustment is appropriate and consistent with the public interest and the protection of investors. Any such adjustment of filing dates would be in lieu of granting temporary hardship exemptions, which were previously available to delinquent filers who made a good faith effort to timely file their reports.

Am I still required to manually sign original copies of any Forms 3, 4 and 5 I file?

Even though Forms 3, 4 and 5 may no longer be filed in paper format, insiders (or persons authorized to sign on their behalf) are still required to manually sign their reports prior to the time of filing. The original signed document must be retained by the filer for a period of five years.

Am I required to provide the stock exchange on which the issuer's securities are listed with a copy of my reports?

It is not necessary to send a copy of the electronic filing to the New York Stock Exchange, American Stock Exchange or Nasdaq. Generally, Section 16 requires that an insider file one copy of the report with each national securities exchange on which the issuer's equity securities are listed. In the case of the NYSE and AMEX, however, the SEC has ruled that sending a copy is unnecessary. Additionally, as Nasdaq is an interdealer quotation system rather than a "national securities exchange," insiders of Nasdaq-quoted companies are not required to supply Nasdaq with copies of their Section 16 reports.

What are the issuer's obligations to post its insiders' Forms 3, 4 and 5 on its website?

An issuer that maintains a corporate website is required to post on its website all Forms 3, 4 and 5 filed with respect to its equity securities by the end of the business day after filing. Issuers may satisfy this requirement either by providing access to the reports directly on their websites or, more simply, by hyperlinking to reports via a third-party service, such as the EDGAR database on the SEC website. Hyperlinks are only permitted if the reports are, among other conditions, available free of charge in the required time frame and if the hyperlink leads the user directly to the Section 16 forms (or to a list of the Section 16 forms). A hyperlink to a site listing all SEC filings relating to the issuer is not acceptable. Forms 3, 4 and 5 posted on an issuer's website are required to remain accessible for at least a 12-month period.

Do I have to provide the issuer with copies of any Forms 3, 4 and 5 I file?

Insiders are required to send or deliver copies of their Section 16 reports to the issuer not later than the time the statement is transmitted for filing with the SEC. The SEC has stated that it expects issuers to designate an electronic transmission medium compatible with the issuers' own systems, so that a form sent via that medium at the time of filing with the SEC would be received by an issuer in time to satisfy the requirement that it post the report on its website by the end of the next business day. It is the insider's responsibility to file Section 16 reports with the SEC, but it is up to the issuer to coordinate with its insiders in order to ensure that the issuer receives the information necessary for it to timely fulfill its obligations (i.e. posting the reports on its website). Many issuers have established mandatory pre-clearance procedures for transactions by officers and directors so that they have advance notice of their insiders' trades.

Any concern about timely obtaining an electronic copy of a filing (for example from a 10% stockholder who may not be subject to the same mandatory pre-clearance procedures as officers and directors) can be obviated by relying on a hyperlink (for example, to EDGAR) instead of direct website posting.

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This memorandum is not intended to provide legal advice with respect to any particular situation and no legal or business decision should be based solely on its content. Questions concerning issues addressed in this memorandum should be directed to any member of the Paul Weiss Securities Group, including:

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