

DETERMINED TO BE AN
ADMINISTRATIVE MARKING
E.O. 12065, Section 6-102
By *JMV* NARS, Date *5/2/2012*

August 5, 2002

ACTION MEMORANDUM

TO: The Commission

FROM: The Division of Corporation Finance *Marin 2. Osterwald*

SUBJECT: That the Commission issue a release, substantially in the form of Attachment A, providing information about amendments to Section 16(a) of the Securities Exchange Act of 1934 ("Exchange Act") enacted by the Sarbanes-Oxley Act of 2002 ("Act") and the Commission's intention to adopt related final rules no later than the August 29, 2002 effective date of those amendments.

ACTION REQUESTED

BY: Seriatim consideration

REGULATORY FLEXIBILITY ACT; COST-BENEFIT ANALYSIS; PAPER-WORK REDUCTION ACT:

Not applicable

NOVEL, IMPORTANT OR COMPLEX ISSUES:

None

OTHER OFFICES OR DIVISIONS CONSULTED:

Office of General Counsel (G. Prezioso, M. Mitchell, C. McCormick, S. Draeger)

Division of Investment Management (S. Nash, P. Cellupica, D. Smith)

PERSONS TO CONTACT:

Anne M. Krauskopf, Special Counsel, Office of Chief Counsel – ext. 2834.

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I. Introduction

Section 16(a) requires every person who is the beneficial owner of more than 10% of any class of equity security registered under Section 12 of the Exchange Act, and each officer and director (collectively, "insiders") of the issuer of such security to report his or her beneficial ownership of all equity securities of the issuer. To keep this information current, Section 16(a) requires insiders to report changes in such ownership on a monthly basis within 10 days after the close of each calendar month in which such a change in ownership occurs.

Section 403(a) of the Act amends Section 16(a) to require insiders to report such a change in ownership "before the end of the second business day following the day on which the subject transaction has been executed, or at such other time as the Commission shall establish, by rule, in any case in which the Commission determines that such 2-day period is not feasible."

In view of this amendment, which becomes effective August 29, 2002, we recommend that the Commission issue a release providing supplemental information concerning implementation of the amendment and stating the Commission's intention to engage in related final rulemaking not later than August 29, 2002.

II. Contents of the Proposed Release

The proposed release would clarify that all transactions subject to Section 16(a) executed on or after August 29, 2002 will be reportable by insiders on Form 4 within two business days, except where the rules under Section 16(a) provide otherwise. Currently, some Section 16(a) rules exempt certain transactions from reporting, and other Section 16(a) rules permit most transactions that are exempted by rule from Section 16(b) short-swing profit recovery to be reported on Form 5 on a deferred basis 45 days after the issuer's fiscal year end.

The proposed release would announce our intention to amend Rule 16a-3(f) immediately so that a transaction between an officer or director and the issuer exempted from Section 16(b) short-swing profit recovery by Rule 16b-3 currently reportable on Form 5 would instead be reportable on Form 4 within two business days following the transaction. We believe this amendment is necessary to satisfy the Act's purpose to require immediate disclosure of insider transactions. Because such regulatory action was subject to notice and comment pursuant to a previous release,¹ the Commission is able to proceed immediately to adoption. The proposed release would state that, in light of the Act's Section 16(a) amendments, we do not intend to consider further our proposed amendments discussed in the previous release to require companies to report directors' and executive officers' transaction in company equity securities, but we continue to consider the other amendments proposed in the previous release.

¹ "Form 8-K Disclosure of Certain Management Transactions," Securities Act Release No. 8090, Exchange Act Release No. 45742 (Apr. 12, 2002) [67 FR 19914].

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We also would announce our intention to adopt no later than August 29, 2002:

- Amendments to Form 4 to conform all references to the applicable due date to the amended statutory due date and to reflect that Form 4 is no longer a monthly form; and
- One or more new rules under Section 16(a) to provide different Form 4 due dates for specified transactions, if any, for which we determine that the two-business day reporting period is not feasible.

With respect to these transactions, we would state our intentions to:

- provide relief only to specified types of transactions where objective criteria prevent the insider from controlling the timing of transaction execution, and
- adopt alternative deadlines that reflect the Act's purpose to require immediate disclosure of insider transactions.

We would note that, not later than one year following enactment, the Act mandates electronic filing of change of beneficial ownership reports, and website posting of such reports by both the Commission and issuers. We would state that the Commission will proceed expeditiously with the necessary rulemaking and related system programming to assure adoption within the one-year period mandated by the Act. We also would encourage insiders and companies filing Section 16(a) reports on their behalf to make these filings electronically in the meantime, and describe technical accommodations that would make this easier.

III. Recommendation

The proposed release will assist interested parties in understanding implementation of the Section 16(a) amendments contained in Section 403 of the Act and the Commission's plans in connection with that implementation. For these reasons, the Division of Corporation Finance recommends that the Commission authorize the issuance of the attached proposed release.

Attachments

Attachment A – Draft Release