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E.O. 12065, Section 8-102  
By JMV NARS, Date 5/2/2012

DRAFT 8/5/02

**SECURITIES AND EXCHANGE COMMISSION**

**OWNERSHIP REPORTS AND TRADING BY OFFICERS, DIRECTORS AND  
PRINCIPAL SECURITY HOLDERS**

[RELEASE NO. 34-XXXXX; File No. S7-xx-02]

**AGENCY:** Securities and Exchange Commission

**ACTION:** Notice of Supplemental Information on Section 16(a) and Related Rules

**SUMMARY:** The Commission today is issuing supplemental information regarding the filing of ownership reports by officers, directors and principal security holders under Section 16 of the Securities Exchange Act of 1934. The release addresses the amendments to Section 16(a) enacted by the Sarbanes-Oxley Act of 2002 and related final rules that the Commission will consider adopting no later than the August 29, 2002 effective date of those amendments.

**DATES:** We welcome any comments on the implementation of the legislative provisions relating to Section 16(a). In light of the August 29, 2002 effective date of the statute, comments should arrive at the Commission by August 15, 2002.

**ADDRESSES:** Comments should be submitted in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549-0609. Comments also may be submitted electronically at the following electronic mail address: [rule-comments@sec.gov](mailto:rule-comments@sec.gov). To help us process and review your comments more efficiently, comments should be sent by one method only. All comment letters should refer to File No. S7-xx-02; this file number should be included in the subject line if electronic mail is used. Comment letters will be available for public inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, NW,

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Washington, DC 20549. Electronically submitted comment letters will be posted on the Commission's Internet Web Site (<http://www.sec.gov>).<sup>1</sup>

**FOR FURTHER INFORMATION CONTACT:** Anne M. Krauskopf, Special Counsel, David Lee, Special Counsel, or Carol McGee, Special Counsel at (202) 942-2900, Division of Corporation Finance, U.S. Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549-0402.

**SUPPLEMENTARY INFORMATION:**

**I. BACKGROUND**

Section 16<sup>2</sup> applies to 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,<sup>3</sup> and each officer and director (collectively, "insiders") of the issuer of such security. Upon becoming an insider, or upon the Section 12 registration of that security, Section 16(a)<sup>4</sup> requires an insider to file an initial report with the Commission disclosing his or her beneficial ownership of all equity securities of the issuer. To keep this information current, Section 16(a) also requires insiders to report changes in such ownership, or the purchase or sale of a security-based swap agreement<sup>5</sup> involving such equity security. As currently in effect, Section 16(a) provides for such transactions to be reported on a

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<sup>1</sup> We do not edit personal identifying information, such as names or electronic mail addresses, from electronic submissions. You should submit only information that you wish to make available publicly.

<sup>2</sup> 15 U.S.C. 78p.

<sup>3</sup> 15 U.S.C. 78l.

<sup>4</sup> 15 U.S.C. 78p(a).

<sup>5</sup> As defined in Section 206(b) of the Gramm-Leach-Bliley Act (15 U.S.C. 78c).

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monthly basis within 10 days after the close of each calendar month in which such a change in ownership or purchase or sale of a security-based swap agreement occurs.

On July 30, 2002, the Sarbanes-Oxley Act of 2002 (the "Act")<sup>6</sup> was enacted. Section 403(a) of the Act amends Section 16(a) to require insiders to report such a change in ownership or purchase or sale of a security-based swap agreement "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."<sup>7</sup>

Section 403(b) of the Act provides that this amendment becomes effective 30 days after the date of enactment. That effective date is August 29, 2002. Thus, all transactions subject to Section 16(a) executed on or after August 29, 2002 will be reportable by insiders on Form 4<sup>8</sup> in accordance with the amended two-business day deadline, except where the rules under Section 16(a) provide otherwise.

The Act also amends Section 16(a) to require, not later than one year following enactment, electronic filing of change of beneficial ownership reports, and website posting of such reports by both the Commission and issuers.<sup>9</sup> We have announced our

<sup>6</sup> P. L. 107-204, 116 Stat. 745.

<sup>7</sup> Section 16(a)(2)(C) (15 U.S.C. 78p(a)(2)(C)), as amended by the Act. Section 30(h) of the Investment Company Act of 1940 (15 U.S.C. 80a-29(h)) provides that "Every person who is directly or indirectly the beneficial owner of more than 10 per centum of any class of outstanding securities (other than short-term paper) of which a registered closed-end company is the issuer or who is an officer, director, member of an advisory board, investment adviser, or affiliated person of an investment adviser of such a company shall in respect of his transactions in any securities of such company (other than short-term paper) be subject to the same duties and liabilities as those imposed by section 16 of the Securities Exchange Act of 1934 upon certain beneficial owners, directors, and officers in respect of their transactions in certain equity securities." Accordingly, the Act's amendments also accelerate the deadline for change of beneficial ownership reports required pursuant to Section 30(h).

<sup>8</sup> 17 CFR 249.104.

<sup>9</sup> Section 16(a)(4), as amended by the Act.

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intention to begin rulemaking to make the filing of Section 16(a) reports on EDGAR mandatory,<sup>10</sup> and will proceed expeditiously with that rulemaking and related system programming to assure adoption within the one-year period mandated by the Act. Meanwhile, we encourage insiders and companies filing Section 16(a) reports on their behalf to make these filings electronically. To facilitate EDGAR conversion, we will accept electronically-filed Section 16(a) reports that are not presented in the standard box format and omit the horizontal and vertical lines separating information items, so long as all required information is presented in the proper order.

## II. RULEMAKING TO IMPLEMENT AMENDED SECTION 16(a)

To implement the new accelerated reporting deadline, we anticipate adopting final rules that will become effective no later than the August 29, 2002 effective date of the Section 16(a) amendments. We anticipate that these final rules will accomplish the following:

1. Adopt amendments to Form 4 to conform all references to the applicable filing deadline to the amended statutory filing deadline and to reflect that Form 4 is no longer a monthly form.
2. Adopt amendments to Rule 16a-3(f)<sup>11</sup> so that transactions between officers or directors and the issuer exempted from Section 16(b)<sup>12</sup> short-swing profit recovery by Rule 16b-3<sup>13</sup> that currently may be reported within 45 days after the

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<sup>10</sup> Securities Act Release No. 7803 (Feb. 25, 2000) [65 FR 11507].

<sup>11</sup> 17 CFR 240.16a-3(f).

<sup>12</sup> 15 U.S.C. 78p(b).

<sup>13</sup> 17 CFR 240.16b-3.

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issuer's fiscal year end on Form 5<sup>14</sup> will be required to be reported immediately on Form 4.

3. Adopt one or more new rules under Section 16(a) that will provide different Form 4 due dates for specified transactions, if any, as to which we determine that the two-business day reporting period is not feasible.

Accelerated reporting of officers' and directors' reportable transactions with an issuer exempted by Rule 16b-3 is necessary to satisfy the Act's purpose to require immediate disclosure of insider transactions. We previously solicited comment on this regulatory action.<sup>15</sup> In light of the Section 16(a) amendments enacted by Section 403 of the Act, we do not intend to consider further our proposed amendments discussed in that release to require companies to report directors' and executive officers' transactions in company equity securities. We continue to consider the other amendments proposed in that Release that would require companies to disclose information about (1) directors' and executive officers' arrangements intended to satisfy the affirmative defense conditions of Exchange Act Rule 10b5-1(c)<sup>16</sup> and (2) company loans and loan guarantees to directors and executive officers.

Rule 16a-3(f) as amended would subject to two-business day reporting on Form 4 all reportable transactions with the issuer exempted by Rule 16b-3, including transactions in issuer equity securities and derivative securities. Derivative securities transactions so

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<sup>14</sup> 17 CFR 249.105.

<sup>15</sup> "Form 8-K Disclosure of Certain Management Transactions," Securities Act Release No. 8090, Exchange Act Release No. 45742 (Apr. 12, 2002) [67 FR 19914, at 19920].

<sup>16</sup> 17 CFR 240.10b5-1(c).

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reportable under the amended rule would include issuances, exercises,<sup>17</sup> and cancellations and regrants, including stock option repricings.

We currently do not intend to consider rules providing exemptions from the two-business day reporting deadline for Form 4 based on non-feasibility for transactions categorized by type of issuer, type of insider, or size of transaction. We are considering relief only for narrowly specified types of transactions where objective criteria prevent the insider from controlling the timing of transaction execution and where we have concluded that satisfying the two-business day period would not be feasible. The deadlines we will consider for these transactions will reflect the Act's purpose to require immediate disclosure of insider transactions. The types of transactions for which we are considering calculating the deadlines differently may include:

- A transaction pursuant to a single market order that is executed over more than one day, but not to exceed a specified number of days;
- A transaction the timing of which is outside the knowledge of the insider before a confirmation or other notice of the transaction is sent to the insider, with a delay not to exceed a specified number of days; and

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<sup>17</sup> The current requirements of Rule 16a-3(f)(1)(i)(A) to report on Form 4 exercises and conversions of derivative securities that are exempt from Section 16(b) short-swing profit recovery under either Rule 16b-3 or Rule 16b-6(b) [17 CFR 240.16b-6(b)] will continue.

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- A discretionary transaction,<sup>18</sup> whether or not exempted by Rule 16b-3.

By the Commission.

Margaret H. McFarland  
Deputy Secretary

August XX, 2002

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<sup>18</sup> A “discretionary transaction” is defined in Rule 16b-3(b)(1).