

compliance with this airworthiness directive, if any, may be obtained from the ACO.

Special Flight Permits

(f) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be done.

Effective Date

(g) This amendment becomes effective on May 7, 2003.

Issued in Burlington, Massachusetts, on March 25, 2003.

Francis A. Favara,

Acting Manager, Engine and Propeller Directorate, Aircraft Certification Service.

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SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 228, 229, 244 and 249

[Release Nos. 33-8216; 34-47583; IC-25983; FR-69; File Nos. S7-43-02 and S7-44-02]

RIN 3235-AI69 and 3235-AI71

Filing Guidance Related to: Conditions for Use of Non-GAAP Financial Measures; and Insider Trades During Pension Fund Blackout Periods

AGENCY: Securities and Exchange Commission.

ACTION: Final rule; interim guidance regarding Form 8-K Item 11 and Item 12 filing requirements.

SUMMARY: The Securities and Exchange Commission is issuing interim guidance regarding the filing of information pursuant to new Items 11 and 12 of Form 8-K. Item 11 requires a registrant to provide public notice of a pension fund blackout period. Final rules related to this disclosure item were published in the **Federal Register** on January 28, 2003 (68 FR 4337). Item 12 requires a registrant to furnish specified disclosure when the registrant, or any person acting on its behalf, makes any public announcement or release disclosing material non-public information regarding the registrant's results of operations or financial condition for a competed quarterly or annual fiscal period. Final rules related to this disclosure item were published in the **Federal Register** on January 30, 2003 (68 FR 4819).

EFFECTIVE DATE: March 28, 2003.

FOR FURTHER INFORMATION CONTACT:

Andrew Thorpe, Special Counsel, with respect to the Form 8-K Item 11

information, or Joseph Babits, Special Counsel, with respect to the Form 8-K Item 12 information, at (202) 942-2910, Division of Corporation Finance, U.S. Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549-0402.

SUPPLEMENTARY INFORMATION: On January 22, 2003, the Commission issued two separate adopting releases. One of the releases contained final rules to clarify the application and prevent evasion of section 306(a) of the Sarbanes-Oxley Act of 2002.¹ Section 306(a) prohibits any director or executive officer of an issuer of any equity security from, directly or indirectly, purchasing, selling or otherwise acquiring or transferring any equity security of the issuer during a pension plan blackout period that temporarily prevents plan participants or beneficiaries from engaging in equity securities through their plan accounts, if the director or executive officer acquired the equity security in connection with his or her service or employment as a director or executive officer. Among other things, the Commission created new Item 11 of Form 8-K, which requires a registrant to provide public notice of a pension fund blackout period. The Item 11 disclosure requirement is effective on March 31, 2003. The Commission deferred effectiveness until March 31 to allow time for Commission staff to program the addition of Item 11 to the Electronic Data Gathering, Analysis and Retrieval ("EDGAR") system. In recognition of the fact that section 306(a) of the Sarbanes-Oxley Act of 2002, including the notice requirement, became effective on January 26, 2003, the release stated that between January 26 and March 31, 2003, a registrant could provide the required notice to the Commission by disclosing the information described in Item 11 under Item 5 ("Other Information") of Form 10-Q or 10-QSB, in the first quarterly period filed by the registrant after commencement of the blackout period.

The other release contained final rules and amendments to address public companies' disclosure or release of certain financial information that is calculated and presented on the basis of methodologies other than in accordance with generally accepted accounting principles.² Among other things, the Commission created new Item 12 of Form 8-K, that requires a registrant to furnish specified disclosure when the

registrant, or any person acting on its behalf, makes any public announcement or release disclosing material non-public information regarding the registrant's results of operations or financial condition for a competed quarterly or annual fiscal period. The Item 12 disclosure requirement applies to earnings releases and similar announcements made after March 28, 2003.

Because the necessary programming to add Items 11 and 12 of Form 8-K to the EDGAR system is not yet complete, we are providing the following interim guidance regarding the filing requirement for these Items.

- Registrants should continue to disclose the information required by Item 11 under Item 5 ("Other Information") of Form 10-Q or 10-QSB in the first quarterly report filed by the registrant after commencement of the blackout period.

- Registrants should furnish the information required by Item 12 under Item 9 ("Regulation FD Disclosure") of Form 8-K.

- The text of Item 5 of the Form 10-Q that provides information required under Item 11 should indicate that information is being provided under Item 11.

- The caption in the Form 8-K that provides information required under Item 12 should indicate that information is being provided under Item 12, or under Items 9 and 12, as the case may be.

This procedural guidance does not affect the legal obligations or consequences of providing the information under these items. For example, the information in a Form 8-K report furnished pursuant to Item 9 is not deemed to be "filed" for the purposes of Section 18 of the Securities Exchange Act of 1934 or otherwise subject to the liabilities of that section, except if the registrant specifically states that the information is to be considered "filed" under the Exchange Act or incorporates it by reference into a filing under the Securities Act of 1933 or the Exchange Act. As provided in the final rules, a registrant must furnish the information that is required by Item 12 under Item 9 of Form 8-K within five business days after the occurrence of an event specified in Item 12. Information provided under Item 12 also may be required to be provided under the requirements of Regulation FD; in this case, any earlier deadline for Item 9 under Regulation FD would apply.

This interim guidance will remain in effect until we announce that our EDGAR system permits registrants to file or furnish information using the

¹ Release No. 34-47225 (January 22, 2003) [68 FR 4337].

² Release No. 33-8176 (January 22, 2003) [68 FR 4819].