

## SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 230, 232, 239, 240, 249, 250, 259, 260, 269 and 274

[Release Nos. 33-8230, 34-47809, 35-27674, IC-26044; File No. S7-52-02]

RIN 3235-AI26

### Mandated Electronic Filing and Web Site Posting for Forms 3, 4 and 5

**AGENCY:** Securities and Exchange Commission.

**ACTION:** Final rule.

**SUMMARY:** We are adopting rule and form amendments to mandate the electronic filing, and Web site posting by issuers with corporate Web sites, 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. We have implemented changes to the EDGAR system in order to facilitate electronic filing. In addition, we are adopting rule changes to eliminate magnetic cartridges as a means of electronic filing. The rule and form amendments generally are adopted as proposed. However, we adopt additional rule amendments that permit section 16 forms submitted by direct transmission on or before 10 p.m. Eastern time to be deemed filed on the same business day and make a temporary hardship exemption unavailable to these forms. The intended general effect of the proposals is to facilitate compliance with the will of Congress, as reflected in amended section 16(a), and to facilitate the more efficient transmission, dissemination, analysis, storage and retrieval of insider ownership and transaction information in a manner that will benefit investors, filers and the Commission.

**DATES:** Effective Date: June 30, 2003.

**Compliance Dates:** Reporting persons must comply with the electronic filing requirements for beneficial ownership reports filed on or after June 30, 2003. Issuers must comply with the Web site posting requirements as to beneficial ownership reports filed on or after June 30, 2003. Magnetic cartridges may not be used as a means of electronic filing after June 27, 2003.

**FOR FURTHER INFORMATION CONTACT:** For assistance with questions about the rule and form amendments in general, contact Mark W. Green, Senior Special Counsel (Regulatory Policy), at (202) 942-1940, or Anne M. Krauskopf, Special Counsel, at (202) 942-2900,

Division of Corporation Finance, U.S. Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20459-0301. For assistance with technical questions about EDGAR or to request access codes, call the EDGAR Filer Support Office at (202) 942-8900.

**SUPPLEMENTARY INFORMATION:** We are adopting <sup>1</sup> amendments that will revise Rules 13,<sup>2</sup> 101,<sup>3</sup> 104<sup>4</sup> and 201<sup>5</sup> under Regulation S-T<sup>6</sup> and Rule 16a-3(h)<sup>7</sup> and Forms 3, 4 and 5<sup>8</sup> under the Securities Exchange Act of 1934 ("Exchange Act").<sup>9</sup> We also are adopting an amendment that will add new Rule 16a-3(k) under the Exchange Act. Finally, we are adopting amendments that will rescind Form ET<sup>10</sup> and revise Rule 12 of Regulation S-T,<sup>11</sup> Rule 110<sup>12</sup> under the Securities Act of 1933 ("Securities Act"),<sup>13</sup> the description of Form 144 contained in the Code of Federal Regulations,<sup>14</sup> Rule 0-2<sup>15</sup> under the Exchange Act, Rule 21<sup>16</sup> under the Public Utility Holding Company Act of 1935 ("Public Utility Act"),<sup>17</sup> and Rule 0-5<sup>18</sup> under the Trust Indenture Act of 1939 ("Trust Indenture Act").<sup>19</sup>

### I. Background

Section 16<sup>20</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>21</sup> and each officer and director (collectively, "reporting persons" or "insiders") of the issuer of the security. Upon becoming a reporting person, or upon the section 12 registration of that class of securities, section 16(a)<sup>22</sup> requires a reporting

person to file an initial report<sup>23</sup> with the Commission disclosing the amount of his or her beneficial ownership of all equity securities of the issuer.<sup>24</sup> To keep this information current, section 16(a) also requires reporting persons to report to the Commission<sup>25</sup> changes in this ownership, or the purchase or sale of a security-based swap agreement<sup>26</sup> involving these equity securities.<sup>27</sup>

Before the effective date of the amendments adopted in this release, insiders may file reports on Forms 3, 4 and 5 either in paper or electronically on the Commission's Electronic Data Gathering, Analysis and Retrieval System ("EDGAR").<sup>28</sup> On July 30, 2002, the Sarbanes-Oxley Act of 2002 (the "Sarbanes-Oxley Act")<sup>29</sup> was enacted. The Sarbanes-Oxley Act amended section 16(a) to require, not later than July 30, 2003, insiders to file these forms electronically, and the Commission and issuers with corporate Web sites to post change in beneficial ownership reports on their Web sites.<sup>30</sup>

The legislative mandate is consistent with our own progress, since 1993, toward requiring electronic filing of Forms 3, 4 and 5. In 1993, we adopted rules, primarily Regulation S-T,<sup>31</sup> that

<sup>23</sup> Insiders file initial reports on Form 3.

<sup>24</sup> Rule 3a12-3 [17 CFR 240.3a12-3] provides that securities registered by a foreign private issuer, as defined in Rule 3b-4 [17 CFR 240.3b-4], are exempt from section 16. The legislative and regulatory actions addressed in this release do not change this exemption.

<sup>25</sup> Section 16(a) also requires reporting persons to file their initial and transactional reports with each national securities exchange on which the issuer lists its equity securities. For classes of securities listed on the New York Stock Exchange, the American Stock Exchange and the Chicago Stock Exchange, filing section 16(a) reports on EDGAR satisfies the requirements of section 16(a)(1) (as amended) and Rule 16a-3(c) to file the reports with the exchange on which the securities are listed. See staff no-action letters to New York Stock Exchange (Jul. 22, 1998), American Stock Exchange (Jul. 22, 1998) and Chicago Stock Exchange (Jan. 18, 1998).

<sup>26</sup> As defined in section 206B of the Gramm-Leach-Bliley Financial Modernization Act of 1999, as amended by H.R. 4577, Pub. L. 106-554, 114 Stat. 2763.

<sup>27</sup> Insiders file transaction reports on Forms 4 and 5.

<sup>28</sup> Rule 101(b)(4) of Regulation S-T [17 CFR 232.101(b)(4)]. The percentage of Forms 3, 4 and 5 filed electronically on the current EDGAR system increased from approximately 8% in June 2002 (the last month before the Sarbanes-Oxley Act was enacted) to approximately 15% in August 2002 (the month the accelerated filing deadline took effect). The percentage held at approximately 15% in September 2002 but increased to approximately 25% in October 2002 and remained at that level in November 2002. The percentage subsequently increased to approximately 31% in December 2002, approximately 35-36% in January and February 2003, and approximately 38% in March 2003.

<sup>29</sup> Pub. L. No. 107-204, 116 Stat. 745.

<sup>30</sup> Section 16(a)(4), as amended by section 403 of the Sarbanes-Oxley Act.

<sup>31</sup> Release No. 33-6977 (Feb. 23, 1993) [58 FR 14628].

<sup>1</sup> The amendments were proposed in Release No. 33-8170 (Dec. 27, 2002) [67 FR 79466] ("Proposing Release").

<sup>2</sup> 17 CFR 232.13.

<sup>3</sup> 17 CFR 232.101.

<sup>4</sup> 17 CFR 232.104.

<sup>5</sup> 17 CFR 232.201.

<sup>6</sup> 17 CFR 232.10 *et seq.*

<sup>7</sup> 17 CFR 240.16a-3(h).

<sup>8</sup> 17 CFR 249.103, 249.104 and 249.105. Forms 3 and 4 also are authorized under the Investment Company Act of 1940 ("Investment Company Act") [15 U.S.C. 80a-1 *et seq.*] under 17 CFR 274.202 and 274.203.

<sup>9</sup> 15 U.S.C. 78 *et seq.*

<sup>10</sup> 17 CFR 239.62, 249.445, 259.601, 269.6 and 274.401.

<sup>11</sup> 17 CFR 232.12.

<sup>12</sup> 17 CFR 230.110.

<sup>13</sup> 15 U.S.C. 77a *et seq.*

<sup>14</sup> 17 CFR 239.144.

<sup>15</sup> 17 CFR 240.0-2.

<sup>16</sup> 17 CFR 250.21.

<sup>17</sup> 15 U.S.C. 79a *et seq.*

<sup>18</sup> 17 CFR 260.0-5.

<sup>19</sup> 15 U.S.C. 77aaa *et seq.*

<sup>20</sup> 15 U.S.C. 78p.

<sup>21</sup> 15 U.S.C. 78l.

<sup>22</sup> 15 U.S.C. 78p(a).