

required domestic issuers to file most documents electronically but did not permit electronic filing of Forms 3, 4 and 5. In 1995, we revised Regulation S-T to permit voluntary electronic filing of Forms 3, 4 and 5.³² In 1996, we asked for comment on whether to require EDGAR filing of any documents then allowed to be filed electronically on a voluntary basis.³³ Early in 2000, we announced that we intended to propose mandated electronic filing of Forms 3, 4 and 5 and asked for comments.³⁴ Later in 2000, we reiterated our expectation of proposing these requirements and stated that we would consider the comments received in connection with future rulemaking.³⁵

In accordance with the will of Congress, on December 20, 2002, we proposed rule and form amendments that would mandate the electronic filing and Web site posting of Forms 3, 4 and 5. In the Proposing Release, we also proposed to eliminate magnetic cartridges as a means of electronic filing. We received 22 comment letters relating to the Proposing Release. Commenters that provided a general view on the proposals supported them as a means of achieving earlier public notification of insiders' transactions and wider public availability of information about those transactions. We address specific comments received where applicable in this release.³⁶

In implementing Congress' directive to require Forms 3, 4 and 5 to be filed on EDGAR, we seek to achieve the same benefits for investors, filers and the Commission that we sought when we first mandated electronic filing for most documents. Since its inception, the primary goals of our EDGAR system have been to facilitate the rapid dissemination of financial and business information about companies and other parties participating in U.S. capital markets while making the transmission

and the Commission's processing of filings more efficient.

Mandated electronic filing benefits members of the investing public and the financial community by making information contained in Commission filings available to them minutes after receipt by the Commission. Information concerning insiders' transactions in issuer equity securities will be publicly accessible substantially sooner and more broadly than it was before. In addition, the electronic format of the information facilitates research and data analysis. The accelerated section 16(a) filing requirement that took effect in August, 2002 makes electronic filing even more valuable.³⁷ Finally, investors clearly want electronic access to these forms.³⁸ Many investors believe that reports of directors' and executive officers' transactions in company equity securities provide useful information as to management's views of the performance or prospects of the company and that more timely and transparent access to reports will be even more useful.

Filers will benefit from changes to the electronic filing system specifically designed to make electronic filing easier while continuing to provide speedy, secure and reliable transmission, as discussed below. We note that many companies help their insiders or submit the insiders' filings on their behalf. We encourage this practice to facilitate accurate and timely filing. Our objective, however, is to create a system that insiders can use relatively easily themselves, particularly as an insider is legally responsible for filing regardless of who submits a filing on the insider's behalf.³⁹

The use of EDGAR also will facilitate more efficient storage, retrieval and analysis of ownership and transaction information than paper filing. Quicker

access to ownership and transaction information should not only facilitate review of the information but also enhance the Commission's ability to study and address issues that relate to this information.

Web site posting of Forms 3, 4 and 5 by issuers with corporate Web sites will provide a convenient, rapidly disseminated electronic source in addition to EDGAR that is conducive to research and data analysis. One objective of the amendments is to encourage availability of this information in a variety of locations, so that it is broadly accessible.

Following adoption of these electronic filing and Web site posting requirements, insiders will continue to be required to report the same transactions and holdings as before. In particular, section 16(a) requires insiders to report all security-based swap agreements⁴⁰ and transactions involving derivative securities,⁴¹ including those in the form of over-the-counter options contracts, forwards, collars,⁴² and security futures.⁴³ The Commission will take action for failure to report these transactions.

II. The Amendments

A. Required Electronic Filing of Forms 3, 4 and 5

We are adopting as proposed the amendments to Regulation S-T⁴⁴ to require insiders to file Forms 3, 4 and 5 with us on EDGAR.⁴⁵ As noted above, Rule 101(b)(4) of Regulation S-T currently permits reporting persons to file Forms 3, 4 and 5 on EDGAR. The amendments revise Rule 101 by:

- Removing subparagraph (4) from paragraph (b) (the voluntary EDGAR filing paragraph); and
- adding a reference to forms filed under section 16(a) to subparagraph (a)(1)(iii) (located in the mandated EDGAR filing paragraph).

Regulation S-T also requires the electronic filing of any related

³² Release No. 33-7241 (Nov. 13, 1995) [60 FR 57682].

³³ Release No. 33-7369 (Dec. 5, 1996) [61 FR 65440].

³⁴ Release No. 33-7803 (Feb. 25, 2000) [65 FR 11507].

³⁵ Release No. 33-7855 (Apr. 27, 2000) [65 FR 24788]. We generally have addressed the electronic filing of Form 144 [17 CFR 239.144] in the same releases as we have addressed the electronic filing of Forms 3, 4 and 5. Although the adopted amendments do not address the electronic filing of Form 144, we may in the future propose to require that form also to be filed electronically.

³⁶ The comment letters and a summary of comments are available for public inspection and copying in our Public Reference Room, 450 Fifth Street, NW., Washington, DC 20549, in File No. S7-52-02. Public comments submitted electronically and the summary of comments are available on our Web site at <http://www.sec.gov>.

³⁷ Before enactment of the Sarbanes-Oxley Act, section 16(a) generally required insiders to file a transaction report within 10 days of the close of the month in which the transaction occurred. The Sarbanes-Oxley Act amended section 16(a), effective for transactions on or after August 29, 2002, to require insiders to file a transaction report "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" [section 16(a)(2)(C) (15 U.S.C. 78p(a)(2)(C))], as amended by section 403 of the Sarbanes-Oxley Act]. On August 27, 2002, we adopted rule and form amendments to implement the accelerated filing deadline [Release No. 34-46421 (Sept. 3, 2002) [56 FR 56462]].

³⁸ The commenters on the Proposing Release that primarily represent investor interests and the one individual commenter all supported required electronic access.

³⁹ Cf. In the Matter of Bettina Bancroft, Release No. 34-32033 (Mar. 23, 1993).

⁴⁰ Section 16(a)(2)(C), as amended by section 403 of the Sarbanes-Oxley Act.

⁴¹ Rule 16a-1(c) [17 CFR 240.16a-1(c)].

⁴² See Section II.G of Release No. 34-34514 (Aug. 10, 1994) [59 FR 42449] and Section IV.H of Release No. 34-37260 (May 31, 1996) [61 FR 30376], addressing section 16(a) reporting of equity swaps and instruments with similar characteristics.

⁴³ Release No. 33-8107 (Jun. 21, 2002) [67 FR 43234].

⁴⁴ Regulation S-T is the general regulation governing EDGAR filing. In addition to complying with Regulation S-T, filers must submit electronic documents in accordance with the instructions in the EDGAR Filer Manual.

⁴⁵ We also are adopting an amendment to Rule 104(a) of Regulation S-T to make it clear that unofficial PDF copy submissions are unavailable to Forms 3, 4 and 5.