

correspondence and supplemental information pertaining to a document that is the subject of mandated EDGAR.⁴⁶ These materials are not disseminated publicly but are available to the Commission staff. This requirement will apply to persons who file Forms 3, 4 and 5 on or after the effective date of the amendments.

B. Required Web Site Posting of Forms 3, 4 and 5

We also are adopting as proposed the amendment to Rule 16a-3⁴⁷ to add a new paragraph (k) to require an issuer that maintains a corporate Web site to post on its Web site all Forms 3, 4 and 5 filed with respect to its equity securities by the end of the business day after filing. One commenter asked us to clarify the term "corporate Web site," stating that the term does not distinguish between public (internet) and private (intranet) sites. We clarify that the term "corporate Web site" refers to public (internet) sites, reflecting the legislative purpose of providing broader dissemination of this information to investors.

As we stated in the Proposing Release, an issuer can satisfy this requirement whether it provides access directly or by hyperlinking⁴⁸ to reports via a third-party service instead of maintaining the forms itself if the following conditions are met:⁴⁹

- The forms are made available in the required time frame;
- access to the reports is free of charge to the user;
- the display format allows retrieval of all information in the forms;⁵⁰
- the medium to access the forms is not so burdensome that the intended users cannot effectively access the information provided;⁵¹

⁴⁶ Regulation S-T Rule 101(a)(1) [17 CFR 232.101(a)(1)].

⁴⁷ 17 CFR 240.16a-3.

⁴⁸ In Release No. 33-7856 (Apr. 28, 2000) [65 FR 25843] (the "2000 Release"), we provided interpretive guidance on the possible effects of hyperlinking to a third-party Web site. See the 2000 Release, at n. 48 and the accompanying text.

⁴⁹ Hyperlinking to these Forms in the EDGAR database on the Commission's Web site will satisfy the posting requirement if the conditions in this section otherwise are met. EDGAR currently displays Forms 3, 4 and 5 filed electronically and will do so under the contemplated on-line system, in both cases shortly after filing and within the period required by section 16(a)(4)(B) (by the end of the business day after filing).

⁵⁰ In this regard, we note that some third-party service providers publish only Table I information, which would not satisfy this condition. The third-party display format would need to publish all form information in order for a hyperlink to satisfy the issuer's Web site posting requirement.

⁵¹ See, for example, Release No. 33-7233 (Oct. 6, 1995) [60 FR 53458], at n. 24 and the accompanying text.

- the access includes any exhibits or attachments;

- access to the forms is through the issuer Web site address the issuer normally uses for disseminating information to investors;⁵² and
- any hyperlink is directly to the section 16 forms (or to a list of the section 16 forms) relating to the posting issuer instead of just to the home page or general search page of the third-party service.⁵³

Three commenters addressed where hyperlinks must lead. Two of the commenters urged that we not require a hyperlink to each individual section 16 form because such a requirement would be unduly burdensome. The third commenter asked whether the hyperlink could be to a site with all Commission filings related to the issuer or whether it had to be to a site that contained only section 16 forms or a list of them. As stated in the list of conditions above, the hyperlink must lead directly to the section 16 forms or to a list of them. It is possible, for example, to link to the section 16 forms relating to an issuer in the EDGAR database on our Web site in a manner that does not require an update each time another section 16 form is filed as to that issuer.⁵⁴

Two commenters addressed hyperlink captions. One of these commenters asked how specific the caption should be and the other suggested that we clarify that the link must be displayed clearly. We clarify that the link caption must indicate clearly that the link leads to the issuer's insiders' section 16 forms.

Two commenters questioned whether an issuer always could post section 16 filings by the end of the business day after filing. The commenters noted that, even where an insider complies with the Rule 16a-3(e)⁵⁵ requirement to send or deliver a duplicate of a section 16 form to the issuer not later than the time the form is transmitted for filing with the Commission, the issuer still may

⁵² If the issuer has a corporate Web site but does not normally disseminate information to investors through the Web site, it must provide access to the forms through a location on its Web site that it reasonably believes will facilitate user access to the forms.

⁵³ An issuer could present the viewer with an intermediate screen stating that the visitor is leaving the issuer's Web site. Also, a disclaimer of responsibility for the accuracy of the third-party service would not make the Web site posting ineffective for purposes of the posting requirement. See generally regarding issuer Web site posting Release No. 33-8128 (Sept. 16, 2002) [67 FR 58480], at n. 132 and accompanying text.

⁵⁴ For example, an issuer could use a link such as the following where the issuer's Central Index Key (CIK) code is 0000906648: <http://www.sec.gov/cgi-bin/browse-edgar?company=&CIK=0000906648&owner=only&action=getcompany>.

⁵⁵ 17 CFR 240.16a-3(e).

receive the filing after the Web site posting deadline, for example when the insider sends the form by certified mail. We recognize that issuers may need to coordinate more closely with their insiders to avoid this concern, but that such coordination may not always be practicable, particularly with more than 10% beneficial owners.

Rule 16a-3(e) requires the insider to send or deliver the duplicate to the person designated by the issuer to receive such statements, or, in the absence of such designation, to the issuer's corporate secretary or person performing equivalent functions. In making this designation, we would expect an issuer also to designate an electronic transmission medium compatible with the issuer's own systems, so that a form sent via that medium at the time specified by Rule 16a-3(e) would be received by the issuer in time to satisfy the Web site posting deadline. To assure that insiders are aware of the designated person and electronic transmission medium, we encourage issuers to post this information on their Web sites together with the section 16 filings. Of course, issuers also may consult EDGAR to obtain notice of new filings. We also note that the concern about obtaining an electronic copy of the filing would not arise for issuers that rely on a hyperlink (for example, to EDGAR) instead of, or in addition to, direct Web site posting.

Two commenters addressed posting duration. One favored a one-year period and the other favored at least a one-year period (noting that we might want to lengthen the period to allow investors to spot trends). As adopted, Rule 16a-3(k) requires each form to remain accessible on the issuer's Web site for at least a 12-month period. We believe that a 12-month period that begins when the form is posted strikes the right balance between the issuer effort needed to post and the investor benefit from having access to the section 16 forms through the additional source of the issuer's Web site. In this regard, we note that the section 16 forms will be available indefinitely in the EDGAR database on our Web site.

One commenter addressed rule-mandated Form 3 posting in the absence of a statutory requirement. The commenter favored our proposal to mandate Form 3 posting on the basis that it would provide timely and complete disclosure regarding initial ownership positions and, therefore, prove useful in assessing changes. We also conclude that mandated posting of Form 3 is appropriate. We believe that the benefits of wider dissemination of the fact that a person is an insider and