

registration requirements under section 12 of the Exchange Act (15 U.S.C. 78l) must register these securities with the Securities and Exchange Commission (SEC). Section 16(a) of the Exchange Act (15 U.S.C. 78p(a)) requires directors, executive officers, and direct or indirect beneficial owners of more than 10 percent of a class of securities that are registered under the Exchange Act (insiders) to file beneficial ownership reports regarding their ownership and transactions in the company's securities.¹ Section 12(i) of the Exchange Act (15 U.S.C. 78l(i)) vests the OCC, rather than the SEC, with the power to issue regulations implementing certain Exchange Act requirements with respect to registered national banks, including section 16, and with the authority to administer and enforce these requirements.²

As amended by the Sarbanes-Oxley Act of 2002, Public Law 107-204, section 16(a) requires that insiders of a registered company, including a registered national bank, must file beneficial ownership reports (1) at the time the company registers its securities pursuant to section 12 of the Exchange Act, (2) within 10 days after becoming an insider of a registered national bank, and (3) within two business days after an insider consummates a transaction resulting in a change in ownership, or resulting in the purchase or sale of a security-based swap agreement,³ in the registered securities. These provisions became effective on August 29, 2002.

Section 16(a)(4) also requires that, beginning July 30, 2003, insiders must file their change-in-ownership reports electronically. Moreover, the SEC, and the OCC in the case of registered national banks, must make these filings available to the public on the Internet not later than the end of the business day following the filing. Also, a registered company, including a registered national bank, must post its insiders' change-in-ownership reports on its Web site, if it has a Web site, not later than the end of the business day following the filing.

The SEC's final rules implementing these requirements for other public companies mandate that all beneficial ownership reports filed under section

16(a), not only the change-in-ownership reports, must be filed electronically and posted on a public company's Web site (if the company has a Web site).⁴ In addition, the SEC will provide Internet access to all such filings that are filed with the SEC. The SEC's rules are effective for all section 16(a) filings that are made on or after June 30, 2003.

The SEC's rulemaking also amended 17 CFR 240.16a-3 which applies to registered national banks through the OCC's regulations at 12 CFR 11.2(b)(2). As recently amended by the SEC, 17 CFR 240.16a-3 provides that any issuer that has a corporate Web site must post any section 16(a) report on that Web site by the end of the business day after the filing and the filing must remain accessible on the Web site for at least 12 months. These same requirements apply to registered national banks.

The OCC is imposing similar requirements to those adopted by the SEC and is requiring that all section 16(a) reports must be filed electronically by the required due dates. To provide for the electronic filing of insiders' reports under section 16(a) of the Exchange Act, the Federal Deposit Insurance Corporation, the Board of Governors of the Federal Reserve System, and the OCC have created an electronic filing system utilizing the FDICconnect secure Web platform. This filing system became operational beginning July 30, 2003.

In order to assure that this new system is fully functional, the OCC will not require compliance with the electronic filing and Web site posting requirements until January 1, 2004. To the extent practicable, however, registered national banks should post the section 16(a) filings on their Web sites and their insiders should file their section 16(a) reports electronically before January 1, 2004.

This short delay will give registered national banks' insiders a transition period for using the new electronic filing system so as to ensure that the new system is fully functional and accessible to the public before requiring that it be used as the only form of filing section 16(a) reports. Moreover, there will be no delay in the due date of any insider's section 16(a) report and all such reports must still be filed with the OCC within the required time frame and will continue to be publicly available as provided by the OCC's current rules.⁵ In addition, the impact of the short

transition period is further minimized because we expect that insiders will begin using FDICconnect and registered national banks will begin posting these filings on their Web sites (if the bank maintains a Web site) as soon as practicable and will not wait until the compliance deadline.

Description of Rule

The interim rule revises section 11.3(a), which relates to filing requirements and the inspection of documents filed with the OCC pursuant to the Exchange Act. The rule contains a new paragraph 11.3(a)(2), which provides that statements required to be filed electronically pursuant to section 16(a) of the Exchange Act shall be filed electronically. New paragraph 11.3(a)(4) clarifies that the electronic filing and Web site posting requirements are mandatory for section 16(a) statements required to be filed on or after January 1, 2004.

The rule also adds a new subparagraph 11.3(a)(3)(ii) which provides that, an electronic filing pursuant to section 16(a) of the Exchange Act submitted by direct transmission on or before 10 p.m. eastern standard time or eastern daylight savings time, whichever is currently in effect, shall be deemed filed on the same business day. This aspect of the rule is consistent with the SEC's rules applicable to electronic filings that apply to other registered companies. See 17 CFR 232.13(a)(4).

The OCC's current rule 11.2(b)(2) incorporates by reference the requirements in the SEC's rules that a public company that has a Web site must post any filings on Forms 3, 4, or 5—the forms for filing beneficial ownership reports under section 16(a) of the Exchange Act—by the end of the business day after the filing and continue to make that form accessible on its Web site for at least 12 months. See 17 CFR 240.16a-3. Under the OCC's current rules, a registered national bank is required to post these filings on its Web site, if it has one, in accordance with the 17 CFR 240.16a-3.

Transition Period for Compliance

This interim final rule is effective on September 22, 2003. National bank insiders should begin to file reports electronically as soon as practicable. Section 16(a) reports must be filed electronically beginning with reports due to be filed on or after January 1, 2004. Insiders will file their section 16(a) reports on FDICconnect by submitting completed SEC Form 3 (Initial Statement of Beneficial Ownership of Securities), Form 4

¹ Section 16(a) also requires an entity that has registered its securities under the Exchange Act to file initial and transactional reports with any national securities exchange on which it has listed its securities.

² Under section 12(i), the other Federal banking agencies have the same authority with respect to the registered depository institutions that they supervise.

³ The term "security-based swap agreement" is defined in section 206(b) of the Gramm-Leach-Bliley Act (15 U.S.C. 78c note).

⁴ See 68 FR 25788 (May 13, 2003).

⁵ During the transition period, paper copies of any section 16(a) reports that are not filed electronically still may be obtained as provided under the OCC's current rules. See 12 CFR 11.2(b).