

(Statement of Changes in Beneficial Ownership), or Form 5 (Annual Statement of Changes in Beneficial Ownership of Securities), as recently amended by the SEC's rules.<sup>6</sup> The OCC already has provided instructions for using *FDICconnect* to affected national banks. When the forms are electronically filed on *FDICconnect*, the forms will be made available immediately on the FDIC's external public Web site (<http://www2.fdic.gov/efr>). Filings will be retrievable by bank name, insider name,<sup>7</sup> bank state, and filing date.

To assure that these reports continue to be publicly accessible until such time as we are confident that the electronic filing system is fully functional, insiders should continue to submit these reports on paper within the required time frames during the transition period and, as soon as practicable, also file their reports electronically. The paper filing requirement can be met by simply completing the on-line version of the report, then printing and faxing the electronic filing system confirmation screen (which contains the completed report). Paper reports may be faxed to the OCC at (202) 874-5279 and filed electronically with *FDICconnect* as of July 30, 2003.

During this transition period, a registered national bank whose insiders choose to file electronically (in addition to making a paper filing) may satisfy the requirement to post the report on its Web site by providing a link on its Web site to the FDIC's public Web site (<http://www2.fdic.gov/efr>). The OCC also will have a link on its Web site to the FDIC's Web site to make it easier for interested persons to retrieve *FDICconnect* filings.

#### Notice and Comment; Effective Date

Under the Administrative Procedure Act (APA), the requirement that an agency provide public notice and an opportunity for comment does not apply to "rules of agency organization, procedure, or practice."<sup>8</sup> This exemption applies to a rule that does not itself affect the substantive rights of those affected, even though the rule "may alter the manner in which the parties present themselves or their viewpoints to the agency." *JEM Broadcasting Co., Inc. v. FCC*, 22 F.3d 320, 326-27 (D.C. Cir. 1994).

The interim rule has no effect on the substantive rights of registered national

banks or their insiders who are filing section 16(a) reports. Amendments to section 16(a)(4) of the Exchange Act require the electronic filing of change-in-ownership reports and the posting of these reports on a registered national bank's Web site. The electronic filing requirements and Web-site posting requirements imposed under this interim rule implement the statutory requirements and require the electronic filing and Web site posting of other section 16(a) reports, as well. These requirements pertain only to the form in which an insider submits his or her information to the OCC or the form in which it is publicly accessible. The electronic filing and Web-site posting requirements do not modify the substantive information in the filing, the deadlines for the filing, or the public availability of the section 16(a) reports. For these reasons, we conclude that this interim rule is not subject to the notice and comment requirements of the APA.

An agency may dispense with the delayed effective date requirement of the APA for "good cause."<sup>9</sup> As we have described, we expect that the interim rule, which itself imposes no new substantive requirements, will help produce efficiencies for and reduce burden on national banks by enabling them to save time and money in the preparation and processing of certain required filings. The rule clarifies that insiders have a transition period for compliance and, thus, provides for an orderly transition to the electronic filing requirement. For these reasons, we conclude that the benefits of the interim rule outweigh any burdens imposed by the rule and that there is good cause to dispense with the 30-day delayed effective date prescribed by the APA.

The OCC is seeking public comment on all aspects of this interim rule and will consider those comments when promulgating the final rule. The OCC will publish in the **Federal Register** a response to any significant adverse comments received, along with modifications to the rule, if any.

Finally, subject to certain exceptions, 12 U.S.C. 4802(b)(1) provides that new regulations and amendments to regulations prescribed by a Federal banking agency that impose additional reporting, disclosure, or other new requirements on an insured depository institution must take effect on the first day of a calendar quarter that begins on or after the date on which the regulations are published in final form. Because the OCC will not enforce the mandatory electronic filing requirement and the Web site posting requirement

until beginning with section 16(a) reports due to be filed on or after January 1, 2004, the requirements in 12 U.S.C. 4802(b)(1) are satisfied.

#### Comment Solicitation

Although notice and comment are not required, we are nonetheless interested in receiving any comments that may improve this rule before it is adopted in final form. We therefore request comment on all aspects of this interim rule. We invite insiders to submit feedback on their use of this system.

#### Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995, the OCC may not conduct or sponsor, and a respondent is not required to respond to, an information collection unless it displays a currently valid Office of Management and Budget (OMB) control number. The collections of information requirements in 12 CFR part 11 are approved under OMB Control Number 1557-0106. The information collection requirements contained in this interim rule with request for comments have been submitted to the OMB for review as a revision of a currently approved collection. The OCC is also soliciting public comments on the information collection requirements contained in this interim rule for 60 days.

12 CFR part 11 incorporates by reference the applicable SEC regulations. The OCC does not maintain its own forms for collecting information and instead requires reporting banks to file SEC forms. Part 11 ensures that publicly owned national banks provide adequate information about their operation to current and potential shareholders, depositors, and to the public. The OCC reviews the information to ensure that it complies with Federal law and makes public all information required to be filed under these rules. Investors, depositors, and the public use the information to make informed investment decisions.

The OCC is revising 12 CFR part 11 to reflect amendments to section 16(a)(4) of the Exchange Act made by the Sarbanes-Oxley Act of 2002 and, like the SEC, is also requiring insiders of registered national banks to file all of their section 16(a) reports electronically in the future.

Section 11.3(a)(2) requires that beneficial ownership reports by officers, directors, and major shareholders of national banks with equity securities that are subject to registration and disclosure requirements of the Exchange Act must be filed electronically, as directed by the OCC. The *FDICconnect* secure Web platform electronic filing

<sup>6</sup> See *supra* note 4.

<sup>7</sup> The ability to be able to retrieve the filing by insider name will be delayed but it is expected to be functional on or about January 1, 2004 if all applicable regulatory requirements are satisfied.

<sup>8</sup> 5 U.S.C. 553(b)(A).

<sup>9</sup> Id. at 553(d)(3).