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CLIENT ADVISORY

Mandatory Electronic Reporting of Transactions by Insiders of Public Companies

As of June 30, 2003, reports by insiders and 10% stockholders of public companies about their trading activities will have to be filed electronically and posted on the companies' websites. Most transactions must be reported within two business days of the transaction.¹

Electronic filing of Forms 3, 4 and 5.

Under Section 16 of the Securities Exchange Act of 1934, executive officers, directors and 10% stockholders of a public company must file reports (known as Form 3, Form 4 and Form 5²) upon becoming an insider and upon most changes in their beneficial ownership of equity securities of the company. Public company insiders may currently file a paper form or voluntarily file electronically via a new SEC web-based system designed to be more user-friendly. The SEC's traditional EDGAR system is no longer available for Section 16 reports. The new system, which is available at <http://www.edgarfiling.sec.gov> or through third party vendors, will continue to be the system for the mandatory filing requirements.

Each insider will need to obtain identification numbers and passwords from the SEC (by filing a "Form ID") prior to making an electronic filing. Each filing person need only have one set of identification numbers, even if he or she files reports relating to the stock of multiple companies. If a filer obtains more than one set of identification numbers, the latest set will automatically cancel the earlier ones.

For purposes of Section 16 reports, the SEC has extended the deadline for which it will accept an electronic filing for a particular day from 5:30 p.m. EST to 10:00 p.m. EST. For example, an insider who sells stock on a Monday will have until 10:00 p.m. Wednesday night to file a Form 4. Note that this filing deadline does not apply to any other SEC filings for which the 5:30 p.m. deadline is currently applicable.

The SEC will not allow any temporary hardship exemptions from the electronic filing requirement. As a compromise, companies required to disclose in their annual proxy statements any late Section 16 filings will be permitted to consider a filing timely (and thus not be subject to proxy disclosure) if it was made within one day after the required filing date and prior to June 30, 2004.

Company website posting.

Under existing SEC rules, which have not changed, insiders must send or deliver copies of their Section 16 reports either in paper form or electronically to the companies to which they relate no later than the time of filing with the SEC. Under new rules, as of June 30, 2003, companies must post those Section 16 reports (including any exhibits) on their websites by the end of the business day after filing.

¹ For a discussion of other changes to Section 16 of the Securities Exchange Act of 1934 pursuant to the Sarbanes-Oxley Act of 2002, including the acceleration of reports of transactions by insiders of public companies and suggested compliance procedures, see the August 2002 ZAG/S&W LLP client advisory: "Accelerated Reporting of Transactions by Insiders of Public Companies," available at www.zag-sw.com.

² Various technical changes to Form 3, Form 4 and Form 5 not discussed in this client advisory have also been made in connection with the rule revisions that are discussed herein. We encourage you to contact us if you have specific questions when completing one of these reports.

This requirement applies to all public companies that are subject to Section 16, regardless of size.³ To assure that companies receive copies of the Section 16 reports for timely posting, the SEC encourages companies to set up an electronic system for transmission by insiders of their reports to the company.

Hyperlinking to a company's Section 16 reports on a third-party service, including the SEC's EDGAR database, will be a permissible method of website posting if the following conditions are met:

- the reports 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 reports;
- the medium to access the reports is not unduly burdensome;
- the access includes any exhibits or attachments to the reports;
- access to the reports is through the company's website that the company normally uses for disseminating information to investors; and
- any hyperlink is directly to the Section 16 reports (or to a list of the Section 16 reports) relating to the posting company instead of just to the home page or general search page of the third-party service. The link caption must indicate clearly that the link leads to the company's Section 16 reports. The SEC has stated that this is *narrower* than a link to a list of all of the company's SEC filings.

Intermediate screens and disclaimers between a company's website and a third-party website stating that the visitor is leaving the company's site or disclaiming responsibility for the accuracy of the third-party site are permissible. Reports must remain accessible for at least 12 months.

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ZAG/S&W LLP has extensive and varied experience representing not only public companies in a wide range of industries, but also individual directors and officers. In addition, ZAG/S&W provides EDGAR filing services for its clients. For a more comprehensive discussion of the Section 16 changes and filing rules that could affect you, please contact the lawyer at ZAG/S&W LLP with whom you regularly consult, or the lawyer below.

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Because sound legal advice must necessarily take into account all relevant facts and developments in the law, the information you will find in this memorandum is not intended to constitute legal advice or a legal opinion as to any particular matter.

¹ Section 16 does not apply to foreign private issuers.