

SEWARD & KISSEL LLP

August 15, 2002

Memorandum to our Clients and Friends:

New Reporting Obligations Under Section 16 of the Securities Exchange Act of 1934, as amended

In an effort to respond to the recent wave of accounting, corporate management and insider trading scandals, Congress enacted the Sarbanes-Oxley Act of 2002 (the "Act") on July 31, 2002. Among other things, the Act will amend those sections of the Securities Exchange Act of 1934, as amended (the "Exchange Act") that govern the timing and manner that public company Insiders (as defined below) must report their transactions in company securities.

BACKGROUND

For the purpose of preventing the unfair use of information which may have been obtained by an Insider (as defined below) by reason of his or her relationship to the issuer, Section 16 of the Exchange Act provides that the issuer (and in certain cases, any shareholder on behalf of the issuer) is entitled to institute suit against an Insider to recover "short-swing" profits from, *inter alia*, a purchase and sale, or sale and purchase, of a security of the issuer (including securities underlying certain options and other derivatives).¹ Section 16 of the Exchange Act and the rules and regulations of the Securities and Exchange Commission (the "SEC") thereunder require Insiders (as defined below) to file reports with the SEC in order to make issuers aware of violations and facilitate enforcement thereof. These laws and rules apply to beneficial owners of more than 10% of any class of equity security registered under Section 12 of the Exchange Act, and each officer and director of an issuer of such securities (collectively, "Insiders").

More particularly, Insiders must file an initial report of beneficial ownership on Form 3 with the SEC to disclose his or her holdings within ten (10) days after the date of the event making him or her an Insider.²

Currently, Insiders must subsequently report any changes in their ownership by filing an amendment on Form 4 with the SEC within ten (10) days of the close of any month in which a change in their ownership occurs for as long as they remain Insiders. Some transactions, such as transactions between the issuer and its officers and directors that meet certain requirements, are exempt from the Form 3 and Form 4 requirements. Exempt transactions must be reported once annually on Form 5, which is due forty-five (45) days following the end of the issuer's fiscal year. All Form 3s, 4s and 5s may presently be filed on paper.

¹ Any purchase (or sale) transaction in a security of such issuer, or a derivative thereof, within six months of any other sale (or purchase) of any such security or derivative may trigger the issuer's right to recover profits.

² In some cases, such as in the case of an initial public offering, certain Insiders must file his or her Form 3 report immediately after such event.

NEW OBLIGATIONS

Section 403 of the Act amends the Exchange Act to provide that Insiders will now generally be required to **report changes in their ownership on a Form 4 before the end of the second business day following the day on which the transaction occurs.**

Section 403 of the Act also makes changes to the rules governing the use of Form 5 by limiting the scope of “exempt transactions” that were formerly reportable after the end of the year. Certain transactions with the issuer that were formerly reportable on Form 5 will be reportable on Form 4 within two (2) business days.

EDGAR is the SEC’s electronic filing system. The Act also directs the SEC to require EDGAR filing of Form 4s and to have the applicable issuer post relevant Form 4s on the issuer’s website by July 2003. While not specifically discussed in the Act, it is likely that Form 3s and 5s will also be required to be filed electronically on EDGAR some time during the next year.

The effective date of this amendment is August 29, 2002 (*i.e.*, transactions that occur on or after August 29, 2002 will be subject to the new reporting guidelines). Transactions that occur prior to the effective date (*i.e.*, from August 1, 2002 through August 28, 2002) will remain reportable within ten (10) days after the close of August 2002.

If you have any questions regarding compliance with these new obligations provided for under the Act, please contact any attorney of Seward & Kissel LLP’s investment management and capital markets groups.

Seward & Kissel LLP