

March 30, 2004

## Additional Form 8-K Disclosure Requirements and Acceleration of Filing Date

Effective August 23, 2004, the SEC is expanding the number of events that are reportable on Form 8-K under the Securities Exchange Act of 1934. These amendments add eight new items to the form, transfer two items from the periodic reports and expand disclosures under two existing Form 8-K items. The amendments also shorten the Form 8-K filing deadline for most items to four business days after the occurrence of an event triggering the disclosure requirements of the form.

The amendments are responsive to the current disclosure goals of Section 409 of the Sarbanes-Oxley Act by requiring public companies to disclose, on a "rapid and current basis," material information regarding changes in a company's financial condition or operations as the SEC, by rule, determines to be necessary or useful for the protection of investors and in the public interest. They are intended to provide investors with better and faster disclosure of important corporate events.

### The eight new disclosure items include

- ♦ entry into or material amendment of a material non-ordinary course agreement;
- ♦ termination of a material non-ordinary course agreement;
- ♦ creation of a material direct financial obligation or a material obligation under an off-balance sheet arrangement;
- ♦ triggering events that accelerate or increase a material direct financial obligation or a material obligation under an off-balance sheet arrangement;

- ♦ material costs associated with exit or disposal activities;
- ♦ material impairments;
- ♦ notice of delisting or failure to satisfy a continued listing rule or standard; transfer of listing; and
- ♦ non-reliance on previously issued financial statements or a related audit report or completed interim review (restatements).

### The two disclosure items transferred, in part, from the periodic reports are

- ♦ unregistered sales of equity securities; and
- ♦ material modifications to rights of security holders.

### Expanded disclosure items include

- ♦ departure of directors or principal officers, election of directors, or appointment of principal officers; and
- ♦ amendments to Articles of Incorporation or Bylaws and change in fiscal year.

The amendments will create a limited safe harbor under Exchange Act Section 10(b) and Rule 10b-5 for failure to timely file seven of the new items on Form 8-K. The safe harbor does not apply to the new disclosure notice of delisting or failure to satisfy a continued listing rule or standard or transfer of listing. Furthermore, the safe harbor will not apply to, or impact, any other duty to dis-

close a company may have and extends only until the due date of the company's periodic report for the relevant period.

If a company amends after August 23 a Form 8-K that it filed before August 23, the amendment must use the form's new numbering system. These amendments do not affect the filing deadline for disclosures under Regulation FD (Item 7.01), voluntary disclosures (Item 8.01) and certain exhibits.

*If you have questions about any of the additional Form 8-K disclosure requirements or the accelerated filing date, please contact the Seyfarth Shaw LLP Business Services Group attorney with whom you work or any Corporate attorney listed on the website at [www.seyfarth.com](http://www.seyfarth.com).*

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