

## SEC NEWS RELEASE PROPOSES CORPORATE DISCLOSURE RULES

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FEBRUARY 28, 2002

The Securities and Exchange Commission (the "SEC") plans to propose new measures intended to improve the financial reporting and disclosure system by requiring companies to disclose information not now required to be disclosed, and by mandating greater electronic access to disclosure documents. The SEC also proposes to shorten a number of deadlines for certain types of filings. The SEC issued a news release on February 13, 2002 (the "News Release") indicating an intention to propose rules that:

- Expand the list of significant events requiring disclosure on current reports on Form 8-K;
- Accelerate filing by companies of their quarterly and annual reports;
- Provide accelerated reporting by companies of transactions by company insiders in company securities, including transactions with the company;
- Add a requirement that public companies post the reports on their web sites at the same time they are filed with the SEC; and
- Require disclosure of critical accounting policies in Management's Discussion and Analysis of Financial Condition and Results of Operations contain in annual reports.

The SEC expects at least a one month delay before the formal proposals are ready for comment. The formal proposals may differ from the requirements discussed in this memorandum.

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### ADDITIONAL DISCLOSURE REQUIREMENTS

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The News Release indicates the SEC's intention to expand the types of information that companies must report on Form 8-K.

Some of the items that the SEC is evaluating for inclusion in these reports include:

- Changes in rating agency decisions and other rating agency contacts;
- Transactions in a company's securities, including derivative securities, with executive officers and directors;

- Defaults and other events that could trigger acceleration of direct or contingent obligations;
- Transactions that result in material direct or contingent obligations not included in a prospectus filed by the company with the SEC;
- Offerings of equity securities not included in a prospectus filed by the company with the SEC;
- Waivers of corporate ethics and conduct rules for officers, directors and other key employees;
- Material modifications to rights of securityholders;
- Departure of the company's CEO, CFO, COO or president (or persons in equivalent positions);
- Notices that reliance on a prior audit is no longer permissible, or that the auditor will not consent to use of its report in a Securities Act of 1933 filing;
- Definitive agreements that are material to the company;
- Any loss or gain of a material customer or contract;
- Any material write-offs, restructurings or impairments;
- Any material change in accounting policy or estimate;
- Movement or de-listing of the company's securities from one quotation system or exchange to another; and
- Any material events, including the beginning and end of lock-out periods, regarding the company's employee benefit, retirement and stock ownership plans.

In addition to the expanded Form 8-K requirements discussed above, the SEC intends to propose that companies file such reports by the second business day following the underlying event. The SEC may also require the Form 8-K relating to some of these events to be filed by the opening of business on the day after the occurrence of the event, although the News Release does not say which events would require more accelerated disclosure.

Certain of the additional disclosure requirements on Form 8-K appear to be inspired by the recent Enron bankruptcy, such as disclosure of certain waivers of corporate ethics and conduct rules. However, a number of the other requirements do not appear to be Enron-related

but instead are part of a continuing effort by the SEC to ensure that the federal public company reporting system is sufficiently extensive and timely to provide needed transparency.

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**SHORTENED DEADLINES FOR  
FILING AND REPORTING  
REQUIREMENTS**

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The SEC is proposing to require reporting companies to file their periodic reports more quickly than heretofore required by the disclosure rules. The SEC will propose that public companies file (i) annual reports on Form 10-K within 60 days after the end of their fiscal year, rather than the current requirement of 90 days and (ii) quarterly reports on Form 10-Q within 30 days after the end of their first three fiscal quarters, rather than 45 days.

The SEC is also considering shortening the time period from 40 days to 10 days for reporting of transactions in a company's stock by its executive officers, directors or beneficial owners of more than 10% of its stock. The SEC is also apparently considering shortening the deadline for reporting by a company whose officers and directors sell stock back to the company. The current rules allow for a delay in reporting of up to 45 days after the end of the fiscal year in which the transaction took place.

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**EXPANDED ELECTRONIC ACCESS**

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The News Release discusses the SEC's intention to require public companies with Internet web sites to make their Exchange Act reports available on their web sites at the same time as their disclosure documents are filed. This requirement would not obviate the need for a company to file with the SEC or otherwise affect a company's reporting requirements with the SEC. Companies who do not currently have web sites will likely not be obligated to establish a web site under this requirement.

The SEC is also looking to provide for electronic filing of reports of insider transactions. The News Release indicates that direct reporting on the EDGAR system by insiders is not currently feasible. Instead, the SEC is considering a requirement that companies file electronically information that they receive from insiders, such as those described above under "Additional Disclosure Requirements".

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**DISCLOSURES ABOUT  
CRITICAL ACCOUNTING POLICIES**

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The SEC intends to propose amendments to its rules for Management's Discussion and Analysis of Financial Condition and Results of Operations to require disclosure about critical

accounting policies. The Simpson Thacher & Bartlett memorandum entitled "SEC Issues Concerning MD&A and Other Accounting-Related Disclosures" dated January 30, 2002 addresses these proposed rule modifications.

The changes proposed by the SEC touch a number of areas and are prompted by the SEC's concern that a wider range of matters now requires more timely disclosure than is currently required by the SEC disclosure rules. This initiative is reflective of Chairman Harvey Pitt's campaign to mandate immediate disclosure of events of unquestionable materiality. In light of Chairman Pitt's proposals on current reporting, however, the expansion of the list of items reportable on Form 8-K in particular may be a stop-gap measure, pending a more comprehensive change in disclosure obligations.

Any measure ultimately proposed may well include a catch-all provision intended to dissuade public companies from taking the narrow view that the obligation to make current disclosure is strictly limited to the items specifically enumerated. The SEC does not intend to limit the concept of materiality for public companies in setting forth the list of additional disclosure requirements. In particular, there should be no implication that such items define what may be material for purposes of Regulation FD. Given the issues addressed by the News Release, companies will need to be attentive to current events that may give rise to reporting requirements, and vigilant to ensure such events are reported rapidly.

A copy of the News Release is attached to this memorandum.

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If you have any questions concerning the Release, please contact Vincent Pagano ([v\\_pagano@stblaw.com](mailto:v_pagano@stblaw.com)); John Lobrano ([j\\_lobrano@stblaw.com](mailto:j_lobrano@stblaw.com)); Valerie Caproni ([v\\_caproni@stblaw.com](mailto:v_caproni@stblaw.com)) or Risë Norman ([r\\_norman@stblaw.com](mailto:r_norman@stblaw.com)) of our firm at (212) 455-2000.

SIMPSON THACHER & BARTLETT LLP

FOR IMMEDIATE RELEASE

2002-22

## SEC TO PROPOSE NEW CORPORATE DISCLOSURE RULES

Washington, DC, February 13, 2002 -- The Securities and Exchange Commission today announced that it intends to propose changes in corporate disclosure rules as the first in a series of steps designed to improve the financial reporting and disclosure system.

"The steps we announce today represent only a beginning in the realization of an important regulatory agenda," SEC Chairman Harvey Pitt said. "These steps will provide significant improvements quickly while other proposals are considered. We will be working on our own and together with Congress, the President's Working Group, companies, investor groups and other interested participants. We anticipate further reform proposals covering financial reporting and disclosure requirements, accounting standard setting, regulation of the auditing process and profession and corporate governance."

Specifically, the Commission intends to propose rules that will:

- Provide accelerated reporting by companies of transactions by company insiders in company securities, including transactions with the company;
- Accelerate filing by companies of their quarterly and annual reports;
- Expand the list of significant events requiring current disclosure on existing Form 8-K. Such events could include changes in rating agency decisions, obligations that are not currently disclosed and lockout periods affecting employee stock-ownership plans.
- Add a requirement that public companies post their Exchange Act reports on their web sites at the same time they are filed with the SEC; and
- Require disclosure of critical accounting policies in Management's Discussion and Analysis of Financial Condition and Results of Operations, contained in annual reports.

"Our financial disclosure system is the best in the world," Pitt said. "Investors can be confident in the system as we continue to work to improve it."

## DETAILS OF PROPOSED CORPORATE DISCLOSURE RULES

### *Proposed Amendments for Insider Reporting*

The Commission is considering a variety of ways to improve public disclosure of trading activities by executive officers, directors and beneficial owners of 10% of a company's stock.

Under the Securities Exchange Act of 1934, trades must be reported by the tenth day of the month following the month in which the trades occur. That represents a delay of up to 40 days, which is inadequate for today's markets. The Commission supports a legislative solution that would dramatically shorten this period.

In the meantime, given the importance to the marketplace of transactions by corporate executives and directors, the Commission intends to propose that, pursuant to their reporting obligations, companies disclose on a current basis significant transactions in the company's stock by their executive officers and directors.

As a complement to this initiative, the Commission is seeking ways to provide for electronic filing of reports of insider transactions. Direct reporting on the EDGAR system by insiders would entail the distribution and monitoring of literally tens of thousands of personal identification numbers to these insiders. Accordingly, the Commission is considering an approach that would require companies to file electronically information that they receive from insiders, including under new accelerated requirements such as those described above.

In addition, the Commission is re-examining an existing provision in its rules that permits officers and directors that sell stock back to their company to delay reporting until 45 days after the end of the fiscal year in which the transaction took place. This current provision allows a potential reporting delay of many months. To eliminate this delay, the Commission intends to propose that a company report on a current basis any transactions involving securities of the company entered into with any of its executive officers or directors.

### *Proposed Amendments for Mandated Secondary Market Reporting*

The Commission's secondary market disclosure system under the Securities Exchange Act of 1934 requires U.S. public companies to make disclosure at annual and quarterly intervals, with limited, specified events reported on a more current basis. The Commission believes that the time periods for filing under this system need to be shortened and the list of events requiring more current reporting needs to be expanded.

### *Annual and Quarterly Reports*

The Commission intends to propose that public companies file their annual reports on Form 10-K within 60 days after the end of their fiscal year, rather than 90 days. The

Commission also intends to propose that public companies file their quarterly reports on Form 10-Q within 30 days after the end of their first three fiscal quarters, rather than 45 days. The time periods for filing these reports have not changed in over 30 years, despite previous attempts to do so. The significantly reduced time periods for the capture and analysis of information and significant technological advances since these time periods were last revised necessitate a new consideration of the timing of mandated disclosure to the markets.

### *Current Reports*

The Commission believes that markets and investors need more timely access to a greater range of important information concerning public companies than what is required by the existing reporting system. Accordingly, the Commission intends to expand the types of information that companies must report on Form 8-K. Some of the items that the Commission is evaluating for inclusion in these reports include:

- Changes in rating agency decisions and other rating agency contacts;
- Transactions in the company's securities, including derivative securities, with executive officers and directors;
- Defaults and other events that could trigger acceleration of direct or contingent obligations;
- Transactions that result in material direct or contingent obligations not included in a prospectus filed by the company with the Commission;
- Offerings of equity securities not included in a prospectus filed by the company with the Commission;
- Waivers of corporate ethics and conduct rules for officers, directors and other key employees;
- Material modifications to rights of security holders;
- Departure of the company's CEO, CFO, COO or president (or persons in equivalent positions);
- Notices that reliance on a prior audit is no longer permissible, or that the auditor will not consent to use of its report in a Securities Act filing;
- Definitive agreement that is material to the company (negotiations of agreements would be excluded from this requirement unless and until a definitive agreement is entered into);

- Any loss or gain of a material customer or contract;
- Any material write-offs, restructurings or impairments;
- Any material change in accounting policy or estimate;
- Movement or de-listing of the company's securities from one quotation system or exchange to another; and
- Any material events, including the beginning and end of lock-out periods, regarding the company's employee benefit, retirement and stock ownership plans.

Given the significance of current disclosure of these events to participants in the secondary markets, the Commission intends to propose that companies file reports of these events no later than the second business day following their occurrence. The Commission also is considering whether some of these events require filing by the opening of business on the day after the occurrence of the event.

#### *Disclosure on Company Web Sites*

The Commission believes that mandated public company disclosure should be more readily available to investors in a variety of locations. To further this goal, the Commission intends to propose amendments that would require public companies to make their Exchange Act reports available on their Internet web sites, if available, at the same time as they are filed. This requirement would not in any way replace or reduce a company's obligation to file with the Commission.

#### *Disclosures about Critical Accounting Policies*

The Commission intends to propose amendments to its rules for Management's Discussion and Analysis of Financial Condition and Results of Operations (MD&A) to require disclosure about critical accounting policies. As described in a Cautionary Advice Release issued by the Commission on December 12, 2001, critical accounting policies are those that are both most important to the portrayal of a company's financial condition and results, and require management's most difficult, subjective or complex judgments, often as a result of the need to make estimates about the effect of matters that are inherently uncertain.

The proposals may require public companies to include in their MD&A full explanations, in clear and understandable format and language, of their critical accounting policies, the judgments and uncertainties affecting the application of those policies, and the likelihood that materially different amounts would be reported under different conditions or using different assumptions. The objective of this disclosure would be consistent with the objective of MD&A to provide information on events or uncertainties known to management that would have a material impact on reported financial information. Such disclosure would



assist investors in understanding a company's financial condition, changes in financial condition, and results of operations.

The Commission will issue proposing releases on these matters and solicit public comment with the intent to adopt new rules as quickly as possible.

The anticipated rule proposals are the first steps in the Commission's efforts to improve the current system of financial reporting and disclosure. The Commission is conducting a number of other reviews that likely will result in additional rulemaking.