

**CORPORATE ALERT:
SEC AMENDS FORM 8-K DISCLOSURE REQUIREMENTS
AND ACCELERATES FILING DEADLINES**

MARCH 11, 2004

The Securities and Exchange Commission today adopted amendments relating to current reports on Form 8-K. These amendments expand the circumstances under which U.S. reporting companies will be required to make disclosures in these filings and also accelerate the deadlines for filing Form 8-K reports. The SEC initially proposed rules regarding expanded and accelerated reporting on Form 8-K in June 2002, prior to the enactment of the Sarbanes-Oxley Act of 2002. Section 409 of the Sarbanes-Oxley Act thereafter specifically called for disclosure on “a rapid and current basis” of material changes in the financial condition or operations of companies pursuant to rules to be determined by the SEC as being necessary or useful for the protection of investors and in the public interest. The SEC has indicated that it regards the amendments as being responsive to the disclosure objectives of Section 409 of the Sarbanes-Oxley Act.

The amendments add eight new items to Form 8-K, expand two existing Form 8-K disclosure items and relocate to Form 8-K two disclosure requirements currently addressed only in annual reports on Form 10-K and quarterly reports on Form 10-Q. The amendments also shorten the deadlines for filing current reports on Form 8-K to four business days after the occurrence of the event giving rise to a reporting obligation as compared with the current filing deadlines of five business days to 15 calendar days, depending on the nature of the event.

The new Form 8-K requirements will be effective on August 23, 2004.

The text of the new reporting standards is not yet publicly available. We expect to circulate a more detailed memorandum discussing this development after the SEC issues the final adopting release relating to the new requirements. In the meantime, we have prepared this overview based on today’s open meeting of the SEC and the SEC press release issued following the meeting.

Eight New Disclosure Events. The amendments add the following new items to the list of events or developments, the occurrence of which requires a company to file a current report on Form 8-K:

- entry into a material agreement not made in the ordinary course of business;¹

¹ The SEC’s original proposal included non-binding agreements, including letters of intent. It is unclear at this time whether the final rules will include this controversial provision that was widely criticized during the comment period for the proposed rules.

- termination of a material agreement not made in the ordinary course of business;
- creation of a material direct financial obligation or a material obligation under an off-balance sheet arrangement;
- occurrence of 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, failure to satisfy a continued listing rule or standard, or a transfer of a listing; and
- non-reliance on previously issued financial statements or a related audit report or completed interim review (restatements).

Accelerated Reporting for Existing Quarterly/Annual Disclosure Items. The amendments relocate the following two disclosure requirements from other Form 10-K and Form 10-Q reports to Form 8-K:

- unregistered sales of equity securities by the company; and
- material modifications to rights of holders of the company's securities.

Expanded Disclosure for Existing Form 8-K Items. The amendments expand existing Form 8-K disclosure requirements relating to:

- the departure of directors or principal officers, the election of directors and the appointment of principal officers; and
- amendments to articles of incorporation or by-laws or changes in a company's fiscal year.

No "Mini-MD&A". The SEC's initial proposal would have required companies to include, in Form 8-K filings made to report the occurrence of certain events, a discussion by management of its analysis of the expected effect on the company of the reported event. Many commentators were critical of this proposed requirement, arguing that analysis prepared in the short timeframe permitted by the rules would be hastily prepared and could lead to inaccurate disclosure and liability for incomplete analysis. The final rules do not specifically require analysis, but SEC staff at the open meeting reminded companies that any disclosures must comply with general antifraud standards and not contain material misstatements or omissions.

Safe Harbor and Short-Form Registration. The new standards approved by the SEC include provisions that will mitigate certain adverse consequences that might otherwise follow from a company failing to file on a timely basis Form 8-K reports disclosing certain of the matters now required to be filed on a Form 8-K report.

The SEC has approved a limited safe harbor from liability under Section 10(b) of the Exchange Act or Exchange Act Rule 10b-5 that will be available to companies that fail to file in a timely fashion reports on Form 8-K required by certain of the new disclosure obligations. Based on statements made at the SEC open meeting, this safe harbor will be available with respect to Form 8-K reports where the question of whether a triggering event has occurred may require a greater degree of judgment, including assessments as to the materiality of an event. The safe harbor will extend only to the due date of the company's first periodic report (i.e., the first quarterly report on Form 10-Q or annual report on Form 10-K) covering the period in which the Form 8-K triggering event occurred. The safe harbor will not apply to, or otherwise affect, any other duty that a company may have to make disclosures.

In addition, the SEC has indicated that a company's failure to make timely filings with respect to the occurrence of the same events which are the subject of the safe harbor will not disqualify the company from using "short-form" registration statements on Forms S-2 and S-3, again so long as the company remedies its failure to file a required Form 8-K report by including corrective disclosure in the first periodic report filed with respect to the period in which the event occurred.

Accelerated Filing. The new rules require U.S reporting companies to file current reports on Form 8-K within four business days following the occurrence of any triggering event. Existing rules require the filing of a report on Form 8-K within five business days for some events (e.g., change of control, acquisitions or dispositions of certain assets and bankruptcy) and within 15 calendar days for others (e.g., changes in accountants, resignations of directors and changes in fiscal year).

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This memorandum is for general informational purposes and should not be regarded as legal advice. Please contact your relationship partner if we can be of assistance regarding these important developments. The names and office locations of all of our partners, as well as additional memoranda regarding recent corporate governance developments, can be obtained from our website, www.simpsonthacher.com.

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