

SEC TO PROVIDE ONLY LIMITED EXCEPTIONS TO NEW SECTION 16 REPORTING REQUIREMENTS

As noted in our memorandum dated July 29, 2002, the Sarbanes-Oxley Act of 2002 (the "Act") amended Section 16 of the Securities Exchange Act of 1934 (the "Exchange Act") to require that all transactions in equity securities by officers, directors or 10% owners (collectively, "Insiders") be reported on SEC Form 4 by the end of the second business day following the execution of the subject transaction. The Act gives the SEC discretion to establish a later date for reporting transactions in cases where reporting within the two-day period would not be feasible. The SEC is in the process of adopting new rules under Section 16 to implement these requirements, which will become effective on August 29, 2002.

The SEC recently issued a release¹ indicating that final rules relating to the accelerated reporting deadlines will be issued no later than the effective date of the Section 16 amendments. With regard to exceptions from the two-day business reporting deadline based on non-feasibility, the notice states that the SEC will not consider rules providing exemptions based on the type of issuer, type of insider or size of transaction. Rather, the deadline will be expanded only for narrowly specified types of transactions, where objective criteria prevent the insider from controlling (or from knowing) the timing of the transaction's execution.

As a result of the SEC's position, transactions which are exempt from the short-swing profit disgorgement rules of Section 16(b) of the Exchange Act, which had previously been eligible for delayed reporting on Form 5 (within 45 days of the end of the issuer's fiscal year), will now have to be reported within two business days on Form 4. Such transactions would include grants of stock options and other equity-based awards under company incentive plans, and gifts of stock by Insiders.

As the final rules will be issued in several weeks and will be effective as of August 29, 2002, companies should begin to organize pre-clearance and other procedures to ensure that all Insiders will be ready to comply with the two-day reporting deadline. Failure to comply would result in potentially embarrassing disclosures of late filings in the company's proxy statement, or more serious sanctions for deliberate or reckless violations.

We will provide you with a summary of the SEC's final rules under Section 16 when they are issued at the end of this month.

¹ SEC Release No. 34-46313 (August 6, 2002)

WILLKIE FARR & GALLAGHER

If you wish to obtain additional information regarding the foregoing, please contact Frank A. Daniele (212-728-8216, fdaniele@willkie.com) or the partner who regularly works with you.

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