

# Client Alert

A report  
for clients  
and friends  
of the firm    May 2003

## SEC Adopts Rules Requiring Electronic Filing and Website Posting of Forms 3, 4 and 5

As a result of the Sarbanes-Oxley Act of 2002 and related rules adopted by the SEC, since August 29, 2002, officers, directors and 10 percent or greater security holders have been required to file beneficial ownership reports with the SEC before the end of the second business day following the date on which the subject transaction was executed. As also required by the Sarbanes-Oxley Act, the SEC has now adopted rules requiring the electronic filing and website posting by issuers with corporate websites of insiders' beneficial ownership reports.

The new rules adopted by the SEC mandate that all Forms 3, 4 and 5 filed on and after June 30, 2003 must be filed by EDGAR and may no longer be filed in paper format. In addition, the new rules require an issuer that maintains a corporate website to post on its website all Forms 3, 4 and 5 by the end of the business day after filing.<sup>1</sup> This website posting requirement may be satisfied by providing direct access to the Forms 3, 4 and 5 or by hyperlinking to them by a third-party service (including via EDGAR) if the following conditions are met:

- the forms are available in the required time frame;
- access to the reports is free of charge to the user;

<sup>1</sup> Rule 16a-3(e) requires insiders to send or deliver a copy of each Form 3, 4 or 5 to the issuer not later than when the form is transmitted for filing with the SEC. This copy must go to the person designated to receive such communications, or in the absence of this designation, to the issuer's corporate secretary or person performing equivalent functions. In light of the issuer's new website posting obligation, issuers should designate a manner of receiving these communications electronically.

- the display format allows retrieval of all information in the forms;
- the medium to access the forms is not so burdensome that the intended users cannot effectively access the information provided;
- the access includes any exhibits or attachments;
- the forms are accessible for at least a 12-month period;
- access to the forms is through the issuer website address that the issuer normally uses for disseminating information to investors; and
- any hyperlink is directly to the forms (or to a list of the forms) instead of just to the home page or general search page of the third-party service.

The SEC also made minor changes to Forms 3, 4 and 5 to effectuate the foregoing electronic filing requirements.

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**Proskauer's Corporate Governance and Defense Practice consists of a multidisciplinary team of attorneys from our Corporate and Litigation practices, including renowned experts and former SEC and US Attorneys, who bring to bear considerable sophisticated expertise to serve your needs. The following individuals serve as the contact persons and would welcome any questions you might have.**

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