

DETERMINED TO BE AN
ADMINISTRATIVE MARKING
E.O. 12065, Section 6-102
By *Jimi* NARS, Date *5/2/2012*

Circ. 4/3 for 4/11

Recom:
Approved
Commission
With Revisions

Melissa Kimps
Program Information Specialist

April 2, 2002

APR 11 2002

P.H.G.
TO:

ACTION MEMORANDUM

The Commission

B. Murphy

33-8089
4/12/02

FROM:

The Division of Corporation Finance

SUBJECT:

Proposed Rules on Acceleration of Periodic Report Disclosure and Website Access to Periodic Reports

RECOMMENDATION:

That the Commission issue a release, substantially in the form of Attachment A, proposing: (1) a shortening of the due dates for Form 10-K and 10-Q reports filed by large issuers; and (2) a new Form 10-K disclosure item applicable only to these large issuers requiring them to state whether they have complied with the Commission's policy encouraging companies to provide access to their Form 10-K, 10-Q and 8-K reports on their websites and if not, the reasons why they have not elected to follow the policy.

ACTION REQUESTED

BY:

Week of April 8, 2002

SUNSHINE ACT

STATUS:

Open Meeting

NOVEL, IMPORTANT OR COMPLEX ISSUES:

The Commission would be expressing a policy encouraging companies to provide website access to their Form 10-K, 10-Q and 8-K reports.

PRIOR COMMISSION ACTION:

Release No. 33-7606A (Nov. 13, 1998), in which the Commission requested comment on shortening the due dates for annual and quarterly reports.

OTHER DIVISIONS OR OFFICES CONSULTED:

Office of General Counsel – consulted (David Fredrickson)
Office of Economic Analysis – consulted (Charles Dale, Lori Walsh)
Division of Market Regulation – consulted (Larry Bergmann)

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Division of Investment Management – consulted (Susan Nash; Barry Miller)
Division of Enforcement – consulted (Laurie Stegman; Charles Niemeier)
Office of the Chief Accountant – consulted (Robert Burns; Jackson Day)
Office of Information Technology – consulted (Michael Bartell)
Office of Filing and Information Services – consulted (Kenneth Fogash)

**REGULATORY
FLEXIBILITY ACT
STATUS:**

The Draft Proposing Release includes an Initial Regulatory Flexibility Analysis.

**COST-BENEFIT
ANALYSIS:**

The Draft Proposing Release includes a consideration of costs and benefits.

**PAPERWORK
REDUCTION ACT
STATUS:**

The Division plans to submit Paperwork Reduction Act filings to the Office of Management and Budget.

**MAJOR RULE
ANALYSIS:**

We are consulting with the Office of Economic Analysis as to whether the proposed amendments will constitute a major rule. The Draft Proposing Release requests comments on whether the proposed amendments are “major rules” for purposes of Congressional review.

**PERSONS TO
CONTACT:**

Jeffrey Minton, Special Counsel, Office of Rulemaking – x2844
Elizabeth Murphy, Chief, Office of Rulemaking – x2848

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I. BACKGROUND

In its February 13, 2002 Press Release, the Commission announced an intention to propose changes to its corporate disclosure rules as the first in a series of steps designed to modernize and improve the federal reporting and disclosure system. Among other changes, the Commission stated that it intended to propose rules that would: (1) accelerate the due dates of companies' quarterly and annual report filings; and (2) add a requirement that companies post their Exchange Act reports on their websites at the same time that they are filed with the Commission.¹

The attached draft proposing release addresses the first two of these initiatives, with some modifications that restrict the type of public company that would be subject to the proposals. There are a variety of reasons for proposing an acceleration of the deadlines for quarterly and annual reports. First, the current deadlines have not been changed since the Commission created Form 10-K, the annual report form, and Form 10-Q, the quarterly report form, more than 30 years ago. Since then, advances in communications and information technology have made it much easier for companies to process and disseminate information broadly and swiftly. The establishment of the EDGAR filing system also has made it faster and easier for companies to file their Form 10-K and 10-Q reports with the Commission and have eliminated our need to consider U.S. mail delivery schedules in establishing reasonable filing timeframes. Today's investors also process and evaluate information on a much shorter timeframe than they did 30 years ago. Further, hundreds of public companies also now routinely issue press releases to announce their quarterly and annual earnings results several days or weeks before they file their Form 10-Q and 10-K reports with the Commission.

In the Commission's 1998 release proposing Securities Act reform, we did not formally propose, but requested comment on the idea of shortening the annual and quarterly report due dates. We received a significant number of comments in response to that request. Some commenters supported the idea, arguing that accelerated deadlines are necessary in today's fast-paced marketplaces to ensure the efficient allocation of capital and the timely flow of information to the market. Most commenters, however, thought that a shortening of the due dates would be overly burdensome, particularly for small companies. Several of these commenters also were concerned that the benefits derived from technological advances have been offset by additional and more complex reporting requirements. They worried that accelerated deadlines would reduce the quality of the periodic reports.

¹ The Commission also stated that it intended to propose rules to: provide accelerated reporting by companies of transactions by company insiders in company securities, including transactions with the company; expand the list of significant events requiring current disclosure on existing Form 8-K; and require disclosure of critical accounting policies in Management's Discussion and Analysis of Financial Condition and Results of Operations.

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In the current post-Enron environment, many of the commenters opposing the shortening of the annual and quarterly report deadlines may now have a different view. A survey of 406 companies conducted in March of this year by the National Investor Relations Institute found that 13% of the respondents already file their Form 10-K reports within 60 days after the end of their fiscal years and 40% did not anticipate any problems filing within 60 days after the end of their fiscal years.

The proposing release also states that it is the Commission's policy to encourage a company to make available, free of charge, on its Internet website (if it has one) its annual report on Form 10-K, quarterly report on Form 10-Q, current reports on Form 8-K and amendments to those reports as soon as reasonably practicable after (and in any event, on the same day as) the information is filed with, or furnished to, the Commission. This would be the first time that the Commission would be expressing this policy. There are several underpinnings to support this policy. Widespread access to corporate information promotes the efficient functioning of the secondary markets by enabling investors to make informed investment and voting decisions. Further, ready access to Exchange Act information is critical to the proper functioning of the short-form registration system under the Securities Act, which relies on incorporation of this information by reference. One of the most efficient and economical methods for companies to make information about themselves available to investors is through their websites. In fact, most companies already provide some form of access to their securities filings through their websites. However, not all companies provide access, nor do all of the ones that do provide access, provide access to all of their reports or in real-time.

II. DISCUSSION OF PROPOSALS

The Division has prepared a draft release proposing:

- (1) Changes to the current due dates for annual and quarterly reports under the Exchange Act for reporting issuers with a public float of at least \$75 million, that have been subject to the Exchange Act reporting requirements for at least 12 calendar months, and that previously have filed at least one annual report; and
- (2) The addition of a disclosure requirement for these issuers to disclose in their annual reports our policy encouraging companies to provide access to their Form 10-K, 10-Q and 8-K reports on their Internet websites and whether they comply with this policy.

Under the proposed amendments, the due date for annual reports on Form 10-K would be reduced from 90 days to 60 days after fiscal year end only for companies with a public float of at least \$75 million. The float requirement, along with the proposed reporting history requirement, match the current eligibility requirements for registration

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of primary offerings for cash on Form S-3. These are the larger, more seasoned public companies have the market following necessary for short-form eligibility. Similarly, the due date for filing of quarterly reports on Form 10-Q for these companies would be reduced only for the these companies from 45 days to 30 days after the end of the companies' first three fiscal quarters. The "must have filed at least one annual report" requirement is intended to give companies new to the Exchange Act reporting requirements enough time to accustom themselves to the reporting system before becoming subject to accelerated filing requirements.

Under the proposals, conforming amendments also would be made for:

- transition reports when a company changes its fiscal year;
- the special financial report that sometimes is required after a registration statement becomes effective under the Securities Act; and
- annual reports for non-ERISA employee stock purchase, savings or similar plans on Form 11-K; and

The proposals would cause only the large companies subject to the accelerated filing requirements to have to disclose in their Form 10-K reports whether they follow the Commission's website policy and, if not, why they do not make their reports available on their websites. The companies also would have to state whether it will provide electronic or paper copies of its filings to investors free of charge upon request.

III. CONCLUSION

For the reasons discussed above, the Division of Corporation Finance recommends that the Commission authorize the issuance of the attached release.

Attachment

Attachment A -- Draft Release