

SICHENZIA ROSS FRIEDMAN FERENCZ LLP

1065 AVENUE OF THE AMERICAS NEW YORK NY 10018
TEL 212 930 9700 FAX 212 930 9725 WWW.SRFFLLP.COM

March 31, 2004

To our clients and friends:

On March 11, 2004, the Securities and Exchange Commission (SEC) adopted final rules (<http://www.sec.gov/rules/final/33-8400.pdf>) amending Form 8-K consistent with the goals of Section 409 of the Sarbanes-Oxley Act of 2002 (Sarbanes-Oxley), which mandates "real time issuer disclosure." The revised Form 8-K requires disclosure of new types of corporate events, expanded disclosure in other areas and prompt disclosure of information formerly required to be disclosed only on a quarterly basis. All Form 8-K filings must be made within four business days of the occurrence of the specified event, other than Regulation FD filings and certain exceptions noted below. **The new rules will take effect in August 2004.**

Disclosure Items

Revised Form 8-K contains numerous disclosure items. The old Form 8-K contained a number of items that had been added to the form over the years in no particular order. The revised Form 8-K organizes these items into sections for the first time, with each section containing one or more disclosure items. The nine sections are:

1. Registrant's Business and Operations
2. Financial Information
3. Securities and Trading Markets
4. Matters Related to Accountants and Financial Statements
5. Corporate Governance and Management
6. [Reserved]
7. Regulation FD
8. Other Events
9. Financial Statements and Exhibits

Section 1- Registrant's Business and Operations

Item 1.01- Entry into a Material Definitive Agreement

A company will be required to file a Form 8-K whenever it enters into or amends a material definitive agreement (that is, the type of agreement that companies are currently required to file as exhibits to registration statements and periodic reports pursuant to Item 601 of Regulation S-K). The Form 8-K will be required to include the date of the agreement, the names of the parties to the agreement, any material relationships between the company and its affiliates and any of the other parties and a description of the agreement, including terms and conditions that are material to the company. The agreement itself does not need to be filed as an exhibit with the Form 8-K. Rather, it must be filed

with the company's next periodic report on Form 10-Q or 10-K, although the SEC urges companies to file the agreement with the Form 8-K where feasible.

Item 1.02 - Termination of a Material Definitive Agreement

A company will also be required to file a Form 8-K whenever one of its material definitive agreements is terminated, other than by expiration on a stated termination date or as a result of completion of all parties' obligations. Consistent with Item 1.01, the disclosure must include the date of termination, the names of the parties to the agreement and any material relationships between the company and its affiliates and any of the other parties. It must also include a brief description of the material circumstances surrounding the termination, the agreement and any material early termination penalties incurred by the company.

Item 1.03 - Bankruptcy or Receivership

This item makes minor changes to the requirements of Item 3 of the old Form 8-K, while retaining most of the same substantive requirements regarding disclosure of a bankruptcy event.

Section 2 - Financial Information

Item 2.01- Completion of Acquisition or Disposition of Assets

This item updates the requirements of Item 2 of the old Form 8-K, while retaining most of the same substantive requirements regarding disclosure of an acquisition or disposition of a significant amount of assets.

Item 2.02 - Results of Operations and Financial Condition

This item makes minor changes to the requirements of Item 12 of the old Form 8-K, while retaining most of the same substantive requirements regarding disclosure of public announcements or releases of material non-public information regarding a company's results of operations or financial condition for a completed fiscal period.

Item 2.03 - Creation of a Direct Financial Obligation or an Obligation Under an Off-Balance Sheet Arrangement

This item requires companies to disclose the details of its direct financial obligations, if material to the company, which include long-term debt obligations, capital lease obligations, operating lease obligations and short-term debt obligations that arise other than in the ordinary course of business.

The company would be required to disclose the date on which it became obligated, a description of the transaction or agreement creating the obligation, the amount of the obligation, including its terms of payment, acceleration and recourse to potential third parties, if any, and other material terms and conditions. The incurrence of an obligation arising from the issuance of securities pursuant to an effective registration statement under the Securities Act of 1933 would be exempt from this disclosure requirement.

In the case of obligations under material off-balance sheet arrangements for which a company becomes directly or contingently liable, the company would be required to disclose the date on which it became liable, a description of the nature and amount of the obligation under the arrangement (including material terms by which it may become a direct obligation and acceleration terms and recourse to potential third parties, if any), the maximum amount of future payments that the company may be required to make and other material terms and conditions. If neither the company nor any of its affiliates is a party to the arrangement creating the obligation, then the four business day period for reporting the event begins on the earlier of (a) the fourth business day after the contingent obligation is created or arises and (b) the day on which an executive officer of the company becomes aware of the

contingent obligation.

Item 2.04 - Triggering Events that Accelerate or Increase a Direct Financial Obligation or an Obligation Under an Off-Balance Sheet Arrangement

If a triggering event occurs causing the increase or acceleration of a direct financial obligation or an off-balance sheet arrangement of the company, or causing a contingent obligation under an off-balance sheet arrangement to become a direct financial obligation, and the consequences are material to the company, it must disclose the date of the triggering event, a description of the related transaction or agreement, a description of the triggering event, the nature and amount of the obligation, including its terms of payment or acceleration and other material obligations that may arise, increase or accelerate as a result of the triggering event.

Item 2.05 - Costs Associated with Exit or Disposal Activities

This item is triggered when a company's board of directors, one of the board's committees or its officers commits the company to an exit or disposal plan, disposes of a long-lived asset or terminates employees under certain plans of termination, in each case, as a result of which material charges will be incurred under GAAP. The company would have to disclose the date of the commitment to the course of action and a description of the course of action, including the facts and circumstances leading to the expected action and the expected completion date. It would also have to disclose estimates of the total amount or range of amounts expected to be incurred in connection with the action, including for each major type of cost associated with the action and expected cash expenditures. If the company cannot in good faith estimate these amounts at the time of the triggering event, then it does not have to disclose them, but it would have to file an amended Form 8K within four days after it does make such estimates.

Item 2.06 - Material Impairments

The triggering event for this item is the conclusion by a company's board of directors or officers that the company is required under GAAP to record a material charge or impairment to one or more of its assets, including securities or goodwill. The company would be required to disclose the date on which the conclusion was reached and a description of the assets subject to impairment. It would also be required to disclose the facts and circumstances leading to the conclusion that the charge for impairment is required and the estimated amount of the impairment. As under Item 2.05, if the company cannot in good faith estimate these amounts at the time of the triggering event it would have to file an amended Form 8-K within four days after it does make such estimates. Also, if the company reaches the conclusion as part of the preparation, review or audit of financial statements required to be included in its next Form 10-K or 10-Q, this item is not triggered, so long as the Form 10-K or 10-Q is filed on time and the company's conclusion regarding impairment is disclosed in that report.

Section 3 - Securities and Trading Market

Item 3.01 - Notice of Delisting or Failure to Satisfy a Continued Listing Rule or Standard; Transfer of Listing

The triggering event for this item is a notice from the principal trading market for a company's common equity securities, such as the New York Stock Exchange or Nasdaq, that the company or a class of its equity securities does not satisfy a rule or standard for continued listing or its common equity is otherwise subject to delisting. The company would be required to disclose the date that it received any notice, the listing requirement or standard that it failed to satisfy and the reason for the delisting. The company would also need to discuss its planned response to the notice. A company also has to provide certain disclosure if it notifies the national securities exchange or Nasdaq that it is aware of any material noncompliance with a rule or standard for continued listing, the national securities exchange or Nasdaq issues it a public reprimand letter or similar communication, or it

takes definitive action to terminate or transfer of its listing.

Item 3.02 - Unregistered Sales of Equity Securities

This item moves the disclosure currently required by Item 2(c) of Form 10-Q and Item 5(a) of Form 10-K into revised Form 8-K. If a company sells equity securities in a transaction that is not registered under the Securities Act of 1933, then it would need to disclose the same information on a Form 8-K within four business days of the sale that it had previously been required to provide on a quarterly basis. This information includes the date of the sale, the title and amount of securities sold, the consideration paid for the securities, the exemption from registration claimed and the terms of conversion or exercise of the securities, if any. However, this item is not triggered if the aggregate amount of equity securities sold since a company's last periodic report on Form 10-Q or 10-K, or its last report on Form 8-K under this item, is less than 1% (or 5% for small business issuers) of the number of shares outstanding of the class of equity securities sold. Issuances not reported on Form 8-K will continue to be required to be reported on periodic reports.

Item 3.03 - Material Modifications to Rights of Security Holders

This item moves the substance of the disclosure currently required by Items 2(a) and 2(b) of Form 10-Q into revised Form 8-K. It requires companies to disclose if there have been any material modifications to the constituent instruments defining the rights of holders of any class of registered securities or material limitations or qualifications to the rights of holders of any class of registered securities as a result of the issuance of another class of securities.

Section 4 - Matters Related to Accountants and Financial Statements

Item 4.01- Changes in Registrant's Certifying Accountant

This item makes minor changes to the language of Item 4 of the old Form 8-K, while retaining most of the same requirements regarding disclosure of a change in the company's accountant.

Item 4.02 - Non-Reliance on Previously Issued Financial Statements or a Related Audit Report or Completed Interim Review

The triggering event for paragraph (a) of this item is the conclusion by a company's audit committee, board of directors or officers that any of the company's previously issued annual or interim financial statements should no longer be relied upon because of an error in the statements. The company would be required to disclose the date the conclusion was reached, the financial statements that should no longer be relied upon and a description of the facts underlying the conclusion. The company would also have to disclose if it discussed the subject matter giving rise to the conclusion with its independent accountant.

Paragraph (b) of this item is triggered if a company is advised by, or receives notice from, its independent accountant that disclosure should be made or it should take action to prevent future reliance on a previously issued report or review related to its annual or interim financial statements. The company would be required to disclose the date it was advised or notified, the financial statements that should no longer be relied upon and a description of the information provided by the accountant. The company would also have to disclose if it discussed the subject matter with the accountant. In addition, the company must provide the accountant with the disclosure called for by this item no later than the day it files the Form 8-K. The company would have to ask the accountant to provide a letter as promptly as possible stating whether or not the accountant agrees with the disclosure. The company would have to file the letter as an exhibit to an amendment of the Form 8K within two business days after it receives the letter from the accountant.

Section 5 - Corporate Governance and Management Item

5.01- Changes in Control of Registrant

This item makes minor changes to the language of Item 1 of the old Form 8-K, while retaining most of the same requirements regarding disclosure of a change in control.

Item 5.02 - Departure of Directors or Principal Officers, Election of Directors, or Appointment of Principal Officers

Departure of Directors because of a Disagreement with the Company

This item expands the disclosure requirements of Item 6 of the old Form 8-K, which require a company to disclose that one of its directors has departed as a result of a disagreement with the company if the director sends a letter to the company requesting that it do so. Under new Item 5.02(a), the director is not required to take any action for this requirement to be triggered. If an executive officer of the company knows that the director has resigned or has declined to stand for reelection because of a disagreement with the company on any matter relating to the company's operations, policies or practices, or if the director has been removed for cause, then this item is triggered.

The company would have to disclose the date of the triggering event, the circumstances surrounding the triggering event and any positions held by the director on any committee of the board of directors and a description of the circumstances representing the disagreement that management believes caused the triggering event. If the director sends the company any written document concerning the circumstances surrounding the triggering event, then the company must summarize the contents of the document and file a copy of the document as an exhibit to the Form 8-K. In addition, the company must provide the director with the disclosure called for by this item no later than the day it files the Form 8-K and give the director the opportunity to provide a letter as promptly as possible stating whether or not the director agrees with the disclosure. Directors should carefully consider whether or not they want to send any written notice to the company if there is a triggering event, or in response to the Form 8-K disclosure, because the company will have an obligation to file such written documents with the SEC. Documents that a director might expect to be private correspondence with the company will be made available to the public via the SEC's Edgar system.

Departure of Directors for Other Reasons; Departure of Principal Officers

Under new Item 5.02(b), if a director resigns, declines to stand for re-election or has been removed for any reason other than as described in Item 5.02(a), or if the principal executive officer, president, principal financial officer, principal accounting officer or principal operating officer, or any person serving an equivalent function (collectively, Principal Officers), of a company resigns or has been terminated, then this item is triggered.

The company would be required to disclose that the triggering event has occurred and the date of the triggering event. The company would not be required to disclose the reasons for the triggering event or any written communications.

Appointment of Principal Officers

Under new Item 5.02(c), if the company appoints a new Principal Officer, the company must disclose his or her name, age, position, date of appointment and term of office. The item also calls for a description of any arrangement between the newly appointed Principal Officer and any other persons pursuant to which the Principal Officer was selected, including the names of the other persons and the material terms of any employment agreement between the company and the Principal Officer. The company would also be required to describe the Principal Officer's business experience, any family relationships with any

other executive officer or director of the company and significant transactions between the Principal Officer and the company.

Election of Directors

Under new Item 5.02(d), if the company elects a new director, except by a vote of security holders at an annual meeting or a special meeting called for this purpose, the company must disclose the name and date of election of the new director. This item also calls for a brief description of any arrangement between the newly appointed director and any other persons pursuant to which the director was selected. The company would also be required to disclose any committees to which the director has been or is expected to be named and significant transactions between the director and the company.

Extension of Four Business Day Deadline

Items 5.02(c) and 5.02(d) provide for certain circumstances under which the four business day filing requirement can be extended or waived. If the company intends to publicly announce the appointment of a Principal Officer other than by filing a Form 8-K, the Form 8-K does not have to be filed until the day on which the announcement is made. Also, if the company cannot determine the committees to which the new director will be appointed or whether or not there have been any significant transactions between the company and newly appointed directors or Principal Officers at the time the Form 8-K disclosing their appointment is due, then the company must include a statement to that effect in the Form 8-K and file an amendment to the Form 8-K when the information is determined or becomes available.

Item 5.03 - Amendments to Articles of Incorporation or Bylaws; Change in Fiscal Year

This item is triggered if a company amends its articles of incorporation or bylaws and the amendment was not disclosed in a proxy statement or information statement. The company would be required to disclose the effective date and a description of the amendment and to file the text of the amendment as an exhibit to the Form 8-K. The full text of the articles of incorporation or bylaws as amended would have to be filed as an exhibit to its next periodic report.

If the company determines to change its fiscal year other than by a vote of security holders through the solicitation of proxies or through an amendment to its articles of incorporation or bylaws, it must disclose the date of the determination of this change, its new fiscal year end and the form on which the transition period will be disclosed. This item only applies to companies with a class of equity securities registered under Section 12 of the Securities Exchange Act of 1934.

Item 5.04 - Temporary Suspension of Trading Under Registrant's Employee Benefit Plans

This item revises Item 11 of the old Form 8-K regarding disclosure of temporary suspensions of trading under a company's employee benefit plans. These changes do not affect the substance of what must be disclosed.

Item 5.05 - Amendments to Registrant's Code of Ethics, or Waiver of a Provision of the Code of Ethics

This item makes minor changes to the language of Item 10 of the old Form 8-K, while retaining most of the same requirements regarding disclosure of amendments and waivers of a code of ethics.

Section 7 - Regulation FD

Item 7.01 - Regulation FD Disclosure

This item makes minor changes to the language of Item 9 of the old Form 8-K. These changes do not affect the substance of what must be disclosed. This item remains unaffected by the new filing deadline

applicable to other items. See "Accelerated Filing Requirement."

Section 8 - Other Events

Item 8.01- Other Events

This item makes minor changes to the language of Item 5 of the old Form 8-K, permitting a company to disclose information not called for by the other items that it believes is material to security holders. This item remains unaffected by the new filing deadline applicable to other items. See "Accelerated Filing Requirement."

Section 9 - Financial Statements and Exhibits

Item 9.01 - Financial Statements and Exhibits

This item provides for the filing of the financial statements of an acquired business and the pro forma financial statements required by Article 11 of Regulation S-X. It also provides for a list of exhibits filed or furnished with the Form 8-K.

Accelerated Filing Requirement

Pursuant to General Instruction B. 1, a company must file Form 8-K within four business days of the occurrence of one or more of the events specified in the form. This replaces the requirements of the old Form 8-K, which required the form to be filed within five business days of certain events and fifteen calendar days of other events.

This new deadline does not affect filings of Regulation FD disclosure under Item 7.01 or 8.01. Information filed with or furnished to the SEC is still required to be submitted in accordance with the terms of Rule 100(a) of Regulation FD. In other words, the Form 8-K would have to be submitted simultaneously with an intentional non-public disclosure and no later than the later of 24 hours and the commencement of the next day's trading on the New York Stock Exchange after a senior official of a company learns of a non-intentional disclosure.

Also, as described above, certain items of the revised Form 8-K provide that if the company does not know the required information at the time the filing is required, it can file the Form 8-K without that information, but must file an amendment at a later date when the information becomes available.

Safe Harbor

The SEC recognizes that several of the revised Form 8-K disclosure items may require management to quickly assess the materiality of an event or to determine whether or not a disclosure obligation has been triggered. Therefore, the final rules provide for a new limited safe harbor from public and private claims under Section 10(b) of the Securities Exchange Act of 1934 and Rule 10b-5 thereunder for failure to timely file a Form 8-K regarding Items 1.01, 1.02, 2.03, 2.04, 2.05, 2.06 and 4.02(a). The safe harbor for these items states that the failure to file a report on Form 8-K that is required solely pursuant to the provisions of Form 8-K shall not be deemed to be a violation of Section 10(b) and Rule 10b-5. The safe harbor only applies to a failure to file a report on Form 8-K. Thus, material misstatements or omissions in a Form 8-K that is filed will continue to be subject to Section 10(b) and Rule 10b-5 liability.

The safe harbor is available until the due date of the company's next periodic report. If the company does not file a Form 8-K disclosing the item, then it must disclose the item in its next 10-K or 10-Q. Also, the safe harbor is not available if the company has an independent duty to disclose information arising from a source other than the Form 8-K requirement. For example, if the company publicly sells or repurchases

securities while in possession of material non-public information that is required to be disclosed in a Form 8-K pursuant to an item that is covered by the safe harbor, the safe harbor will not protect the company from Section 10(b) or Rule 10b-5 liability regarding its separate disclosure obligation pursuant to the offering of securities.

Eligibility to Use Forms S-2 and S-3

The final rules make changes to Forms S-2 and S-3 that are parallel to the safe harbor described above. These changes clarify that a company will not lose its eligibility to use these short-form registration statements if it fails to file a Form 8-K, so long as it stays within the terms of the safe harbor and discloses the required information in its periodic reports in a timely fashion.

Other Changes

The final rules make conforming changes to Forms 10-Q and 10-K to reflect the disclosure items that have been transferred to revised Form 8-K. The adopting release also definitively states that the SEC and the Department of Justice have jointly concluded that the certification requirements of Section 906 of Sarbanes-Oxley do not apply to Form 8-K. In addition, it clarifies that exhibits submitted under Item 9.01 of revised Form 8-K that are related to Item 2.02 (Results of Operations and Financial Condition) or Item 7.01 (Regulation FD) are deemed "furnished" to the SEC, not "filed" with it, even if the Form 8-K contains disclosure pertaining to other items that is "filed," unless the filer specifies that the exhibits are intended to be "filed."

Conclusion

As always, if you have any questions concerning these new rules, please contact us.