



February 27, 2003

***Is Your Corporate Website Ready for Sarbanes-Oxley?***

Several new SEC rules affect, or will soon affect, your corporate website. While the compliance deadlines for some of these new rules are in the future, you should start to focus on these requirements now so that your website will be ready to comply on time.

***Website Access to 1934 Act Reports***

One new Form 10-K disclosure item is already effective and is likely to apply to your next 10-K filing. If your company is an “accelerated filer,” not only do you have to indicate that fact on the front cover of your Form 10-Qs and 10-Ks starting with your first year ended on or after December 15, 2002, you also have a new disclosure requirement in Item 1 of Form 10-K. (Generally, a company is an “accelerated filer” if it has a public float of at least \$75 million as of the last business day of its most recently completed second fiscal quarter, it has been subject to the 1934 Act reporting requirements for at least 12 months, and it has filed at least one Form 10-K.)

New Items 101(e)(3) and (4) of Regulation S-K – which embody the new component of Item 1 -- requires an accelerated filer to disclose:

- (1) The corporate (or investor relations) website address, if it has one;
- (2) Whether the company makes available free of charge on or through its website its filed reports on Forms 10-K, 10-Q and 8-K, and all amendments thereto, as soon as reasonably practicable after the reports are filed with or furnished to the SEC;
- (3) If not, why not; and
- (4) If not, whether the company voluntarily will provide electronic or paper copies of its filings free of charge upon request.

The SEC has taken the position that “as soon as reasonably practicable” means “the same day as” the reports are filed with or furnished to the SEC.

A company may either post the reports directly on its website or provide a free hyperlink to the reports posted by a third-party service, such as a direct link to the company’s reports (or list of reports) on the SEC’s EDGAR website. In order to be able to say that the company makes its reports available in this manner, all of its Form 10-K, 10-Q and 8-K reports furnished or filed

during the period covered by the 10-K must have been available on or through its website on the same day as they were filed or furnished (starting November 15, 2002). Thus, for a Form 10-K for a fiscal year ended December 31, 2002, the required disclosure relates to the period from November 15, 2002 through December 31, 2002. We expect that many, if not most, companies with December 31 fiscal year ends will find it necessary to describe the availability of their filings as a “work in progress.” The SEC recommends, but does not yet require, maintaining website access to these reports for at least twelve months.

### ***Mandatory Website Posting of Forms 3, 4 and 5***

Starting sometime between now and July 30, 2003 (the SEC has not yet decided when), companies that maintain corporate websites will be required to make available on or through their websites their insiders’ Form 3, 4 and 5 filings with the SEC. Companies will have to make these forms available by the end of the business day immediately following the day the forms are filed with the SEC. A company may post the forms directly on its website or, subject to certain ease-of-access conditions, provide a direct link on its website to the forms posted on a third-party service (such as the SEC’s EDGAR website). These forms must remain available for twelve months. The rule will apply only to companies with a corporate website; a company that does not have a website will not be required to create one.

Intel already posts its insiders’ Form 3, 4 and 5 filings on its website and is a good example of one method of complying with this upcoming requirement.

### ***Earnings Releases***

In an e-mail alert dated January 24, 2003, we described new Regulation G and the disclosure requirements relating to the use of non-GAAP financial measures. The e-mail alert also discussed new Item 12 of Form 8-K. Under Item 12, beginning with earnings announcements made after March 28, 2003, within five business days after making a written public announcement of material non-public information regarding results of operations for a completed annual or quarterly period, a public company (other than a registered investment company) will be required to furnish the announcement to the SEC on a Form 8-K. Item 12 applies whether or not the announcement contains non-GAAP measures.

If the information regarding a completed period is presented orally or by telephone, webcast, broadcast or similar means (such as an earnings conference call), the information need not be furnished on a Form 8-K if all of the following conditions are satisfied:

- (1) the disclosure initially occurs within 48 hours of a written announcement or release that is furnished on a Form 8-K;
- (2) the presentation is accessible to the public (by dial-in conference call, webcast or similar means);

(3) the financial or statistical information included in the presentation is provided on the company's website, along with any accompanying disclosures required by Regulation G; and

(4) the presentation was announced by a widely disseminated press release with instructions for access to the presentation and the location on the company's website where information will be available.

Under the new rules, unless an earnings press release is furnished on a Form 8-K prior to an earnings conference call, information from the conference call itself must be furnished on Form 8-K as well. Consequently, to avoid a Form 8-K requirement for earnings conference calls, we expect most companies to furnish each earnings press release on a Form 8-K simultaneously with the issuance of the press release.

### ***Posting Your Code of Ethics and Disclosing Amendments or Waivers***

In an e-mail alert dated January 28, 2003, we described the new disclosure requirements regarding whether or not a company has adopted a code of ethics for its principal executive and financial officers. If a company has a code of ethics that satisfies the SEC rules, for years ending on or after July 15, 2003, the company has three alternatives for making its code of ethics publicly available: (i) it can include the ethics code as an exhibit to its Form 10-K, (ii) it can post the ethics code (or relevant portions thereof) on its corporate website, or (iii) it can include an undertaking in its Form 10-K to provide a copy of the code of ethics without charge upon request. In order for a company to use the website posting alternative, the company must disclose in its Form 10-K its website address and the fact that it has posted its ethics code there.

A company also can comply with the requirement to promptly disclose any subsequent amendment to or waiver of its code of ethics affecting its senior officers through a Form 8-K filing or by disclosure on its website. In order for a company to use the website alternative for disclosing amendments and waivers, the company previously must have disclosed in Item 10 of its most recent Form 10-K (Item 9 for Form 10-KSB) its website address and its intention to disclose these events on its corporate website. Where website disclosure is used, the disclosure must be maintained on the company's website for twelve months and retained by the company for five years.

### ***Practical Advice***

These future compliance deadlines will be here soon. If you have not already begun to do so, start talking with your company's website manager today to make sure your website will be able to comply with these new disclosure requirements when the time comes.

## **Contact Us**

If you have any questions or comments, please let any member of our Corporate and Securities Group know, or you can contact the individuals listed below:

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