

# GRAUBARD MILLER

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## MEMORANDUM

June 11, 2003

**TO:** Clients and Friends  
**FROM:** Graubard Miller  
**SUBJECT:** New SEC Rule Regarding Electronic Filing and Website Posting of Section 16(a) Change of Beneficial Ownership Reports

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The SEC adopted final rules requiring electronic filing and website posting of forms filed under Section 16(a) of the Securities Exchange Act of 1934 (“Exchange Act”) reporting corporate insiders’ ownership and transactions in their company’s securities. These rules implement Section 403 of the Sarbanes-Oxley Act of 2002 and complement the accelerated two-day reporting requirement adopted by the SEC in August 2002. **Mandatory electronic filing and website posting requirements become effective on June 30, 2003.**

Directors, executive officers and 10% owners of a class of securities (collectively, “Insiders”) are required to file Forms 3, 4 and 5 (“Section 16 Reports”) pursuant to Section 16(a) of the Exchange Act and the rules thereunder. Forms 4 generally are required to be filed within two business days after a reportable transaction. Currently, Section 16 Reports can be filed electronically or by paper. The new rules adopted by the SEC (i) require Insiders to file all Section 16 Reports electronically (thereby eliminating the paper filing option) and (ii) if a company maintains a website, require the company to post Section 16 Reports on its website by the end of the business day following the filing date and to keep the reports accessible on its website for at least a 12-month period.

A company can satisfy the website posting requirement by hyperlinking to filings on the SEC’s EDGAR database or to other third-party databases if the following conditions are satisfied:

- The Section 16 Reports are made available in the required time frame;
- Access to the reports is free of charge to the user;
- The display format allows retrieval of all information in the Section 16 Reports;

- The medium to access the Section 16 Reports is not so burdensome that the intended users cannot effectively access the information provided;
- The access includes any exhibits or attachments;
- Access to the Section 16 Reports is through the company website address the company normally uses for disseminating information to investors; and
- Any hyperlink is directly to the Section 16 Reports (or to a list of the Section 16 Reports) relating to the posting company instead of just to the home page or general search page of the third-party service. (See Appendix A annexed hereto for additional information about hyperlinking.)

The final rules also provide that, effective June 30, 2003:

- The deadline for electronic filing of Section 16 Reports will be extended from 5:30 p.m. Eastern Standard Time on the date on which a Section 16 Report is due to 10:00 p.m. Eastern Standard Time. Therefore, if a Form 4 is filed electronically before 10:00 p.m. EST on its due date, it will be treated as timely filed. This extended filing deadline will not be available for other SEC filings, such as Forms 8-K, 10-K and 10-Q or for registration statements. Although those reports currently can be submitted electronically between 5:30 and 10:00 p.m. EST, they are not deemed to be filed until the next business day.
- For a period of one year, companies will not be required to report an Insider's late Section 16 Report filings in their Forms 10-K or proxy statements, if the Section 16 Report is filed only one day late.
- Insiders or companies that encounter technical difficulties in filing Section 16 Reports will not be able to file a Form TH, which provides an automatic deadline extension, for late Section 16 Reports. Instead, they will need to request that the SEC adjust the filing date if they can demonstrate to the SEC staff that they meet the requirements for an adjusted filing date under Regulation S-T.

### **Additional Information**

Graubard Miller has in-house EDGAR filing capabilities and is equipped to handle electronic SEC filings, including Section 16 Reports. If you are interested in utilizing our electronic filing services or have any questions regarding this memorandum, please call Brian Ross at (212) 818-8610 or Marci J. Frankenthaler at (212) 818-8892.

We intend to provide updates to this memorandum and our previous memoranda regarding the implementation of the provisions of the Sarbanes-Oxley Act of 2002 as warranted at our website [www.graubard.com](http://www.graubard.com). When visiting our website for updates, please review the section entitled "Articles."

## Appendix A

### Website Hyperlinking Tips

- To hyperlink to the SEC's EDGAR website, a company could use the following link:  
<http://www.sec.gov/cgi-bin/browse-edgar?company=&CIK={INSERT COMPANY'S EDGAR CIK NUMBER}&owner=only&action=getcompany>
- If a company hyperlinks to the SEC's EDGAR website, the following disclaimers should be included on the company's website:

“You are provided a hyperlink to the EDGAR website maintained by the Securities and Exchange Commission. [Company Name] does not maintain or provide information directly to this site.”

“[Company Name] makes no representations or warranties with respect to the information contained therein and takes no responsibility for supplementing, updating, or correcting any such information.”
- See Intel's website for an example of a company that posts its Section 16 Reports directly on its website without hyperlinking -- <http://www.intel.com/intel/finance/section16.htm>.
- See Merck, Inc.'s website for an example of a company that uses a hyperlink to a third party service for its Section 16 Reports [http://www.corporate-ir.net/ireye/ir\\_site.zhtml?ticker=MRK&script=1901](http://www.corporate-ir.net/ireye/ir_site.zhtml?ticker=MRK&script=1901). Please note that Merck hyperlinks to 10kwizard.com, a private third-party service which charges Merck a fee for hyperlinking, instead of the SEC EDGAR website, which is free of charge.