



Office of Thrift Supervision
Department of the Treasury

Scott M. Albinson
Managing Director

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October 27, 2003

MEMORANDUM FOR: CHIEF EXECUTIVE OFFICERS DIRECTORS AND PRINCIPAL SHAREHOLDERS

FROM:

Scott M. Albinson

SUBJECT:

Electronic Filing of Beneficial Ownership Reports

Directors, officers and principal shareholders of savings associations that have a class of equity securities registered with the Office of Thrift Supervision (OTS) are encouraged to use a new interagency electronic filing system to submit their beneficial ownership reports. OTS is joining a Federal Deposit Insurance Corporation (FDIC) interagency electronic filing system. The system facilitates the submission and public retrieval of beneficial ownership reports filed by directors, officers and principal shareholders (insiders) of savings associations that have equity securities registered with OTS pursuant to the Securities Exchange Act of 1934 (Exchange Act). Although filing under the system will be voluntary initially, OTS encourages the use of the electronic filing system. OTS will issue additional guidance making electronic filing of beneficial ownership reports mandatory, as required by the Sarbanes-Oxley Act of 2002. OTS expects to make the electronic filing mandatory no later than the first quarter of 2004.

Implementation of this new electronic filing and retrieval system is an important step in OTS' ongoing efforts to streamline the filing and retrieval of reports filed with OTS under the Exchange Act. Because beneficial ownership reports will be considered filed immediately upon submission to OTS under this new system, it is anticipated that use of the system will make filing faster and easier for insiders. During the transition period to mandatory electronic filing, insiders will be required to continue to submit beneficial ownership reports on paper by simply completing the on-line version of the report, then printing and faxing the electronic filing system confirmation screen (which contains the completed report) to OTS. This will help relieve the burden on insiders to get paper copy beneficial ownership reports to OTS' securities filing desk within two business days of completing a transaction in the equity securities of the savings association, as required by the Sarbanes-Oxley Act. Attached are instructions for the electronic filing of the beneficial ownership reports and the form for designating a person in your institution to coordinate the electronic filing function.

For further information, please contact Gary Jeffers, Senior Attorney, Business Transactions Division, at (202) 906-6457 (gary.jeffers@ots.treas.gov).

Attachments:

Electronic Filing of Beneficial Ownership Reports

Designated Coordinator Registration form: Available only in hard copy

OFFICE OF THRIFT SUPERVISION

ELECTRONIC FILING OF BENEFICIAL OWNERSHIP REPORTS

October 27, 2003

SUBJECT: Office of Thrift Supervision Announces an Interagency
Electronic Filing System for Beneficial Ownership Reports

The Office of Thrift Supervision (OTS) announces that beginning immediately it is joining the Federal Deposit Insurance Corporation's (FDIC) interagency electronic filing system to facilitate the submission of beneficial ownership reports by directors, officers, and principal shareholders of institutions whose equity securities are registered with OTS. OTS encourages the use of the electronic filing system as soon as practicable. OTS will be issuing guidance making electronic filing of beneficial ownership reports mandatory, as required by the Sarbanes-Oxley Act of 2002.

Background

The Securities Exchange Act of 1934 (Exchange Act) seeks to protect investors by requiring accurate, reliable, and timely corporate securities disclosures. Institutions with securities that are subject to the registration and disclosure requirements of the Exchange Act must register these securities with the appropriate federal banking agency. The Exchange Act requires directors, executive officers, and owners of 10 percent of a class of equity securities of these institutions (insiders) to file the beneficial ownership reports regarding their ownership and transactions in the company's securities.¹

As amended by the Sarbanes-Oxley Act of 2002, Section 16 of the Exchange Act (15 U.S.C. 78p) establishes requirements for the electronic filing of beneficial ownership reports.² It further mandates that, when a change in ownership occurs, the insider is required to file a report electronically within **two** business days after consummation of a transaction in registered securities of an institution. The Exchange Act requires the appropriate federal banking agency to make those filings available to the public on the Internet. The Exchange Act also requires institutions with Web sites to post their insiders' changes in beneficial ownership reports on their Web sites.

¹ These reports are filed using SEC Forms 3, 4, and 5.

² Beneficial ownership reports were previously filed on paper with OTS within 10 days from the end of the month of the transaction.

Electronic Filing and Retrieval System

In order to permit the electronic filing of beneficial ownership reports as required by the Exchange Act, OTS is joining the FDIC's electronic filing system utilizing the *FDICconnect* secure Web platform. This filing system is in a transitional stage. This transition period will end when the agencies issue guidance making the electronic filing of the beneficial ownership reports mandatory. The agencies anticipate this guidance will be issued by the first quarter of 2004.

During the transition period, insiders will be required to continue to submit beneficial ownership reports on paper. Insiders are encouraged (but not required) to file their reports electronically as well. The current paper filing requirement can be met by simply completing the on-line version of the report, then printing and faxing the electronic filing system confirmation screen (which contains the completed report). Reports must be faxed to OTS, as noted under the contacts section below.

The electronic filing system will use beneficial ownership reports that are designated as Forms 3, 4, and 5. When the forms are electronically submitted, the forms will be made immediately available on the FDIC's external public Web site (<http://www2.fdic.gov/efr>). Filings will be retrievable by institution name, institution state, and filing date.

Additionally, the Exchange Act requires that, when reports are filed electronically, institutions with Web sites must post their insiders' reports on their Web site within one business day after the report is filed. During this transition period, institutions whose insiders choose to file electronically (in addition to making a paper filing) may meet this requirement by providing on their Web site a link to the FDIC's Web site (identified above) to enable the public to access the reports.

The agencies invite institutions and insiders to submit feedback on their use of this system. Feedback will be helpful when the agencies periodically consider technical or other system upgrades. Comments or suggestions may be submitted via e-mail to FDICconnect@fdic.gov.

Access to the Electronic Filing System

Access to the electronic filing system for the submission of beneficial ownership reports is available through the OTS Web site at www.ots.treas.gov. At the OTS home page, click on **Public Info** on the menu bar, then click on **Forms/Info Collections**. A link to the *FDICconnect* secure Web platform is provided by clicking on **Beneficial Ownership Reports**.

Each registered institution should designate an *FDICconnect* Coordinator by completing the attached Designated Coordinator Form attached to this letter. This form requires the signature of an appropriate approving officer of the institution. Please promptly complete this form and return it to the FDIC by one of the following methods:

- Fax the completed form to 703-516-5256, to the attention of *FDICconnect*, or
- Mail the completed form to:

Federal Deposit Insurance Corporation
ATTENTION: *FDICconnect* Project Team
3501 North Fairfax Drive, Room VS-5240
Arlington, VA 22225

Please provide a copy of the completed form to OTS by one of the following methods:

- Fax the completed form to 202-906-5708, to the attention of Gary Jeffers, Senior Attorney, Business Transactions Division, or
- Mail the completed form to:

Business Transactions Division
Chief Counsel's Office
Office of Thrift Supervision
1700 G Street, N.W.
Washington, D.C. 20552

As specified on the attached Designated Coordinator Registration, the Designated Coordinator will be able to execute regulatory transactions and submit regulatory filings on behalf of the institution and its insiders. The Coordinator will also be authorized to provide access to the electronic filing system to other institution staff as well as individuals not employed by the institution who need to file beneficial ownership reports. The agencies will rely on the actions taken by the Coordinator and those users given access to the filing system by the Coordinator. Thus, it is important that the institution chooses the Designated Coordinator carefully and that controls be implemented to address operational risks inherent in on-line transactions. When a Designated Coordinator is assigned, *FDICconnect* staff will provide that individual with technical guidance for using *FDICconnect*.

Subject Matter/Banking Agency Contact Information

Please contact one of the following individuals if you have questions regarding the beneficial ownership reports or other Exchange Act requirements. OTS' fax number for submitting paper copies of these reports is also included below:

OTS Contacts

Gary Jeffers, Senior Attorney, Phone (202) 906-6457
Frances Augello, Senior Attorney, Phone (202) 906-6151
John Harootunian, Senior Counsel, Phone (202) 906-6415
FAX (202) 906-5708

Submission of Paper Copies

FAX: (202) 906-7342

To the attention of: Brenda Proctor

Technical/System Help Contact Information

For technical questions or problems relating to the use of *FDICconnect* or Designated Coordinator registration, please contact *FDICconnect* toll-free at 877-275-3342, or via e-mail at FDICconnect@fdic.gov.

Attachment:

Designated Coordinator Registration form: Available only in hard copy.