U. S. Securities and Exchange Commission
Washington, D.C. 20549 (202) 272-2650

News Release

Opening Statement of
Chairman Richard C. Breeden
United States Securities and Exchange Commission

Section 16
January 10, 1991

Today we have before us the first comprehensive revisions of the regulatory scheme under Section 16 since the adoption of the Exchange Act. The amendments are intended to respond to the development of the standardized options market, the growth and increasing diversity of employee benefit plans, the substantial problem of filing delinquencies, and to reduce, where consistent with purposes of the Act, the costs of compliance.

Section 16 of the Exchange Act requires officers, directors and persons who beneficially own more than ten percent of a specified class of equity securities of companies with equity securities registered under the Act to report their transactions in equity securities to the Commission and permits the company to recover profits made on short-swing transactions occurring in any six month period.

Revision of the Section 16 regulatory scheme has been a long time in the making. Proposals for revision were made by a committee of the ABA in 1983 and the American Society of Corporate Secretaries in 1984. Commission concern for filing delinquencies activated intensive enforcement activities, including a special program for identifying late filers in

1983. These proposals and the delinquency program made clear a need to overhaul the rules to reflect current market and compensation structure, and to achieve greater clarity and simplicity in the requirements. These amendments, together with the additional enforcement remedies provided by the Securities Enforcement Remedies and Penny Stock Reform Act of 1990, should substantially reduce the delinquent reporting under Section 16.

Under the regulatory scheme proposed for adoption today, the application of Section 16 to standardized options and other derivative securities will be clearly defined, and insiders will not be able to avoid liability for short-swing profits simply by resorting to purchases and sales of derivative securities.

Rule 16b-3, the traditional exemption for transactions pursuant to employee benefit plans, was proposed to change the disinterested administration requirements to assure against misuse of these plans, and to drop the shareholder approval condition. Upon reconsideration, the Commission has determined to retain the current shareholder approval condition and disinterested administration requirements. There is little evidence they have not served the purposes of the statute. The continued right of shareholders to be consulted on these management plans and to approve the terms of these plans is no less important today than when originally required. The Rule distinguishes between issuer grant plans and participant directed plans, and has specifically tailored conditions for exemption.

The new rules provide greater certainty and less need for interpretation, and hopefully will reduce litigation with the addition of a number of defined terms.

Beneficial ownership for purposes of determining status as an insider subject to Section 16 is now defined, and uses the framework of Section 13(d).

Various attribution rules and safe harbors from attribution of pecuniary interest giving rise to reporting obligations and short swing profits have been included.

And the definition of officer has been revised to make clear that a person's functions, and not simply title will determine the applicability of Section 16. The definition, already used for reporting on Form 10-K and the proxy statement, is intended to make clear that individuals with executive functions do not avoid liability under Section 16 simply by forgoing title, and that those with a title but no significant executive responsibilities are not subject to the automatic short-swing profit liability of Section 16(b). Thus, for example, a vice president of a bank, who has no policymaking responsibility, would not have to be concerned with possible liability under Section 16(b), if because of an unexpected family emergency, he needed to sell securities.

The reporting requirements have been greatly streamlined to minimize compliance costs for insiders while continuing to require current reporting of those transactions that could give rise to short-swing profit liabilities. In 1989, more than

200,000 transactions were reported on more than 115,000 forms. We estimate a very large number of these transactions were exempt under Section 16(b).

Current reports under the new rules will focus on non-exempt transactions - those that may give rise to short-swing profit liabilities. Exempt transactions will still be reportable, but, except for option exercises, they need only be reported once a year on new Form 5. The new reporting scheme will highlight those discretionary transactions of interest to the marketplace and that may give rise to liabilities, and at the same time reduce the paperwork of insiders engaging in exempt transactions.

As noted at the outset, one of the catalysts for change of the rule was the substantial delinquency rate of reports filed under Section 16(a). Over the past 5 years, the reported delinquency rate has reached as high as 55%, and notwithstanding continuous Commission exhortations of the filing community was still about 21% for the first 10 months of 1990. The regulatory changes proposed today should go a long way to make compliance easier and less costly, and thus reduce delinquencies. Those insiders who continue to file late, or not to file at all, will be required to be disclosed to shareholders in Commission filings. I trust that the combination of the new regulatory scheme and new enforcement remedies will result in a minimal level of late filings in future years.

Finally, I would like to take this opportunity to thank Mauri Osheroff, Ann Wallace, Rich Konrath, Brian Lane, Mark Green, Diane Sanger, Harry Weiss, Bruce Hiler and, of course, Linda Quinn, Elisse Walter, Bill McLucas and Jim Doty, as well as the scores of other staff who have labored long and hard to bring this initiative at long last to a conclusion. I understand, in fact, that Brian has been working on this project for more than 4 years, and Mauri more than 3 years, and to them a special thanks.

Now, I'd like to have the Division briefly outline the principal changes recommended to the scheme reproposed in 1989.