

September 5, 2002

SEC Issues Rules for CEO/CFO Certifications of Quarterly and Annual Reports and Internal Disclosure Controls and Procedures

On August 29, 2002, the SEC issued rules under the Securities Exchange Act of 1934 (the "Exchange Act") imposing new certification requirements. The new rules mandate:

- CEO/CFO certifications as to the contents of each annual and quarterly report, as to "disclosure controls and procedures" (a new concept related to disclosure) and as to "internal controls" (an existing concept relating to financial reporting, certain elements of which are viewed by the SEC as a subset of "disclosure controls and procedures");
- Establishment and maintenance of "disclosure controls and procedures";
- Evaluation prior to the filing of each annual or quarterly report of such "disclosure controls and procedures"; and
- Disclosure in each annual and quarterly report concerning the effectiveness of such procedures, based on the mandated evaluation, and any changes in "internal controls."

This memorandum outlines the new requirements for CEO/CFO certifications and the related internal procedures. A copy of the SEC's form certification is attached to this memorandum as Annex A.

We note that there is some uncertainty concerning the relationship between disclosure controls and procedures and internal controls, compounded by the fact that although the certifications with respect to internal controls are subject to transition rules, the requirement to report changes in "internal controls" following an "evaluation," which was not mandated, is not subject to transition rules. We have been advised by the SEC staff that they expect to issue guidance on these issues shortly. Further clarification may be forthcoming as part of the proposals under Section 404 of the Sarbanes-Oxley Act (covering the internal controls report).

I. Overview

General

Certification. The new CEO/CFO certification requirements are in response to Section 302 of the Sarbanes-Oxley Act, which mandated that the SEC adopt final rules by August 29, 2002 for CEO/CFO certifications. These new requirements supersede the SEC's original CEO/CFO certification proposal issued on June 14, 2002 (the "June 14th Release"),

but do not supersede the certifications mandated by Section 906 of the Sarbanes-Oxley Act. The SEC declined to address how the Section 906 certifications (which, in the view of the SEC, are the responsibility of the US Department of Justice and not the SEC) are to operate in conjunction with the parallel certification requirements effective for filings made beginning today. Until further clarification, reporting companies are subject to two sets of certifications.

Procedures. The new rules also establish a new concept of “disclosure controls and procedures,” which are intended to ensure that internal communications and other internal procedures operate such that information required to be disclosed in SEC reports is gathered, reported, processed, summarized and disclosed in a timely manner. Reporting companies are required to maintain these disclosure controls and procedures, which as the term implies relate to information potentially *subject to disclosure* and complement (and thus are broader than) existing requirements for reporting companies to establish and maintain systems of “internal controls” with *respect to financial reporting*. This concept is based not on Section 302 of the Sarbanes-Oxley Act, but rather on the June 14th Release.

Internal control report. The SEC release did not address the requirement of Section 404 of the Sarbanes-Oxley Act, under which the SEC is to prescribe rules requiring annual reports to contain a management assessment of internal controls, other than to indicate that rules will be forthcoming.

Coverage

The new rules apply to all SEC reporting companies - domestic and foreign. Certification of reports will be required for filings of annual reports on Form 10-K, 10-KSB, 20-F and 40-F and to quarterly reports on Form 10-Q and 10-QSB, and amendments to any of the foregoing. Certification is not required for current reports on Form 8-K or 6-K (though the new rules require that disclosure controls and procedures be designed, maintained and evaluated to ensure full and timely disclosure in such reports).

II. Effective Dates

- The certification requirements as to the contents of annual and quarterly reports are effective for filings of annual and quarterly reports made after August 29, 2002; thus, certification will be required for a filing by a June 30 year-end company of its next Form 10-K on or before September 30, a filing by a calendar year-end company of its next Form 10-Q on or before November 14 or a filing by a March 31 year-end foreign private issuer of its next Form 20-F on or before September 30.
- The requirement to maintain disclosure controls and procedures is effective as of August 29, 2002.
- The requirement to disclose changes in internal controls is effective as of August 29, 2002, notwithstanding the fact that the disclosure is based on changes since the last evaluation, and there is no provision in the rules mandating such an

evaluation. The timing issue only impacts filers filing reports for periods ending prior to August 29, though all filers will need clarification to understand the substance of the last two paragraphs of the certification (i.e., what are internal controls and what evaluation is required).

- The certification requirements as to the disclosure controls and procedures, and the requirement to evaluate disclosure controls and procedures, are effective for reports filed for periods ending after August 29, 2002 (e.g., for a calendar year-end company, its Form 10-Q for the quarter ended September 30, 2002).
- The requirement to disclose conclusions regarding the effectiveness of disclosure controls and procedures is effective for reports filed for periods ending after August 29, 2002.
- Any amendments filed after August 29, 2002 of a covered report originally filed prior to August 29, 2002 will be subject to the then effective certification requirements.

III. The Certification

Form of the Certification

Under new Exchange Act Rules 13a-14 and 15d-14 an issuer's principal executive officer (or officers) and the principal financial officer (or officers), or persons performing similar functions, are each required to certify that:

As to the contents of covered reports:

- he or she has reviewed the covered report;
- based on his or her knowledge, the report does not contain any untrue statement of a material fact or omit to state a material fact necessary in order to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by the report;
- based on his or her knowledge, the financial statements, and other financial information included in the report, fairly present in all material respects the financial condition, results of operations and cash flows of the issuer as of, and for, the periods presented in the report;

As to procedures:

- he or she and the other certifying officers:
 - are responsible for establishing and maintaining "disclosure controls and procedures";

- have designed such disclosure controls and procedures to ensure that material information is made known to them, particularly during the period in which the periodic report is being prepared;
 - have evaluated the effectiveness of the issuer's disclosure controls and procedures as of a date within 90 days prior to the filing date of the report; and
 - have presented in the report their conclusions about the effectiveness of the disclosure controls and procedures based on the required evaluation as of that date;
- he or she and the other certifying officers have disclosed to the issuer's auditors and to the audit committee of the board of directors (or persons fulfilling the equivalent function):
 - all significant deficiencies in the design or operation of internal controls which could adversely affect the issuer's ability to record, process, summarize and report financial data and have identified for the issuer's auditors any material weaknesses in internal controls; and
 - any fraud, whether or not material, that involves management or other employees who have a significant role in the issuer's internal controls; and
 - he or she and the other certifying officers have indicated in the report whether or not there were significant changes in internal controls or in other factors that could significantly affect internal controls subsequent to the date of their evaluation, including any corrective actions with regard to significant deficiencies and material weaknesses.

Issuers Subject to Certification Requirement

The new certification requirement applies to the principal executive officer and principal financial officer, or persons performing similar functions, of any issuer (including foreign private issuers and small business issuers) that files quarterly and annual reports with the SEC under either Section 13(a) or 15(d) of the Exchange Act.

The rules apply to foreign private issuers that file Form 20-F or 40-F reports (i.e., that are listed and/or have conducted a public offering). They do not apply to foreign issuers that furnish information to the SEC under Rule 12g3-2(b).

The SEC issued separate guidance on how issuers of asset-backed securities should comply with the new rules. New rules have also been adopted to cover registered investment companies.

We understand from the SEC staff that CEOs/CFOs of voluntary filers (such as high yield issuers) are subject to the requirements.

Covered Reports

The new certification requirement applies to annual reports on Forms 10-K, 10-KSB, 20-F and 40-F; quarterly reports on Forms 10-Q and 10-QSB; and amendments to, and transition reports on, any of the foregoing reports. A certification in an annual report that incorporates Part III information by reference from a proxy statement filed not later than 120 days after year-end would be deemed to cover such Part III information.

The new certification requirement does not apply to annual reports on Form 11-K (i.e., reports by employee stock purchase and benefit plans).

Current reports (such as reports on Forms 8-K and 6-K) are also not covered. Thus, certification will not be required to be included in quarterly or semi-annual reports that are submitted to the SEC by foreign issuers under cover of a Form 6-K. However, it is important to note that the “disclosure controls and procedures” required by new Exchange Act Rules 13a-15 and 15d-15, discussed below, are required to be designed, maintained and evaluated to ensure full and timely disclosure in 8-K and 6-K reports, as well as definitive proxy materials and definitive information statements, even though there is no specific certification requirement relating to reports on those forms.

Although a Form 20-F or 40-F annual report need not be signed by any specific executive officer of the foreign private issuer, the CEO and CFO will be required nonetheless to sign the certification for that report.

The SEC asked for public comment on extending certification requirements to proxy statements and information statements.

Analysis of the Certifications - As to Contents of Covered Reports

Material accuracy and completeness of the disclosure. The statement concerning the material accuracy and completeness of the periodic report that is covered by the statement mirrors the existing statutory disclosure standards for “material” accuracy and completeness of information contained in reports.

Fair Presentation of Financial Information. The certification states that the overall financial disclosure fairly presents, in all material respects, the issuer’s financial condition, results of operations and cash flows. This certification statement addresses the presentation of an issuer’s financial disclosure, which includes financial statements (including footnote disclosure), selected financial data, management’s discussion and analysis of financial condition and results of operations, and other financial information in a report. The SEC added the reference to cash flows, which was not a part of Section 302.

This statement is not limited to a representation that the financial statements and other financial information have been presented in accordance with “generally accepted accounting principles” and is not otherwise limited by a reference to GAAP. The statement is

intended to provide assurances that the financial information disclosed in a report, viewed in its entirety, meets a standard of overall material accuracy and completeness that is broader than financial reporting requirements under GAAP. In the SEC's view, a "fair presentation" encompasses:

- selection of appropriate accounting policies;
- proper application of appropriate accounting policies;
- disclosure of financial information that is informative and reasonably reflects the underlying transactions and event; and
- the inclusion of any additional disclosures necessary to provide investors with a materially accurate and complete picture of financial condition, results of operations and cash flows.

The SEC cited accounting literature that provides guidance as to what elements should be considered in determining whether financial information, taken as a whole, provides a fair presentation of financial condition and results of operations.

Knowledge. The certification statements as to disclosure are to be made based on the knowledge of the certifying officer. The SEC stated that the certifications are not intended to change the current obligations of corporate officers in connection with the discharge of their duties. The foregoing certifications are made in the context of the requirements of the form of report in which they are included, which means that the certification requirements are limited to information required by the applicable form, and the SEC's existing rules and interpretations in respect of such applicable form.

Analysis of the Certifications - As to Procedures

Disclosure Controls and Procedures. The SEC has adopted a new concept aimed at assuring adequate disclosure. The disclosure controls and procedures are intended to address the quality and timeliness of disclosure. The new concept is to differentiate the disclosure controls from the existing concept of "internal controls," which pertains only to financial reporting and control of assets, as embodied in Section 13(b) of the Exchange Act and addressed in the last two items of the certification, as well as in Section 404 of the Sarbanes-Oxley Act.

While the certification provisions (reflecting Section 302) only require statements as to these procedures, separate provisions were necessary to mandate the maintenance of such procedures. New Exchange Act Rules 13a-15 and 15d-15 will now mandate such procedures. See Part III below for a discussion this new requirement and a summary of the new concept.

Because the statements involving "disclosure controls and procedures" and internal controls require the certifying officers to take certain specified actions, such as evaluating the effectiveness of the disclosure controls and procedures, prior to the date of the report to which the certification relates, these statements will be required as part of the certification only with respect to any reports that cover periods ending on or after August 29, 2002.

Form and Location of Certification

The new certification must be in the exact form set forth in the form of the affected report and may not be changed in any respect. Note that other than references to the proper form and type (either quarterly or annual), all the form certificates contained in the amended Forms 10-Q, 10Q-SB, 10-K, 10-KSB, 20-F and 40-F are identical.

The new rules are in addition to, and do not alter, the signature requirements for Exchange Act reports. The new certifications are to follow immediately after the signature sections of the reports. Certifying officers may not use an attorney-in-fact to sign on their behalf.

Potential Liability for False Certification

The SEC has taken the view that an issuer's principal executive and financial officers are already responsible as signatories for the issuer's disclosures under the Exchange Act liability provisions and may be liable for material misstatements or omissions under general anti-fraud standards and under the SEC's authority to seek redress against those who cause or aid or abet securities law violations. An officer providing a false certification would in their view be subject potentially to SEC action for violating Section 13(a) or 15(d) of the Exchange Act and to both SEC and private actions for violating Section 10(b) of the Exchange Act and Exchange Act Rule 10b-5. Certifications of reports that are incorporated by reference into Securities Act registration statements could be subject to liability under the anti-fraud provisions of the Securities Act.

Although there is a theoretical risk of liability for failure to maintain the proper disclosure procedures, one can expect that liability will be raised in the context of restatement cases and similar actions involving materially misleading disclosure, and that the SEC's traditional approach to these types of actions (i.e., determining who is culpable and the proper target of enforcement for violation of Section 10(b), 13(a) and 13(b) and Rule 10b-5, 12b-20, 13a-1, 13a-13, or Rules 13b2-1, 13b2-2 and 13b-5 -- be it the company, senior management or rogue employees) will continue.

IV. Disclosure Controls and Procedures

The Rules

Maintenance of procedures. While the certification requirements cover, among other things, certification of disclosure controls and procedures, separate provisions require each issuer filing reports under Section 13(a) or Section 15(d) of the Exchange Act to maintain the disclosure controls and procedures.

Evaluation of procedures. New Exchange Act Rules 13a-15 and 15d-15 also require each reporting company, under the supervision of the principal executive and financial officers, to conduct an evaluation of the effectiveness of the design and operation of the issuer's

disclosure controls and procedures within 90 days prior to the filing date of any quarterly or annual report filed under the Exchange Act. While the new rules do not provide detailed procedures for such an evaluation, the evaluation must, at a minimum, address the matters specified by the rules. This evaluation could be carried out in a manner that would form the basis for the certification statements required in an issuer's quarterly and annual reports.

Disclosure. Annual report and quarterly report forms will require reporting companies to disclose:

- the conclusions of the principal executive and financial officers about the effectiveness of the disclosure controls and procedures based on their evaluation of these controls and procedures (referred to above); and
- whether or not there were any significant changes in internal controls or on other factors that could significantly affect these controls subsequent to the date of their evaluation, including any corrective actions with regard to significant deficiencies and material weaknesses.

Coverage

Although the SEC acknowledged in its June 14th Release that mandatory requirements regarding disclosure controls and procedures may raise several issues for foreign private issuers, these requirements do apply to foreign private issuers.

The Procedures

"Disclosure controls and procedures" are defined as controls and other procedures of an issuer that are designed to ensure that information required to be disclosed by the issuer in the reports (including current reports on Form 8-K and 6-K and proxy materials) filed or submitted by it under the Exchange Act is recorded, processed, summarized and reported, within the time periods specified in the Commission's rules and forms. "Disclosure controls and procedures" include, without limitation, controls and procedures designed to ensure that information required to be disclosed by an issuer in its Exchange Act reports is accumulated and communicated to the issuer's management, including its principal executive and financial officers, as appropriate to allow timely decisions regarding required disclosure.

The procedures are to ensure timely collection and evaluation of information potentially subject to disclosure under Regulations S-X and S-K (which set forth disclosure items for Exchange Act reports for domestic issuers) and Forms 20-F and 40-F, and should capture information that is relevant to an assessment of the need to disclose developments and risks that pertain to the issuer's business. For example, for some businesses such as financial services firms, an assessment and evaluation of operational and regulatory risks may be necessary. The procedures should also cover information that must be evaluated in the context of Rule 12b-20, which requires the addition to required disclosure of items of such

further material information as may be necessary to make any required statements, in the light of the circumstances under which they are made, not misleading.

The SEC has not mandated any particular procedures for conducting the required review and evaluation. Instead, each issuer is expected to develop a process that is consistent with its business and internal management and supervisory practices. However, the SEC has recommended that issuers create a committee with responsibility for considering the materiality of information and determining disclosure obligations on a timely basis which would report to senior management, including the principal executive and financial officers, who bear express responsibility for designing, establishing, maintaining, reviewing and evaluating the issuer's disclosure controls and procedures. The committee could consist of the principal accounting officer (or controller), the general counsel or other senior legal officer responsible for disclosure matters, the principal risk management officer, the chief investor relations officer and such other employees in the business units as are appropriate.

Liability

The SEC stated that a company that fails to maintain the mandated procedures, review them and otherwise comply with the new requirements could subject it to SEC enforcement action for violation of Section 13(a) of the Exchange Act, which is often a principal basis of liability in restatement actions. This could occur even where the failure did not lead to misleading or inaccurate disclosure.

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This memorandum is not intended to provide legal advice, and no legal or business decision should be based on its contents. Any questions concerning the foregoing should be addressed to any of the following members of our Securities Group ("SG"), M&A Group ("MA") or Securities, Futures and Derivatives Litigation Group ("LG"):

Mark S. Bergman - SG	(44 20) 7367 1601	Edwin S. Maynard - SG	(1) 212-373-3024
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In addition, memoranda on related topics, including our memorandum summarizing the Sarbanes-Oxley Act, may be accessed under Securities Group publications on our web site: www.paulweiss.com.

PAUL, WEISS, RIFKIND, WHARTON & GARRISON

CERTIFICATIONS*

I, [identify the certifying individual], certify that:

1. I have reviewed this [quarterly/annual] report on Form [10-K/10-KSB/10-Q/10-QSB/20-F/40-F] of [identify registrant];
2. Based on my knowledge, this [quarterly/annual] report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this annual report;
3. Based on my knowledge, the financial statements, and other financial information included in this [quarterly/ annual] report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this annual report;
4. The registrant's other certifying officers and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-14 and 15d-14) for the registrant and have:
 - a) designed such disclosure controls and procedures to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this annual report is being prepared;
 - b) evaluated the effectiveness of the registrant's disclosure controls and procedures as of a date within 90 days prior to the filing date of this [quarterly/annual] report (the "Evaluation Date"); and
 - c) presented in this [quarterly/annual] report our conclusions about the effectiveness of the disclosure controls and procedures based on our evaluation as of the Evaluation Date;
5. The registrant's other certifying officers and I have disclosed, based on our most recent evaluation, to the registrant's auditors and the audit committee of registrant's board of directors (or persons performing the equivalent functions):
 - a) all significant deficiencies in the design or operation of internal controls which could adversely affect the registrant's ability to record, process, summarize and report financial data and have identified for the registrant's auditors any material weaknesses in internal controls; and
 - b) any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal controls; and
6. The registrant's other certifying officers and I have indicated in this [quarterly/annual] report whether there were significant changes in internal controls or in other factors that could significantly affect internal controls subsequent to the date of our most recent evaluation, including any corrective actions with regard to significant deficiencies and material weaknesses.

Date:

[Signature]
[Title]

* Provide a separate certification for each principal executive officer and principal financial officer of the registrant. See Rules 13a-14 and 15d-14. The required certification must be in the exact form set forth above.