

PAUL, WEISS, RIFKIND, WHARTON & GARRISON

AUGUST 2, 2002

PREPARING FOR THE NEW PERIODIC REPORT CERTIFICATION REQUIREMENTS

As part of the Sarbanes-Oxley Act of 2002 (the “Act”) that was signed by the President July 30, effective immediately, each periodic report containing financial statements filed by a reporting company must be accompanied by a written statement by the company’s CEO and CFO certifying that:

- such periodic report fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934; and
- information contained in such periodic report fairly presents, in all material respects, the financial condition and results of operations of the reporting company.

The Act also calls upon the Securities and Exchange Commission to promulgate additional rules by the end of August 2002 regarding further certification requirements.

We are providing guidance to CEOs and CFOs on how to prepare to comply with the certification requirements that have already become effective under the Act. We anticipate that the SEC will offer further guidance in connection with the required rulemaking and expect to provide further advice when the rules are proposed.

Set the Stage for an Effective Reporting Process

Although the company’s most senior officers may not necessarily be directly involved in the actual drafting of a reporting company’s periodic reports, it is important for them in light of the new certification requirements to:

- Establish the appropriate “tone at the top.”
- Send a clear message to the entire organization that the company places a high priority on the best disclosure practices.
- Remind all employees of their responsibility to protect the integrity of the company’s systems and procedures regarding the collection, analysis and disclosure of information relevant to investors.
- Provide a clear mandate and authority from the top of the organization to those responsible for gathering information and for preparing the company’s financial statements and other disclosure.

- Maintain an “open door” policy for any individual who wants to raise issues or ask questions about the company’s reporting obligations and disclosure.
- Remain actively involved in the disclosure process.

CEO/CFO Review of Periodic Reports and Certification

Given that many reporting companies have only a short time before the first filing of a report subject to the new provisions of the Act, CEOs and CFOs need to take steps now to make sure that reports in preparation are adequately prepared and reviewed. While the amount of “due diligence” that the CEO and CFO should undertake prior to making the certification will depend on their degree of familiarity with the details of the company’s financial results, its public filings and its approach to accounting issues, the following steps should be considered as part of the process of preparing to make the certifications:

- Carefully review the company’s financial results and how they were prepared. Speak to the company’s senior accounting officers, with particular attention given to any material discretionary issues and accounting policies under generally accepted accounting principles (“GAAP”).
- Carefully review the non-financial statement information in the remainder of the report, especially the Management’s Discussion and Analysis of Financial Condition and Results of Operations (the “MD&A”). Discuss the report with the principal authors of the MD&A and the descriptions of the company’s businesses. Focus on the information included in the report and review any matters excluded from the report, with attention to any material discretionary judgments. Also address the critical accounting estimates and the underlying assumptions.
- Discuss the report with the company’s in-house or external disclosure counsel. Ask counsel to confirm that the report meets the form requirements of the Securities Exchange Act referred to in the certification.
- Review with the appropriate officers responsible for internal controls the procedures that were followed in preparing the report. Review a list of the persons from whom information was gathered and to whom the draft report was circulated. Consider whether information was gathered from the persons best able to provide it and whether the report was circulated to the persons best able to assure its accuracy and completeness. Assess the adequacy of the time and resources devoted to the preparation of the report.
- Review the company’s internal controls with officers responsible for maintaining such controls, including any changes to the nature and scope of procedures relating to internal controls. Review issues raised by the company’s auditors regarding the company’s controls. Consider how such issues, or any other issues raised concerning weaknesses in the financial and reporting systems or internal controls, have been addressed. Inquire about any impact that company growth or internal reorganization may be having on the effectiveness of the company’s controls.

- Identify issues that are worth further consideration. Consider issues raised in past SEC comment letters, issues identified by the company's auditors, issues raised internally involving the disclosure process, judgments or discretion and issues raised by analysts or others outside the company. Think about where mistakes would be most likely to occur and where others in the company's industry have had problems.
- Meet with the Company's outside auditors so that the auditors can share any additional views or thoughts that they may have. Ask them about adjustments to the company's financial statements that they have recommended. Ask if there are any alternative treatments that the company should be considering in preparing its financial statements. Review with them the SEC's "hot-button" accounting issues (*e.g.*, earnings management, off-balance sheet transactions, related party transactions) and disclosure issues (*e.g.*, pro forma figures, critical accounting estimates) and any other accounting or disclosure issues receiving attention in the company's industry.
- Meet with the Audit Committee, and with the full board if necessary, to understand any questions or concerns that they may have identified concerning the company's financial and reporting systems, internal controls, risk assessment and risk management policies, auditor independence and effectiveness, financial statements and other public disclosure, or any related matters.
- Review the representation letters delivered by officers of the company to the outside auditors.
- Consider obtaining back-up certification from the principal internal officers who participated in the preparation of the report. At a minimum ask the personnel involved in the preparation of the report if they are comfortable with its contents (would they sign the certification if they were you?). Ask them what have they done to ensure the accuracy of the report.

Keep minutes of the CEO and CFO review. Schedules or checklists indicating the process used to prepare the report, a list of the participants involved in the preparation of the report and a list of the persons to whom drafts of the report were circulated should be reviewed with the CEO and CFO and retained.

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There is clearly no "one size fits all" approach that will enable every CEO and CFO to make the certifications called for by the Act. Nevertheless, early planning, adherence to current best practices and consideration of the suggestions described above will prove useful in complying with the Act and any in preparing for any finally adopted SEC rules called for by the Act.

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”):

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In addition, memoranda on related topics may be accessed under Securities Group publications on our web site (www.paulweiss.com).

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