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M E M O R A N D U M

July 26, 2002

To Our Clients And Friends

Summary of the Sarbanes-Oxley Act of 2002

On July 25, 2002, Congress passed the Sarbanes-Oxley Act of 2002 (the “Act”), and it is anticipated that the President will soon sign the Act into law. The following presents a detailed summary of the Act.

1. THE PUBLIC COMPANY ACCOUNTING OVERSIGHT BOARD

The Act establishes the Public Company Accounting Oversight Board (the “Board”) to oversee the audit of public companies (“Issuers”) and to further the public interest in the preparation of accurate, independent audit reports.

Board Status and Composition

- Nonprofit, nongovernmental entity subject to oversight by the Securities and Exchange Commission (“SEC”).
- Composed of five members; no more than two CPAs.
- Members serve on a full-time basis for five-year terms (two term maximum).
- Board members are chosen by the SEC, after consultation with the Federal Reserve Board Chairman and the Secretary of the Treasury.

Public Accounting Firm Registration with the Board

- Public accounting firms will not be permitted to prepare audit reports for Issuers unless they register with the Board.

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- Public accounting firms are required to disclose:
 - the names of all Issuers for which the applicant prepared or issued audit reports during the preceding calendar year, and for which the applicant expects to prepare audit reports during the current calendar year;
 - annual audit and non-audit fees received from each Issuer;
 - current financial information about the firm;
 - statement of the applicant's quality control policies;
 - list of accountants associated with the firm who are involved in the preparation of audit reports;
 - Issuer filings that disclose accounting disagreements between the Issuer and the firm;
 - information relating to criminal, civil, administrative and disciplinary actions pending against the applicant or its employees in connection with any audits;
 - consents from the firm, and an agreement to obtain consents from certain professionals in the firm, to cooperate in and comply with any request for testimony and documents made by the Board; and
 - any other information requested by the Board.
- The Board is required to act on applications within 45 days, unless more information is requested.
- The Board is to assess a registration fee and annual fee from each registered public accounting firm ("Registered Firm").
- Registered Firms must submit annual reports to the Board.
- Applications and annual reports are to be made available to the public, subject to confidentiality laws and rules.

Auditing, Quality Control, and Ethics

- The Board is to establish auditing, and quality control and ethics standards relating to the preparation and issuance of audit reports.
- The auditing standards are to include the following requirements:
 - maintain audit work papers for at least seven years;
 - concurring or second partner reviews of audit reports;
 - description of the scope of testing and evaluation of an Issuer's system of internal accounting controls; and
 - increased quality control standards relating to monitoring the Registered Firm's ethics and independence, and other procedures intended to ensure high quality professional auditing standards.

Inspections of Registered Firms

- The Board is to conduct annual inspections of Registered Firms that audit more than 100 Issuers, and inspect other Registered Firms at least every three years.

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- The Board may conduct special inspections of Registered Firms at the request of the SEC or its own motion.
- Inspectors are to identify and report violations of Board or SEC rules, or professional standards.
- Copies of the Board's inspection report are to be sent to the SEC or appropriate state agencies.
- Nonconfidential portions of reports are to be available to the public.
- Registered Firms may seek review of Board findings by the SEC under certain circumstances.

Investigations and Disciplinary Proceedings

- The Board is authorized to conduct investigations and disciplinary proceedings, and impose sanctions, including civil money penalties, suspensions and deregistration, for violations of law and regulations.
- The Board may require any person associated with a Registered Firm to testify or produce documents in connection with such investigations. Failure to cooperate may result in suspension, deregistration or debarment.
- Information collected by the Board is confidential and not discoverable by third parties. However, where in connection with an inspection or investigation the Board determines disclosure is necessary, information may be made available to appropriate federal and state agencies without loss of its privileged and confidential status.
- The Board may refer an investigation to the SEC, any other federal functional regulator (as defined by the Gramm-Leach-Bliley Act), and at the direction of the SEC to the Attorney General, state attorneys general, and other state authorities.
- Hearings are not open to the public, unless good cause is shown and the parties consent to such hearing.

Foreign Public Accounting Firms

- Foreign public accounting firms are subject to the same provisions as U.S. firms, except that registration does not, by itself, provide a basis for subjecting the foreign firm to the jurisdiction of federal and state courts.

SEC Oversight of the Board

- The Board's rules are subject to SEC approval, and the SEC may amend them.
- The SEC may review and modify sanctions imposed by the Board.
- The SEC may censure the Board and its members, and remove Board members from office.

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Accounting Standards

- The SEC may recognize as “generally accepted” any accounting standards established by a standard setting body that meets certain requirements.

2. AUDITOR INDEPENDENCE

Services Outside the Scope of Practice of Auditors

- A Registered Firm that audits an Issuer may not provide non-auditing services to the Issuer.
- However, with the approval of the Issuer’s audit committee, tax and certain other nonaudit services may be provided.
- Approval by the audit committee must be disclosed to investors in periodic reports.

Audit Partner Rotation; Auditor Reports to Audit Committees

- A Registered Firm must rotate an Issuer’s audit partners every five years.
- A Registered Firm must provide audit reports promptly to Issuer’s audit committee.

Conflicts of Interest

- A Registered Firm may not perform an audit for an Issuer if certain principal officers of the Issuer were employed by the Registered Firm during the previous year.

Considerations by State Regulatory Authorities

- State regulatory authorities are encouraged to consider the size and nature of the accounting firms they supervise. The Board’s standards should not be presumed applicable to small and medium-sized nonregistered public accounting firms.

3. CORPORATE RESPONSIBILITY

Issuers’ Audit Committees

- Issuers’ audit committees:
 - shall be composed of independent members who may not receive any consulting or advisory fees from the company;
 - shall establish procedures to address complaints regarding accounting, auditing and internal controls; and
 - may retain independent counsel and other advisers.

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Corporate Responsibility

- The Act requires the SEC to issue a rule requiring that an Issuer's principal executive officer and its principal financial officer, or persons performing similar functions, make a number of certifications in each of the Issuer's annual and quarterly reports. The certifications must provide:
 - that the signing officer has reviewed the report;
 - that based on the officer's knowledge, the report does not contain any untrue statement of material fact or omissions;
 - that based on the officer's knowledge, the financial statements "fairly present" in all material respects the financial condition and results of operations of the issuer as of and for the periods presented in the report;
 - that the signing officers are responsible for establishing and maintaining internal controls, have designed such internal controls to ensure that material information relating to the Issuer and its subsidiaries is made known to such officers by others within those entities, have evaluated the effectiveness of the Issuer's internal controls as of a date within 90 days prior to the report, and have presented in the report their conclusions about the effectiveness of their internal controls based on their evaluation as of that date;
 - that the signing officers have disclosed to the Issuer's auditors and the audit committee of the board of directors all significant deficiencies in the design or operation of internal controls which could adversely affect the Issuer's ability to record, process, summarize or report financial data and have identified for the Issuer's auditors any material weaknesses in internal controls, and any fraud that involves management or other employees who have a significant role in the Issuer's internal controls; and
 - that the signing officers have indicated in the report whether there have been 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.
- Knowingly providing a certification that does not comport to the requirements of the Act may result in imprisonment and a fine.
- The Act provides that it is the sense of the Senate that the federal income tax return of a corporation should be signed by its CEO.
- No officer or director of an Issuer may fraudulently influence, coerce, mislead or manipulate any independent public or certified accountant that is auditing the Issuer's financial statements for the purpose of rendering a materially misleading audit report.

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- An Issuer's CEO and CFO are required to reimburse the Issuer for any bonuses and profits derived from the sale of Issuer stock received during the past year if the Issuer is required to restate its financial statements.

Insider Trades During Blackout Periods Prohibited

- Directors and officers are prohibited from buying or selling the Issuer's equity securities during a "blackout" period.
- A blackout period is a period during which employees are not permitted to trade stock of the Issuer which is held in an employee retirement or benefit plan.
- When an officer or director of an Issuer becomes subject to the provisions relating to blackout periods, the Issuer must notify the SEC and the officer or director of such "blackout" period.
- The Act also adds a requirement under ERISA for a benefit plan administrator to notify plan participants and beneficiaries of the blackout period 30 days in advance of the blackout period. Violation of this notice provision may result in a fine of up to \$100 per day.

4. ENHANCED FINANCIAL DISCLOSURES

Disclosures in Periodic Reports

- Issuers must disclose off-balance sheet transactions that may have a material effect on their financial condition.
- Pro forma financial information must be presented in a manner that does not contain untrue or misleading statements of material facts, and must reconcile with the Issuer's financial condition and results of operations under generally accepted accounting principles.
- The SEC shall review disclosures made by Issuers at least once every three years. Issuers are also required to disclose to the public on a rapid and current basis such information as the SEC determines by rules is necessary for protection of investors and in the public interest.
- The Act modifies the filing statement requirements for a person who is a ten percent owner or who is a director or officer of the Issuer.
 - o If there has been a change in ownership, the person must file a statement electronically with the SEC within two days after the day on which the transaction occurred.
 - o The Issuer shall provide the statement on its corporate website, and the SEC shall provide the statement on a publicly accessible internet site, no later than one day after the filing.

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Conflict of Interest Prohibition

- Issuers may not extend a personal loan to a director or executive officer, unless the loans are maintained by the Issuer on the date of enactment of this provision.
- This prohibition does not apply to a loan made by an insured depository institution if the loan is subject to the insider lending restrictions of the Federal Reserve Act.
- Loans made in the ordinary course of the consumer credit business are not prohibited if they are of a type that is generally made available by such Issuer to the public and they are made on terms no more favorable than those offered to the public for such loans.

Management Assessment of Internal Controls

- Issuers shall include in their annual reports an assessment by the management of the Issuer of the effectiveness of the Issuer's internal controls.
- Issuer's outside accounting firm is required to attest to and report on the assessment.

Code of Ethics

- Issuers shall disclose in their filings whether or not they have adopted a code of ethics for senior financial officers.
- Issuers are required to disclose whether or not their audit committees are comprised of at least one member who is a financial expert.

5. ANALYST CONFLICTS OF INTEREST

- The SEC is to adopt rules to address potential conflicts of interest between the roles of an entity's research and investment banking activities.

6. PENALTIES AND RULES OF PROFESSIONAL CONDUCT

- Increases the penalties for mail and wire fraud and ERISA violations.
- Increases the criminal penalties under the SEC Act.
- The United States Sentencing Commission is requested to review sentencing guidelines applicable to securities and accounting fraud and related offenses.
- Makes it a crime to alter or destroy a record with the intent to impair the object's integrity or availability for use in any official proceeding.

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- Makes it a crime for an accountant not to maintain all audit papers relating to the audit of an Issuer for five years after the audit was concluded.
- The SEC may petition a federal district court for a temporary order to place in escrow any “extraordinary payments” (either as compensation or otherwise) that the Issuer is about to make to its directors, officers or other employees.
- A private action raising a securities fraud claim may be brought within the later of two years after the discovery of the facts constituting the violation or five years after such violation.
- No employee of an Issuer may be discriminated against in the terms and conditions of employment because of any lawful act done by the employee to assist in an investigation regarding any conduct which the employee reasonably believes constitutes a violation of any SEC regulation or federal law relating to fraud against shareholders. An employee alleging such discrimination may bring an action against the Issuer in federal district court.
- Civil penalties and disgorgement funds resulting from a judicial or administrative action brought by the SEC under the securities laws or the regulations thereunder shall become part of a fund for the benefit of the victims of such violation.
- The SEC is to adopt minimum standards of professional conduct for attorneys representing public companies before the SEC.
 - An attorney is required to report a material violation of law by the company or any agent to the chief legal counsel or CEO of the company, and,
 - If the company’s counsel or CEO does not respond appropriately, the attorney will be required to report the information to the audit committee of the company’s board of directors.

7. ADMINISTRATION AND ENFORCEMENT

- The SEC has general enforcement authority over the provisions of the Act.
- With respect to Issuers that are insured depository institutions, the powers, functions and duties to administer and enforce various provisions of the Act are vested in the appropriate federal bank regulatory agency.

If you have any questions concerning the Act, please call Gilbert Schwartz, Robert Ballen or Tom Fox at (202) 776-0700. A copy of the bill as passed by the United States Congress can be found at <http://www.schwartzandballen.com/WhatsNew.htm>.