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MEMORANDUM

April 22, 2003

TO: Clients and Friends

FROM: Graubard Miller

SUBJECT: New SEC Rules relating to Off-Balance Sheet and Other Arrangements

As required by Section 401(a) of the Sarbanes-Oxley Act of 2002 (“Act”), the SEC has adopted rules relating to the disclosure of off-balance sheet arrangements and aggregate contractual obligations. The following is a description of these new rules.

Disclosure Obligations

The rules require companies to disclose in each quarterly and annual report certain off-balance sheet arrangements in a separately-captioned subsection of Management’s Discussion and Analysis (“MD&A”) and require (except in the case of small business issuers) tabular disclosure of future payments due under certain contractual obligations.

Under the new rules, an “off-balance sheet arrangement” includes any contractual arrangement to which an unconsolidated entity is a party, under which the company has:

- any obligation under certain guarantee contracts;
- a retained or contingent interest in assets transferred to an unconsolidated entity or similar arrangement that serves as credit, liquidity or market risk support to that entity for such assets;
- any obligation under certain derivative instruments; or
- any obligation under a material variable interest held by the company in an unconsolidated entity that provides financing, liquidity, market risk or credit risk support to the company, or engages in leasing, hedging or research and development services with the company.

The rules only require disclosure of off-balance sheet arrangements that either have, or are reasonably likely to have, a current or future effect on the company's financial condition, changes in financial condition, revenues or expenses, results of operations, liquidity, capital expenditures or capital resources that is material to investors. This disclosure threshold is consistent with the existing disclosure threshold under which information that could have a material effect on financial condition, changes in financial condition or results of operations must be included in MD&A.

To apply the disclosure threshold, management first must:

- identify and critically analyze the company's off-balance sheet arrangements, including its guarantee contracts, retained or contingent interests, derivative instruments and variable interests; and
- assess the likelihood of the occurrence of any known trend, demand, commitment, event or uncertainty that could affect an off-balance sheet arrangement (e.g., performance under a guarantee; an obligation under a variable interest or equity-linked or indexed derivative instrument; or recognition of an impairment).

If management concludes that the known trend, demand, commitment, event or uncertainty is not reasonably likely to occur, then no disclosure is required in MD&A. If management cannot make that determination, it must evaluate objectively the consequences of the known trend, demand, commitment, event or uncertainty on the assumption that it will come to fruition.

Disclosure is required unless management determines that a material effect on the company's financial condition, changes in financial condition, revenues or expenses, results of operations, liquidity, capital expenditures or capital resources is not reasonably likely to occur. Consistent with other disclosure threshold determinations that management must make in drafting MD&A, the assessment must be objectively reasonable, viewed as of the time the determination is made.

Disclosure Substance

If disclosure of off-balance sheet arrangements is required, each of the following items must be included in the disclosure to the extent necessary for an understanding of the company's reportable off-balance sheet arrangements and their material effects:

- the nature and business purpose of the off-balance sheet arrangements;
- the importance of the off-balance sheet arrangements to the company's liquidity, capital resources, market risk support, credit risk support or other benefits;
- the (i) amounts of revenues, expenses, and cash flows of the company arising from the arrangements, (ii) nature and total amount of any interests

retained, securities issued and other indebtedness incurred by the company in connection with such arrangements and (ii) nature and amount of any other obligations or liabilities (including contingent obligations or liabilities) of the company arising from the arrangements that are, or are reasonably likely to become, material and the triggering events or circumstances that could cause them to arise; and

- any known event, demand, commitment, trend or uncertainty that will, or is reasonably likely to, result in the termination, or material reduction in availability to the registrant, of its off-balance sheet arrangements that provide the company with material benefits.

Disclosure Table

To eliminate unnecessary repetition, companies are allowed to include within its MD&A section a cross-reference to information in the footnotes to the financial statements. The cross-reference must clearly identify specific information in the footnotes and must integrate the substance of the footnotes into the MD&A discussion in a manner designed to inform readers of the significance of the information that is not included within the body of the MD&A.

In addition to the foregoing, new Item 305(a) of Regulation S-K (new Item 5.F. for foreign private issuers) requires companies to include a table in the MD&A section of their annual report indicating the amount of future payments due under certain contractual obligations. Payments must be aggregated by category and presented, as of the company's last fiscal year-end balance sheet date, in substantially the following form:

Contractual Obligations	Payments Due By Period (\$)				
	Total	Less than 1 year	1-3 years	4-5 years	After 5 years
Long-Term Debt					
Capital Lease Obligations					
Operating Leases					
Purchase Obligations					
Other Long-Term Liabilities Reflected on the Company's Balance Sheet under GAAP					
Totals					

GAAP already requires companies to aggregate and assess all of the specified categories, except for purchase obligations. Accordingly, the first three categories of contractual obligations are defined by reference to the relevant GAAP accounting pronouncements. Some purchase obligations are executory contracts, and therefore are not recognized as liabilities in accordance with GAAP. Because purchase obligations may have a significant effect on the company's liquidity, they are included in the table.

A “purchase obligation” is defined as an agreement to purchase goods or services that is enforceable and legally binding on the company and that specifies all significant terms, including:

- fixed or minimum quantities to be purchased;
- fixed, minimum or variable price provisions; and
- the approximate timing of the transaction.

Disclosure is required for the time periods listed in the table. Companies are permitted to use different categories of contractual obligations, so long as those categories contain all of the contractual obligations required to be disclosed. The tables should also be accompanied by footnotes describing provisions that create, increase or accelerate obligations, or describing other pertinent data to the extent necessary to provide an understanding of the timing and amount of the company’s contractual obligations.

Disclosures made under Items 303(a)(4) and (5), except statements of historical fact, are deemed to be “forward looking statements” under the terms of the statutory safe harbors of Section 27A of the Securities Act of 1933 and Section 21E of the Securities Exchange Act of 1934. Under these statutory safe harbors, forward looking statements are generally protected from private litigation if the statements are identified as forward looking and accompanied by meaningful cautionary statements that identify important factors that could cause actual results to differ materially from those in the forward looking statements. With respect to the MD&A discussion of off-balance sheet arrangements, a company will be deemed to have met the “meaningful cautionary statements” element of the statutory safe harbors if it satisfies all of its off-balance sheet arrangements disclosure requirements.

Effective Dates

Companies must comply with the off-balance sheet arrangement disclosure requirements in registration statements, annual reports and proxy or information statements that are required to include financial statements for their fiscal years ending on or after June 15, 2003. Companies (other than small business issuers) must include the table of contractual obligations in registration statements, annual reports, and proxy or information statements that are required to include financial statements for the fiscal years ending on or after December 15, 2003. However, companies are encouraged to voluntarily comply with the new disclosure requirements before such compliance dates.

Additional Information

If you have any questions, please call Brian Ross at (212) 818-8610 or Marci J. Frankenthaler at (212) 818-8892. We intend to provide updates to this memorandum and our previous memoranda regarding the implementation of the provisions of the Sarbanes-Oxley Act of 2002 as warranted at our website www.graubard.com. When visiting our website for updates, please review the section entitled “Articles.”