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**MEMORANDUM**

July 31, 2003

**TO:** Clients and Friends

**FROM:** Graubard Miller

**SUBJECT:** A. Modified Section 302 and Section 906 Certification Requirements  
B. New Internal Control Provisions Under Sarbanes-Oxley Act

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**A. Certification of Disclosure in Exchange Act Reports**

*General*

On June 5, 2003, the SEC issued modified rules relating to the filing and language of certifications made under Section 302 and Section 906 of the Sarbanes-Oxley Act. These rules require that the certifications be included as exhibits to periodic reports rather than as part of the body of the report or signature page. These rules also account for certain certifications to be made in connection with the new internal control requirements that are discussed in Section B of this memorandum.

*Effective dates*

A company must comply with the modified certification requirements in all quarterly, semi-annual or annual reports due on or after August 14, 2003. To account for the differences between the effective dates of the new rules relating to internal control over financial reporting (discussed in Section B, below) and the effective dates relating to the modified language and filing requirement of the Section 302 certification, a company's certifying officers may temporarily modify the content of the Section 302 certification to eliminate certain references to internal control over financial reporting until such references are required as discussed in Section B and as set forth in the form of Section 302 certification attached to this memorandum.

### ***Filing of Sections 302 and 906 certifications***

Section 302 and 906 certifications must be included as exhibits to the periodic reports to which they relate. The Section 302 certification must be filed as Exhibit 31. The Section 906 certification must be included as Exhibit 32. It should be noted that the Section 906 certification is only required in periodic reports that contain financial statements, and even though included as an exhibit, it will be deemed “furnished” rather than “filed.” As a result, the Section 906 certification is not subject to liability under Section 18 of the Exchange Act and will not be automatically incorporated by reference into any filing under the Securities Act of 1933 or the Securities Exchange Act of 1934.

### ***Modified language of the Section 302 certification***

The following changes have been made to the language to be contained in a Section 302 certification:

- the addition of a statement that the company’s principal executive and financial officers are responsible for designing internal controls and procedures for financial reporting;
- the clarification that disclosure controls and procedures may be designed under the supervision of principal executive and principal financial officers;
- the term “internal controls” has been replaced with “internal control over financial reporting;”
- the provision of the certification relating to changes in internal controls has been amended so that it requires disclosure of changes that have materially affected or are reasonably likely to materially affect internal controls; and
- clarified that the statement as to effectiveness of disclosure controls and procedures must be as of the end of the period.

### ***Modified forms of Section 302 and Section 906 certifications***

Please see new forms of Section 302 and Section 906 certifications attached to this memorandum.

## **B. Management's Reports on Internal Control Over Financial Reporting**

### ***General***

On June 5, 2003, the SEC adopted final rules implementing the requirements of Section 404 of the Sarbanes-Oxley Act. As a result, public companies will be required to include in their annual reports on Form 10-K, 10-KSB, 20-F or 40-F, a report of management on the company's "internal controls over financial reporting."

### ***Effective dates***

A company that is an "accelerated-filer"<sup>1</sup> must include the internal control report in each annual report filed for fiscal years ending on or after June 15, 2004. All other issuers, including foreign issuers and small business issuers, will be required to include the report in each annual report filed for fiscal years ending on or after April 15, 2005.

### ***Contents of management's internal control report***

Under the SEC's final rules, each annual report on Form 10-K, 10-KSB, 20-F or 40-F must include management's internal control report setting forth:

- A statement of management's responsibility for establishing and maintaining adequate internal control over financial reporting;
- A statement identifying the framework used by management to evaluate the effectiveness of the company's internal control over financial reporting;
- Management's assessment of the effectiveness of the company's internal control over financial reporting as of the end of the company's most recent fiscal year, including a statement as to whether or not the company's internal control over financial reporting is effective;
- Disclosure of any material weaknesses in the company's internal control over financial reporting that management has identified; and
- A statement that the company's auditor has issued an attestation report on management's assessment of the company's internal control over financial reporting. This attestation report must be filed as part of the company's annual report.

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<sup>1</sup> An "accelerated filer" means a U.S. issuer meeting all of the following conditions as of the end of its fiscal year: (i) the aggregate market value of voting and non-voting common equity held by non-affiliates of the issuer is \$75 million or more; (ii) the issuer has been subject to the requirements of Section 13(a) or 15(d) of the Exchange Act for a period of at least 12 calendar months; (iii) the issuer has filed at least one annual report under Section 13(a) or 15(d) of the Exchange Act; and (iv) issuer is not eligible to use Forms 10-KSB or 10-QSB for its annual and quarterly reports.

### ***Definition of internal control over financial reporting***

Under the final rules, “internal control over financial reporting” is defined as a “process designed by, or under the supervision of, the registrant’s principal executive and principal financial officers, or persons performing similar functions, and effected by the registrant’s board of directors, management and other personnel, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles and includes those policies and procedures that:

- pertain to the maintenance of records that in reasonable detail accurately and fairly reflect the transactions and dispositions of the assets of the registrant;
- provide reasonable assurance that transactions are recorded as necessary to permit preparation of financial statements in accordance with generally accepted accounting principles, and that receipts and expenditures of the registrant are being made only in accordance with authorizations of management and directors of the registrant; and
- provide reasonable assurance regarding prevention or timely detection of unauthorized acquisition, use or disposition of the registrant’s assets that could have a material effect on the financial statements.”

### ***Recognized framework for internal controls***

Management’s evaluation of the effectiveness of the company’s internal control over financial reporting must be based on a “suitable recognized control framework that is established by a body or group that has followed due-process procedures, including the broad distribution of the framework for public comment.” The Committee of Sponsoring Organizations of the Treadway Commission (“COSO”) developed an internal control framework that was published in 1992. The SEC has stated that this COSO framework is an acceptable framework for purposes of management’s evaluation of internal control. It should be noted, however, that it is not mandated that the COSO framework be used and the SEC specifically notes that other frameworks may be utilized, including those that may have been formulated outside of the United States. Any framework that is ultimately used by management must be clearly identified in the report and must:

- be free from bias;
- permit reasonably consistent qualitative and quantitative measurements of a company’s internal control;
- be sufficiently complete so that the relevant factors that would alter a conclusion about the effectiveness of a company’s internal controls are not omitted; and
- it must be relevant to an evaluation of internal control over financial reporting.

### ***Evaluation of effectiveness***

The management's report must explicitly state whether or not the company's internal control over financial reporting is effective. The SEC will not permit management simply to provide a negative assurance that nothing has come to its attention suggesting that the company's internal control over financial reporting is not effective. Management's assessment must be based on procedures that are sufficient both to evaluate the design of the control and to test its operating effectiveness.

A non-comprehensive list of controls that are subject to assessment would include:

- controls over initiating, recording, processing and reconciling account balances, classes of transactions and disclosure and related assertions included in the financial statements;
- controls related to the initiation and processing of non-routine and non-systematic transactions;
- controls related to the selection and application of appropriate accounting policies; and
- controls related to the prevention, identification and detection of fraud.

### ***Location of the internal control report***

The final rules do not specify where management's internal control report must appear in the company's annual report. The SEC noted, however, that it expects that most companies will choose to place the report and the accountant's attestation report following the MD&A section or immediately preceding the company's financial statements.

### ***Quarterly evaluations***

The final rules also require management, together with the principal executive and principal financial officers of the company, to perform quarterly evaluations of changes that have materially effected or likely will materially affect the company's internal control over financial reporting. U.S. issuers are required to disclose material changes in their next quarterly periodic report, and foreign issuers are required to disclose such changes in their next annual report.

### **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](http://www.graubard.com). When visiting our website for updates, please review the section entitled "Articles."

**[FORM OF SECTION 302 CERTIFICATION  
PURSUANT TO RULE 13a-14(a) AND 15d-14(a) UNDER  
THE SECURITIES EXCHANGE ACT OF 1934, AS AMENDED]**

**[TO BE FILED AS EXHIBIT 31 TO ANNUAL AND QUARTERLY REPORTS]**

**CERTIFICATION**

I, \_\_\_\_\_ **[identify the certifying individual]**, certify that:

1. I have reviewed this **[specify report]** of **[identify small business issuer/registrant]**;

2. based on my knowledge, this 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 report;

3. based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the **[small business issuer][registrant]** as of, and for, the periods presented in this report;

4. the **[small business issuer's] [registrant's]** other certifying officers and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) **[and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f))][DO NOT NEED TO INCLUDE THIS LANGUAGE UNTIL THE FIRST ANNUAL REPORT REQUIRED TO CONTAIN MANAGEMENT'S INTERNAL CONTROL REPORT AND THEREAFTER]** for the **[small business issuer][registrant]** and have:

- (a) designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the **[small business issuer][registrant]**, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
- (b) **[Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;] [DO NOT NEED TO INCLUDE THIS LANGUAGE UNTIL THE FIRST ANNUAL REPORT REQUIRED TO CONTAIN MANAGEMENT'S INTERNAL CONTROL REPORT AND THEREAFTER]**

- (c) Evaluated the effectiveness of the **[small business issuer's][registrant's]** disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
- (d) Disclosed in this report any change in the **[small business issuer's][registrant's]** internal control over financial reporting that occurred during the **[small business issuer's][registrant's]** most recent fiscal quarter (the **[small business issuer's][registrant's]** fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the **[small business issuer's][registrant's]** internal control over financial reporting; and

5. The **[small business issuer's][registrant's]** other certifying officers and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the **[small business issuer's][registrant's]** auditors and the audit committee of the **[small business issuer's][registrant's]** board of directors (or persons performing the equivalent functions):

- (a) all significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the **[small business issuer's][registrant's]** ability to record, process, summarize and report financial information; and
- (b) any fraud, whether or not material, that involves management or other employees who have a significant role in the **[small business issuer's][registrant's]** internal control over financial reporting.

Date: \_\_\_\_\_

\_\_\_\_\_  
Name:

Title: **[title must indicate that signatory is principal executive officer or principal financial officer]**\*

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\* A separate certification must be provided for each principal executive officer and principal financial officer of the issuer.

**[FORM OF SECTION 906 CERTIFICATION]**  
**[TO BE FILED AS EXHIBIT 32 TO ANNUAL AND QUARTERLY REPORTS]**

**CERTIFICATION PURSUANT TO  
18 U.S.C. SECTION 1350  
AS ADOPTED PURSUANT TO  
SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002**

In connection with the \_\_\_\_\_ Report of \_\_\_\_\_ (the "Company") on Form 10-\_\_\_\_ for the period ended \_\_\_\_\_ as filed with the Securities and Exchange Commission (the "Report"), each of the undersigned, in the capacities and on the dates indicated below, hereby certifies pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, that:

1. the Report fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934; and
2. the information contained in the Report fairly presents, in all material respects, the financial condition and results of operation of the Company.

Dated: \_\_\_\_\_ Name: \_\_\_\_\_

Title: **[title must indicate that signatory is principal executive officer]**

Dated: \_\_\_\_\_ Name: \_\_\_\_\_

Title: **[title must indicate that signatory is principal financial officer]**