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MEMORANDUM

September 4, 2002

TO: Our Corporate Clients

FROM: Graubard Miller

SUBJECT: SEC Rules Requiring Financial Statement Certifications and Accelerated Filing of Annual, Quarterly and Section 16 Reports

The SEC has adopted rules which:

- implement Section 302 (financial statement certifications) of the Sarbanes-Oxley Act;
- implement Section 403 (Section 16 reporting) of the Sarbanes-Oxley Act; and
- phase in, over time, accelerated annual and quarterly report filing deadlines for larger companies.

This memorandum supplements our August 5, 2002 memorandum and describes the key provisions of the new SEC rules. We will continue to issue additional memoranda as the SEC continues to adopt rules implementing the provisions of the Sarbanes-Oxley Act and other changes under the federal securities laws.

1. Section 302 Certifications by CEOs and CFOs

This requirement applies to annual and quarterly reports and, ultimately, may apply to proxy statements.

The certification requirement applies to all issuers filing annual reports on Forms 10-K, 10-KSB, 20-F and 40-F, and quarterly reports on Forms 10-Q and 10-QSB on and after August 29, 2002 under either Section 13(a) or 15(d) of the Exchange Act, including small business issuers and foreign private issuers. The SEC has proposed that the requirement also apply to proxy statements and is requesting comment on this issue.

There are mandated representations that must be made in a proper certification.

An issuer's principal executive officer and principal financial officer are each required to make the certifications set forth on **Exhibit A** hereto.

Issuers must establish disclosure control and procedures

The new rules require issuers to establish and maintain an overall system of "disclosure controls and procedures." The SEC defines "disclosure controls and procedures" as those controls and other procedures of an issuer that are designed to ensure that information required to be disclosed in the period reports is recorded, processed, summarized and reported within the appropriate time periods. The disclosure controls and procedures should ensure that the information required to be disclosed by an issuer in the Report is accumulated and communicated to the CEO and CFO in such a manner as to allow timely decisions regarding required disclosure.

The new rules also require issuers (including foreign private issuers), within the 90-day period prior to the filing date of each covered report, to carry out an evaluation of the effectiveness of the design and operation of the disclosure controls and procedures under the supervision and with the participation of the issuer's management, including the certifying officers.

Note, that the SEC uses the term "disclosure controls and procedures" instead of the pre-existing term "internal controls" in order to incorporate a broader concept of controls and procedures designed to ensure compliance with disclosure requirements generally, including the quality and timeliness of disclosure. In contrast, the term "internal controls," as embodied in Section 13(b) of the Exchange Act, pertains to the accuracy and reliability of an issuer's financial information and control of assets only.

Our current recommendations:

We believe that the following steps should be taken in response to the new certification and disclosure control and procedures requirements:

- Each CEO and CFO should review existing procedures for preparing SEC filings and evaluate whether the procedures are adequate.
- Management, including the CEO and CFO, should schedule drafting sessions to prepare each of the company's quarterly and annual reports in order to review the disclosures being made in the applicable report.
- Each CEO and CFO should obtain reports from each of the company's division and department heads. It will be the responsibility of the CEO and CFO to review these reports and to ask the appropriate questions in order to support the disclosures being made and to support their personal certifications.
- Adopt procedures that ensure that appropriate reports are provided to the CEO and CFO throughout the reporting period in order for the CEO and CFO to

become familiar with the information and to have adequate time to analyze the information prior to the filing deadline for the report.

- Each CEO and CFO should review the company's financial control procedures to determine whether they are adequate to provide accurate results and should discuss these procedures with the company's outside auditors.
- Each CEO and CFO should become familiar with the people involved in the preparation of the financial reports of the company and should meet with these people on a consistent basis. The CEO and CFO should determine whether these people are the appropriate people to be involved in the preparation of financial reports and whether they have any concerns regarding the disclosures being made.
- Establish a compliance committee that is charged with considering the materiality of information and determining disclosure obligations. This committee would report to senior management, including the certifying officers. The composition of the committee will vary by organization but it should, at a minimum, include key members of the accounting/financial, legal and operations staffs.

This Section 302 certification requirement is in addition to the Section 906 certification requirement.

The certifying officers must make the Section 302 certification as well as the Section 906 certification. Under Section 906, a company's CEO and CFO must certify that:

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

2. Adoption of Accelerated 10-K and 10-Q Deadlines; Access to Reports on Company Web Sites

The SEC has determined to accelerate, over time, the filing deadlines for quarterly reports on Form 10-Q and annual reports on Form 10-K. The SEC also adopted new disclosure rules regarding access to these reports on company web sites.

These accelerated deadlines apply to larger companies.

The accelerated requirements do not apply to certain small business issuers or foreign private issuers. They apply only to domestic companies that:

- Have a public float of at least \$75 million;
- Have been reporting for at least 12 months; and
- Have previously filed one annual report.

The new deadlines are being phased in, over time.

The changes to filing deadlines will be phased in as follows:

- For reports being filed in 2004: Any subject issuer with a fiscal year ending on or after December 15, 2003 will file its 10-K within 75 days of fiscal year end and will file all 10-Qs within 40 days of each fiscal quarter end.
- For reports being filed in 2005 and thereafter: 10-Ks will be filed within 60 days of fiscal year end and 10-Qs will be filed within 35 days of each fiscal quarter end.

Any company to which these new deadlines will apply is also subject to a new requirement mandating that its reports be accessible on its company web site.

An accelerated filer is required to disclose in its Form 10-K, beginning with reports for fiscal years ending on or after December 15, 2002, whether the company makes its periodic and current reports available, free of charge, on its web site as soon as reasonably practicable after these reports are filed with, or furnished to, the SEC.

3. Section 16 Changes

The SEC adopted rules (SEC Release No. 34-46421) implementing the accelerated filing deadline applicable to change of beneficial ownership reports required to be filed by officers, directors and principal security holders under Section 16(a) of the Exchange Act, as amended by Section 403 of the Sarbanes-Oxley Act. The rules:

- Require that, effective August 29, 2002, insiders (*i.e.*, directors, officers and 10% holders) stock transactions must be reported on Form 4 and filed with the SEC within two business days after the transaction is executed;
- Require certain transactions between officers or directors and the issuer under Rule 16b-3 previously reportable on an annual basis on Form 5 to be reported within two business days on Form 4 (e.g., option grants, cancellations and repricing of stock options). It should be noted that the new rules do not change the exemptions from Section 16 reporting available to qualified plans, excess benefit plans and stock purchase plans under Section 3(c) and to dividend reinvestment plans under Rule 16a-11; and

- Modify the Form 4 reporting deadline for the following transactions:
 - Contracts, instructions or written plans under Rule 10b5-1(c); and
 - Specified plan transactions defined as “Discretionary Transactions,” such as fund-switching transactions, pursuant to employee benefit plans.
- For these transactions, the reports must be filed within two business days after the insider receives notice of the transaction, but the notification date may be no later than the third business day after the transaction is executed and the insider does not select the date of execution.

The new rules also require that acquisitions of securities under \$10,000 from the issuer (including from an employee benefit plan sponsored by the issuer) are not eligible for reporting on Form 5 and must be reported on Form 4 in two business days.

Our current recommendations:

Issuers should evaluate the existing compliance procedures for their insiders and take an active role in assisting insiders in completing and filing reports of transactions. Issuers must immediately inform their insiders of the new filing requirements and revise internal compliance procedures as needed.

Such revisions may include:

- designation of a compliance officer and supporting personnel;
- imposition of mandatory pre-clearance requirements on trades by insiders and their family members;
- implementation of interface procedures with one or more brokers to ensure timely notice of transactions;
- establishing notification procedures with employee benefit plan administrators;
- obtaining powers of attorney from insiders to allow reports to be signed and filed on their behalf; and
- early adoption of electronic filing procedures.

EDGAR filing of forms

Although the new SEC rules do not yet require mandatory EDGAR filing of Form 4s, the SEC encourages companies to begin filing electronically. Not later than July 30, 2003, (i) insiders will be required to file all Forms 4 electronically; (ii) if the issuer maintains a web site, such issuer will be required to post a copy of the filing on such site by the end of the business

day following such electronic filing; and (iii) the SEC will be required to make the filing available on its site within the same time frame.

4. Additional Information

If you have any questions, please call Brian Ross at (212) 818-8610 or Marci J. Frankenthaler at (212) 818-8892. It is expected that additional guidance and clarification with respect to the Sarbanes-Oxley Act will be forthcoming from the SEC shortly. We intend to provide updates to this memorandum and our August 5, 2002 memorandum as warranted at our website www.graubard.com. When visiting our website for updates, please review the section entitled “Articles.”

Issuers must include the certifications set forth below in a signed certificate immediately following the signature sections of the report. The certification will be deemed to be "filed" with the SEC for liability purposes.

The undersigned, with respect to this Report, hereby certifies, pursuant to Rules 13a-14 and 15d-14 promulgated under the Exchange Act of 1934, as amended, that:

- he or she has reviewed the 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;
- 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 and results of operations of the issuer as of and for the periods presented in the Report;
- he or she and the other certifying officers:
 - are responsible for establishing and maintaining disclosure controls and procedures for the issuer;
 - 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 within 90 days of the 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.
- 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.