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MEMORANDUM

April 22, 2003

TO: Clients and Friends
FROM: Graubard Miller
SUBJECT: New SEC Rules relating to Audit Committee Financial Experts

As required by Section 407 of the Sarbanes-Oxley Act of 2002 (“Act”), the SEC has adopted rules relating to audit committee financial experts. The following is a description of these new rules.

Disclosure Obligations

The SEC has adopted new rules that require a company to disclose:

- whether it has at least one “audit committee financial expert” (as that term is newly defined) serving on its audit committee;
- the name of such expert; and
- whether the expert is independent of management.

A company that does not have at least one audit committee financial expert must disclose this fact and provide an explanation as to why it does not. All of the foregoing disclosure must be made in the company’s annual report filed on Form 10-K, 10-KSB, 20-F or 40-F.

Definition of “audit committee financial expert”

The rules define an “audit committee financial expert” as a person with the following attributes:

- An understanding of generally accepted accounting principles (“GAAP”) and financial statements;

- The ability to assess the general application of such principles in connection with the accounting for estimates, accruals and reserves;
- Experience preparing, auditing, analyzing or evaluating financial statements that present a breadth and level of complexity of accounting issues that are generally comparable to the breadth and complexity of issues that can reasonably be expected to be raised by the registrant's financial statements, or experience actively supervising one or more persons engaged in such activities;
- An understanding of internal controls and procedures for financial reporting; and
- An understanding of audit committee functions.

The rules state that the person may acquire the foregoing attributes through one or more of the following:

- Education and experience as a principal financial officer, principal accounting officer, controller, public accountant or auditor or experience in one or more positions that involve the performance of similar functions;
- Experience actively supervising and principal financial officer, principal accounting officer, controller, public accountant, auditor or person performing similar functions.
- Experience overseeing or assessing the performance of companies or public accountants with respect to the preparation, auditing or evaluation of financial statements; or
- Other relevant experience.

If a person qualifies as an audit committee financial expert, the new rules require the issuer to disclose a brief listing of that person's relevant experience.

The SEC has noted that this expertise should be the product of experience and not merely education. However, the rules do not require that the person have previous experience in the same industry as the company, or that the person's experience be with a company subject to Exchange Act reporting requirements, so long as the person's experience is "generally comparable" based on the breadth and level of complexity of the accounting issues.

It should be noted that the fact that a person has previously served on an audit committee, was a public accountant or auditor or principal financial officer, controller or principal accounting officer or has experience in a similar position does not, by itself, justify deeming the person an audit committee financial expert.

Board Obligations

Although neither the Act nor the new rules specifies who at a company should determine whether a person qualifies as an audit committee financial expert, the SEC “believe(s) that the board of directors in its entirety. . . is best equipped to make the determination” and “should consider all available facts and circumstances, and. . . examine a person’s experience and knowledge as a whole.” The SEC further stated that it is “appropriate” that “any such determination [made by the board] be subject to relevant state law principles such as the business judgment rule.”

Personal Exposure of Financial Expert

The rules expressly state that the designation and identification of an audit committee financial expert does not enlarge that person’s duties as a director or member of the audit committee, or affect the duties, obligation or liabilities to which any member of the company’s audit committee or board of directors is subject. In addition, the safe harbor provides that an audit committee financial expert is not deemed an “expert” for any purpose (including, without limitation, for purposes of Section 11 of the Securities Act of 1933) as a result of being designated or identified as an audit committee financial expert.

Rules and Regulations Cites

The new rules will be embodied in Item 401(h) of Regulation S-K and 401(e) of Regulation S-B (Item 16A of Form 20-F and 8A of Form 40-F). The requirement to provide the new audit committee disclosure in the annual report is included in Part III of Forms 10-K and 10-KSB, enabling a domestic company that voluntarily chooses to include this disclosure in its proxy or information statement to incorporate this information by reference into its Form 10-K or 10-KSB if it files the proxy or information statement with the SEC no later than 120 days after the end of the fiscal year covered by the Form 10-K or 10-KSB.

Effective Date

Companies, other than small business issuers, must comply with the audit committee financial expert disclosure requirements promulgated under Section 407 of the Act in their annual reports for fiscal years ending on or after July 15, 2003. Small business issuers must comply with the audit committee financial expert disclosure requirements in their annual reports for fiscal years ending on or after December 15, 2003.

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.”