Hale and Dorr LLP

September 18, 2002

corporate advisor

Preparation and Certification of Periodic SEC Reports

Executives of public companies are now required to include two different personal certifications in each annual and quarterly report filed by their companies with the SEC. In addition, public companies are now subject to new SEC rules requiring evaluations of, and disclosures about, their:

- "internal controls," which refers to controls relating to financial reporting and control of assets; and
- "disclosure controls and procedures," a new concept referring to controls and procedures relating to the timely and accurate reporting of information required to be disclosed in SEC reports[1].

Following a brief overview of the new rules, which are a result of the enactment of the Sarbanes-Oxley Act on July 30, 2002 and the adoption by the SEC on August 29, 2002[2] of new rules implementing certain of the Act's requirements, this *Corporate Advisor* recommends procedures for companies to follow in light of these new certification and disclosure requirements.

Overview Of New Rules

CEO and CFO Certifications

Section 906 certifications. Section 906 of the Sarbanes-Oxley Act, which took effect on July 30, 2002, requires each periodic report containing financial statements that is filed with the SEC under Section 13(a) or 15(d) of the Exchange Act of 1934[3] to be accompanied by a written statement by the CEO and the CFO[4] of the company, certifying that the report fully complies with the requirements of the Exchange Act, and that the information contained in the report fairly presents, in all material respects, the financial condition and results of operations of the company.

Our recommended text for the Section 906 certification follows this article as Exhibit A. While some of the Section 906 certifications filed to date have modified the statutory language to add various qualifiers (particularly a knowledge qualifier), we do not recommend making any changes to the statutory language, since Section 906 does not indicate that any deviations are permitted and the Department of Justice (which has jurisdiction over the Section 906 certification) has not indicated its view as to whether modifications of the certification are permissible. Regardless of whether a knowledge qualifier is included, Section 906, as discussed below, only provides criminal sanctions for a knowing violation.

An officer who knowingly makes a false certification under Section 906 is subject to a fine of up to $1 million and imprisonment of up to 10 years. An officer who willfully makes a false certification under Section 906 is subject to a fine of up to $5 million and imprisonment of up to 20 years. Neither Congress, the SEC nor the Department of Justice has given any guidance as to what the difference is between "knowingly" and "willfully" making a false certification. Depending on the circumstances, false certifications may also be prosecuted under other criminal liability statutes that provide stiff penalties, including imprisonment of up to 25 years.

CEOs and CFOs are now required to certify every 10-K and 10-Q —TWICE.

[1] This *Corporate Advisor* is not intended for mutual funds or issuers of asset-backed securities, to which a different set of certification rules apply and for which different procedures would be applicable.

[2] The new SEC rules discussed in this *Corporate Advisor* generally take effect on August 29, 2002. However, there are transition rules which defer the effectiveness of some provisions of these new rules with respect to quarterly or annual reports for periods ended prior to August 29, 2002.

[3] It is not clear from the language of Section 906 whether a current report on Form 8-K that includes financial statements must include this certification. However, the general view is that a Form 8-K, though filed under Section 13(a) and 15(d) of the Securities Exchange Act, is not a "periodic" report and therefore does not need to include the Section 906 certification. The SEC release adopting the new Rule 13a-14 certification requirement indirectly supports this conclusion.

[4] Section 906 requires that a certification be executed by the "chief executive officer" and the "chief financial officer" of the company, whereas other provisions of the Sarbanes-Oxley Act and the new SEC rules impose certification and controls evaluation obligations on the "principal executive officer" and "principal financial officer" of the company. Because it is unlikely that there will be any distinction between the chief and the principal executive officer or the chief and the principal financial officer, for ease of reference this *Corporate Advisor* refers to the CEO and the CFO.

Rule 13a-14 certifications. As mandated by Section 302 of the Sarbanes-Oxley Act, on August 29, 2002 the SEC adopted Rule 13a-14[5], which imposes a separate, additional certification requirement. Rule 13a-14 requires that each annual and quarterly report filed with the SEC include a certification of the CEO and the CFO that is significantly more extensive than the certification required under Section 906. The text of the certification required under Rule 13a-14 follows this article as Exhibit B. The rule prohibits any changes to the required language of the certification, regardless of how insignificant the change may seem.

The SEC has provided the following important guidance relating to the Rule 13a-14 certification:

- The certification regarding fair presentation of the financial statements and other financial information encompasses the financial statements, financial statement footnotes, selected financial data, MD&A and any other financial information in the report.
- Although several items in the certification are limited to the knowledge of the certifying executive, the SEC believes that existing case law establishes a general duty of inquiry regarding what is disclosed in an SEC report.
- The SEC has acknowledged the narrower scope of a Form 10-Q as compared to a Form 10-K and indicated that (1) the certification is made in the context of the information required to be disclosed in the report in which the certification is included and (2) the certification requirement is not intended to require expansion of a Form 10-Q to satisfy the disclosure requirements of a Form 10-K.
- For a Form 10-K that forward-incorporates material from the company's proxy statement—that is, the proxy statement is not on file at the time the Form 10-K is filed, but designated information in the proxy statement is deemed incorporated by reference into the Form 10-K at such later time that the proxy statement is filed—the certification covers the designated information in the proxy statement when filed.

A CEO or CFO who provides a false certification under Rule 13a-14 may be subject to an enforcement action by the SEC for violating the SEC's reporting and disclosure requirements and may also be subject to investor lawsuits under antifraud rules such as Rule 10b-5. In addition, it is possible that a false certification may be prosecuted under criminal liability statutes that provide penalties that include imprisonment of up to 25 years.

Evaluations and Disclosures Concerning Controls

Public companies are now subject to legal requirements concerning the maintenance, evaluation and disclosure of two different types of controls:

- "internal controls," which is defined in AU Section 319 of the AICPA Codification of Statements on Auditing Standards, and refers to the controls and procedures for ensuring the reliability of financial reporting, the proper execution and recording of transactions and compliance with applicable laws and regulations; and
- "disclosure controls and procedures," which is a new term under the federal securities laws that refers to the controls and procedures for ensuring that information—including non-financial information—required to be disclosed in SEC reports is accurately recorded, processed, summarized and reported within the time periods specified in SEC rules.

Internal controls. Section 13(b) of the Exchange Act has for a number of years required that public companies maintain a system of internal controls. Section 404 of the Sarbanes-Oxley Act directs the SEC to promulgate rules requiring public companies to include in each annual report filed with the SEC a report on management's evaluation of the effectiveness of its internal controls. The SEC has not yet promulgated these rules, but is expected to do so in the near future.

The SEC on August 29, 2002 also amended Form 10-K and Form 10-Q, and amended Regulation S-K to add a new Item 307, which together require public companies to include in each annual and quarterly report filed with the SEC a separate item (entitled "Controls and Procedures") that includes disclosure concerning, among other things, changes affecting the company's internal controls since their most recent evaluation. Moreover, the Rule 13a-14 certification requires disclosure by the CEO and the CFO to the company's auditors and audit committee concerning deficiencies in the design or operation of the company's internal controls and any fraud involving employees with a significant role in the internal controls.

Disclosure controls and procedures. Rule 13a-15 under the Exchange Act, which took effect on August 29, 2002, requires public companies to maintain disclosure controls and procedures and to evaluate, within 90

[5] In addition to Rule 13a-14 and Rule 13a-15 (which is discussed later in this *Corporate Advisor*), the SEC adopted corresponding rules—Rules 15d-14 and 15d-15—that apply to companies that do not have stock registered under Section 12 of the Exchange Act but file reports under Section 15(d).

days prior to the filing of each annual and quarterly report, the effectiveness of the design and operation of its disclosure controls and procedures. Pursuant to the amendments to Form 10-K and Form 10-Q and new Regulation S-K Item 307, the results of this evaluation must be disclosed in each annual and quarterly report in the new "Controls and Procedures" section of the report. In addition, the Rule 13a-14 certification requires that the CEO and the CFO certify in each annual and quarterly report as to the design and evaluation of the disclosure controls and procedures as well as the report on such evaluation.

What Companies Should Do

In light of the scope of the certifications which the company's CEO and CFO are required to make, the significant penalties for a false certification, and the additional disclosure requirements concerning the company's internal and disclosure controls, we recommend that the company establish a more formalized set of procedures for the preparation of periodic SEC reports[6]. Although the particular steps taken will vary from company to company, the following procedures should be considered.

Initial Steps

The following steps should be taken as soon as practicable.

1. *Form a disclosure committee*. The SEC, in both its June 2002 release proposing a certification requirement and its August 2002 release adopting Rule 13a-14, recommended that each public company form a disclosure committee to assist it in fulfilling its disclosure obligations under the securities laws. While the composition of a disclosure committee would vary from company to company, the SEC has specifically identified the following persons as possible members of the committee:

- the principal accounting officer or controller;
- the general counsel or senior in-house attorney responsible for disclosure matters;
- the head of the company's risk management and/or internal audit functions; and
- the senior investor relations officer.

The company should also consider whether it would be appropriate, in light of the company's organizational structure, for the disclosure committee to include other individuals, such as the heads of one or more of the principal business units of the company. The disclosure committee's role should generally encompass at least the following:

- participating in the company's evaluations of its internal controls and its disclosure controls and procedures;
- periodically assessing the adequacy of the company's disclosure policy and practices;
- assessing the materiality of information that might be publicly disclosed;
- reviewing press releases and other public communications by the company; and
- reviewing each periodic SEC report.

2. *Document the process to be followed in preparing periodic SEC reports*. The company should prepare a formal checklist or policy that outlines the process to be followed in the preparation and review of periodic SEC reports. This process should incorporate the suggested procedures outlined in the remainder of this *Corporate Advisor* that the company chooses to adopt, as well as any other steps that the company deems appropriate in light of its particular circumstances. We recommend that this document be structured in a manner that enables the company to easily document the procedures that were followed with respect to each periodic SEC report that is filed.

3. *Report to the audit committee on the process to be followed*. After the company has documented the process it will follow in the preparation of its periodic SEC reports, it should meet with the audit committee to review that process and incorporate any further suggestions from the audit committee.

Evaluations of Controls and Procedures for Collecting and Reporting Information

Newly adopted Rule 13a-15 requires public companies to evaluate their disclosure controls and procedures on a quarterly basis. While it is not known whether the SEC will require a quarterly—or just an annual—evaluation of internal controls, we recommend that, in light of the certifications which the CEO and the CFO are required to make concerning each periodic SEC report, the company also conduct a quarterly evaluation of its internal controls.

We offer the following suggestions to assist the company in designing and performing its evaluations of controls and procedures:

[6] References in this *Corporate Advisor* to the term "periodic SEC reports" mean annual reports on Form 10-K and quarterly reports on Form 10-Q. However, the company's disclosure controls and procedures are also required to ensure accurate and timely disclosure in Form 8-Ks and proxy statements, and many of the recommendations set forth in this *Corporate Advisor* regarding the preparation and filing of periodic SEC reports are applicable to other SEC filings.

(continued on page 4)

1. *Document the company's disclosure controls and procedures and its internal controls*. This documentation does not need to encompass every aspect of the company's controls, but should cover the key features. Documenting these controls should help a company respond to a claim that its disclosure controls and procedures or its internal controls are not adequate.

2. *Involve the CEO and the CFO in the evaluations*. Both the SEC rule requiring evaluations of disclosure controls and procedures and the Rule 13a-14 certification requirement make it clear that the CEO and the CFO are responsible for maintaining the company's disclosure controls and procedures and must participate in their evaluations. Accordingly, while many aspects of the evaluations can be conducted by others, the CEO and the CFO should oversee the evaluations and receive direct reports on their results. The CEO and the CFO should also meet with each other to discuss their conclusions concerning the adequacy of the controls and how they might be improved, and should regularly inquire whether those who report to them have ideas concerning how the controls should be improved.

3. *Consult with its independent auditors in designing the internal controls evaluations*. Public accounting firms have significant experience in designing, implementing and evaluating financial systems and controls, and the company should tap this expertise in formulating its own evaluation plan. The company should also review any recent management letters provided by its independent auditors and ensure that its evaluations encompass any areas of deficiency noted in those letters.

4. *Consult with its senior business, internal audit and legal personnel in designing the evaluations*. The disclosure controls and procedures that must be evaluated are not confined to financial controls. The evaluations should encompass any controls or procedures of the company designed to ensure that the business and legal information required in periodic SEC reports is properly collected and disclosed. It is therefore important to involve non-financial executives in both designing and performing the evaluations. For example, the company should take affirmative steps to notify the appropriate employees of the company of the information that must be included in periodic SEC reports—such as litigation, compensation information and material contracts—and instruct them to communicate that information in a timely manner to the company personnel responsible for preparing the reports.

5. *Plan for accelerated SEC reporting deadlines*. The SEC has recently adopted rules providing that certain public companies—generally companies with a public float of at least $75 million that have been filing SEC reports for at least one year—will eventually be required to file Form 10-Qs within 35 days after quarter-end and Form 10-Ks within 60 days after year-end. The accelerated filing deadlines will be phased in over a period of three years. The first report affected would be the Form 10-K for a fiscal year ending on or after December 15, 2003, which must be filed 75 days after year-end; Form 10-Qs for the quarters of the following year would be due 40 days after quarter-end. It is therefore critical that the company's controls and procedures be sufficiently robust to accommodate these accelerated filing requirements.

6. *Schedule the evaluations so that they are completed by the end of the quarter.* Rule 13a-15 requires that the disclosure controls and procedures evaluations take place as of a date within 90 days prior to the filing of each periodic SEC report. It is currently unclear when the evaluation of internal controls will have to be completed. To increase the likelihood that the preparation of a periodic SEC report benefits from the correction of any weaknesses identified in these evaluations, the evaluations should be completed as early as practicable. Consequently, we recommend that the evaluations be commenced several weeks before the end of each quarter and be completed by the end of the quarter.

7. *Address identified deficiencies in a timely manner.* In order for the CEO and the CFO to be able to make the required certifications for each periodic SEC report, any material deficiencies in the company's internal controls and its disclosure controls and procedures should be promptly addressed. Another reason for taking prompt action is that each periodic SEC report must include disclosure about the effectiveness of such controls and procedures. This required disclosure will be significantly more palatable if any description of weaknesses or deficiencies can be accompanied by a statement that such deficiencies have been addressed.

Closing of Books and Preparation of Periodic SEC Reports

We recommend that the company follow the procedures described below concerning the compilation of the financial and other information required for periodic SEC reports and the preparation of the reports:

1. *Prepare and distribute a timetable for the preparation of each earnings press release and the corresponding periodic SEC report*. This timetable should indicate the

dates and responsible parties for the distribution of the draft press release and report, the submission of comments, and other significant aspects of the preparation and review process, such as audit committee meetings. We recommend that the first complete draft of a periodic SEC report be distributed to the primary reviewing parties at least 10 days prior to the required filing date in the case of a Form 10-Q and at least three weeks prior to the required filing date in the case of a Form 10-K. Managing this timetable will become more of a challenge when the accelerated filing dates for many public companies are fully implemented.

2. *Meet with its independent auditors to discuss key accounting issues affecting the financial results*. As part of the process of preparing the financial statements and the periodic SEC report, members of the company's financial organization should meet with the company's independent auditors to discuss any material accounting issues that would affect those financial statements or report, including:

- the accounting policies, judgments and estimates that are important to the company's financial statements;
- any issues relevant to the company that have been receiving a significant amount of attention from the SEC or investors, such as the use of reserves, off-balance-sheet liabilities, related party transactions, restructuring charges, write-downs of goodwill or other assets, and derivative contracts; and
- any recent changes in applicable accounting standards.

3. *Remember that compliance with GAAP is not enough*. The SEC and other regulators have been stressing the importance of presenting financial statements and other information, such as MD&A, in a manner that is easily understandable—or "transparent"—and not misleading. The SEC stated in the release adopting the Rule 13a-14 certification requirement that "presenting financial information in conformity with GAAP may not necessarily satisfy obligations under the antifraud provisions of the federal securities laws." In the SEC's view, a "fair presentation" of financial results encompasses (1) the selection of appropriate accounting policies, (2) proper application of appropriate accounting policies, (3) disclosure of financial information that is informative and reasonably reflects the underlying transactions and events and (4) the inclusion of any additional disclosure necessary to provide investors with a materially accurate and complete picture of the company's financial condition, results of operations and cash flows.

4. *Consult with the audit committee prior to the public announcement of quarterly financial results*.

We recommend that the company, prior to the public announcement of its financial results, hold an audit committee meeting, with its independent auditors participating, at which:

- management reports to the audit committee on the company's results of operations for the quarter and its quarter-end financial position;
- the company's independent auditors report to the audit committee on the SAS 71 review or year-end audit of such financial statements performed by the auditors;
- the CEO and the CFO report to the audit committee on the evaluations of the company's internal controls and its disclosure controls and procedures;
- the audit committee is given the opportunity to ask questions of management and the auditors concerning accounting policies, judgments and estimates and other issues affecting the reported financial results, including a session with the auditors at which management is not present; and
- the audit committee is given the opportunity to comment on the company's draft earnings press release.

5. *Pay extra attention to any pro forma financial information included in the report*. The company should take the following steps with regard to any pro forma financial information presented in the report[7]:

- consider discontinuing the practice of reporting pro forma results, due to the increasingly negative public perception of this practice;
- present GAAP financial results before any pro forma results;
- clearly explain the basis for any pro forma presentation —that is, what adjustments have been made to the company's GAAP financial results to produce the pro forma results;
- reconcile the pro forma results to GAAP financial results by quantifying—generally in tabular format—each of the adjustments made to the GAAP numbers;
- specifically identify any significant non-recurring items that are not excluded from the pro forma results;
- explain why the company believes the pro forma results are meaningful and helpful to investors;

[7] The SEC is required to adopt, no later than January 26, 2003, rules mandating that pro forma financial information included in SEC reports be presented in a manner that does not contain an untrue statement of a material fact or omit to state a material fact necessary to make the information not misleading and reconciles it with GAAP financial results.

(continued on page 6)

- be consistent in the preparation of pro forma results —that is, the pro forma adjustments should be consistently applied in all periods presented, and any changes made from a prior reporting period in the company's definition or calculation of pro forma results should be disclosed;
- state that the pro forma results have not been prepared in accordance with GAAP and should not be relied upon as a substitute for GAAP financial results; and
- review the overall pro forma presentation to ensure that it is not misleading and does not obscure material information about the company.

6. *Draft the MD&A from scratch each quarter.* Many companies have fallen into the habit of taking the MD&A from the prior fiscal period and revising it by adding the financial information for the current period and, where there are obvious changes, updating the explanations. To assist the company in thinking critically and reporting accurately about the explanations and trends that must be addressed in each MD&A, we recommend that the person responsible for preparing the first draft of the report start with a "clean piece of paper" and draft the MD&A from scratch.

7. *Address open SEC comments in the report.* If the SEC has recently reviewed a registration statement of the company or any of the company's periodic reports, it is possible that the disclosure required by the company in response to certain of these SEC comments has not yet been resolved between the company and the SEC. In addition, the SEC often provides "future filings" comments that do not require any different or added disclosure in the registration statement or report being reviewed but which direct the company to comply with the comment in future filings. The company should determine whether it is the subject of any unresolved or "future filings" SEC comments and address those comments in the report. If there is an unresolved comment that would significantly affect the company's financial statements or other disclosure if complied with, it may be advisable to disclose the existence of the unresolved comment and the changes to the company's financial statements or other disclosure that would result if the company ultimately acceded to the comment. The CEO and CFO should also consider whether the existence of any unresolved comments calls into question their ability to make the required certifications on the report.

8. *Ensure that the report contains all required information.* In addition to complying with GAAP and the requirements of the applicable SEC form, the company should ensure that each periodic SEC report complies with the following new requirements imposed by the Sarbanes-Oxley Act or new SEC rules:

- Each periodic SEC report must include, as a new item entitled "Controls and Procedures," a report on the evaluation by the company of the effectiveness of its disclosure controls and procedures, as well as disclosure of changes affecting its internal controls since their most recent evaluation. In addition, as noted above, the SEC intends to promulgate additional rules requiring the disclosure in each annual report of certain information about the company's internal controls.
- Effective following the registration of accounting firms with the new Public Company Accounting Oversight Board, each report must reflect all material correcting adjustments that have been identified by the company's independent auditors in accordance with GAAP and the rules and regulations of the SEC.
- The SEC must adopt, no later than January 26, 2003, rules requiring the disclosure of all material off-balance sheet transactions, arrangements, obligations and other relationships of the company with unconsolidated entities or other persons. Even in advance of the SEC rule-making on this subject, the company should include this disclosure in its periodic SEC reports.
- The SEC must adopt, no later than January 26, 2003, rules requiring a public company to disclose in its periodic SEC reports whether or not (and if not, why not) its audit committee is comprised of at least one member who is a financial expert. The term "financial expert" will be defined in future SEC rules that are likely to be in effect for periodic SEC reports filed by the company after January 1, 2003.
- The report must include or be accompanied by the required CEO and CFO certifications discussed in this *Corporate Advisor.*

Review of Periodic SEC Reports

Listed below are recommended steps for review of draft SEC reports prepared by the company:

1. *Designate one of the reviewing parties with responsibility for performing a technical compliance check.* Ensuring that the report contains all information required by the applicable SEC form and the related rules is particularly important in light of the fact that Section 906 of the Sarbanes-Oxley Act requires the CEO and the CFO to certify that the report fully complies with the requirements of the applicable provisions of the

Exchange Act. This compliance check is generally done by either in-house counsel or outside securities counsel.

2. *Distribute the draft report for review by the company's disclosure committee and by other appropriate internal personnel*. We recommend that the draft report be reviewed by both the company's disclosure committee and by other appropriate company personnel, such as the senior executive at each principal business unit of the company (including each unit or division that must be reported as a separate business segment under applicable accounting rules) if such person is not on the disclosure committee. We offer the following suggestions for the process of collecting comments from these individuals:

- Because some of the individuals participating in the review process (particularly business unit heads) might be expected to contribute meaningful input for only certain sections of the report, it may be appropriate for the person distributing the draft report to identify those sections of the report on which each reviewing person should focus his or her attention. This is particularly true of the Form 10-K.
- If logistical considerations permit, we recommend that each reviewing person provide his or her input in person or via telephone—generally to a designated member of the disclosure committee—rather than simply returning written comments, because of the opportunity a personal interchange provides for explanations and questions with respect to the comments. While some companies may find it helpful to hold a meeting at which comments are collected from and discussed among all of the internal reviewers, this may not be practicable for all companies.
- Some companies have begun a practice of obtaining from each internal reviewer of the report a certification as to the accuracy and completeness of the report, as a means of supporting the certifications that must be made by the CEO and the CFO. An argument in favor of such internal certifications is that company personnel are more likely to carefully and thoughtfully review the report if they are required to make a written certification with respect to its contents. A possible countervailing consideration is the difficult issues that may be presented if an executive reviewing the report refuses—possibly for reasons unrelated to his or her views as to the accuracy and completeness of the report—to sign an internal certification. Whether it is advisable for a company to institute a process of obtaining internal certifications will vary from company to company, and will depend in part upon non-legal considerations such as company culture.

If the company is considering requiring internal certifications, we recommend that the company consult with its outside securities counsel concerning both the content of the certifications and the process for obtaining them. If an internal certification program is adopted, compliance with the program must be rigorously followed.

3. *Distribute the draft report for review by the company's independent auditors and by outside securities counsel*. For Form 10-Qs, it will generally be sufficient if the independent auditors and attorneys convey their comments separately to a designated person at the company. However, in light of the significantly greater scope of the information that must be included in a Form 10-K, we recommend that the company hold a "drafting session"—akin to the type of session that is held in preparing a registration statement for a public offering—at which representatives of the company, the company's auditors and outside securities counsel are present to provide comments on the Form 10-K and discuss it as a group.

4. *Distribute the draft report for review by the audit committee*. The comments of the audit committee should be collected at an in-person or telephonic meeting.

5. *The CEO and the CEO must carefully review the report*. It is imperative that both the CEO and the CFO carefully review each periodic SEC report. While this review has always been an important component of a sound SEC reporting process, this review is even more important in light of the certifications that the CEO and the CFO must make with respect to the report. Two aspects of this review merit further comment:

- It is unavoidable that some of the information contained in the report will be outside the personal knowledge of the CEO and the CFO. However, it is incumbent upon these officers to make inquiries of other responsible persons within the company if they have questions about the accuracy of, or do not fully understand, any of the information presented.
- It is equally important that the CEO and the CFO "step back" from merely considering the disclosure in the draft report, and ask themselves whether any information, trends or issues that they believe are critical to an understanding of the company—perhaps items that have recently been discussed at a Board of Directors meeting or a strategic planning session—are not included in the report.

Exhibit A

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 [annual report on Form 10-K/quarterly report on Form 10-Q] of _____ (the "Company") for the period ended _____, 200_ as filed with the Securities and Exchange Commission on the date hereof (the "Report"), the undersigned, _____, Chief Executive Officer of the Company, hereby certifies, pursuant to 18 U.S.C. Section 1350, 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 operations of the Company.

Dated: _____, 200_

_____
[Name]
Chief Executive Officer

[Repeat the text of this certification, referencing the company's Chief Financial Officer instead of the Chief Executive Officer where appropriate]

Exhibit B

[*Insert the following after the "Signatures" section:*]

CERTIFICATIONS

I, _____, certify that:

1. I have reviewed this [annual report on Form 10-K/quarterly report on Form 10-Q] of [name of company];

2. Based on my knowledge, this [annual/quarterly] 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 [annual/quarterly] report;

3. Based on my knowledge, the financial statements, and other financial information included in this [annual/quarterly] report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this [annual/quarterly] report;

4. The registrant's other certifying officers and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-14 and 15d-14) for the registrant and we have:

    a) designed such disclosure controls and procedures to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this [annual/quarterly] report is being prepared;

    b) evaluated the effectiveness of the registrant's disclosure controls and procedures as of a date within 90 days prior to the filing date of this [annual/quarterly] report (the "Evaluation Date"); and

    c) presented in this [annual/quarterly] report our conclusions about the effectiveness of the disclosure controls and procedures based on our evaluation as of the Evaluation Date;

5. The registrant's other certifying officers and I have disclosed, based on our most recent evaluation, to the registrant's auditors and the audit committee of registrant's board of directors (or persons performing the equivalent function):

    a) all significant deficiencies in the design or operation of internal controls which could adversely affect the registrant's ability to record, process, summarize and report financial data and have identified for the registrant's auditors any material weaknesses in internal controls; and

    b) any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal controls; and

6. The registrant's other certifying officers and I have indicated in this [annual/quarterly] 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 our most recent evaluation, including any corrective actions with regard to significant deficiencies and material weaknesses.

Dated: _____, 200_

_____
[Name]
[Title]

[***Repeat the text of this certification, referencing the company's Chief Financial Officer instead of the Chief Executive Officer where appropriate***]

corporate advisor

For more information, contact one of the following:

Mark G. Borden
617.526.6675
<mark.borden@haledorr.com>

John A. Burgess
617.526.6418
<john.burgess@haledorr.com>

David E. Redlick
617.526.6434
<david.redlick@haledorr.com >

www.InternetAlerts.net

Enroll here to receive Hale and Dorr's brief and useful email alerts on a wide range of topics of interest to technology companies.

Boston
617 526 6000

London*
44 20 7645 2400

Munich*
49 89 24213 0

New York
212 937 7200

Oxford*
44 1235 823 000

Princeton
609 750 7600

Reston
703 654 7000

Waltham
781 966 2000

Washington
202 942 8400

*an independent joint venture law firm

Hale and Dorr. When Success Matters.

Hale and Dorr LLP Counselors at Law <haledorr.com>