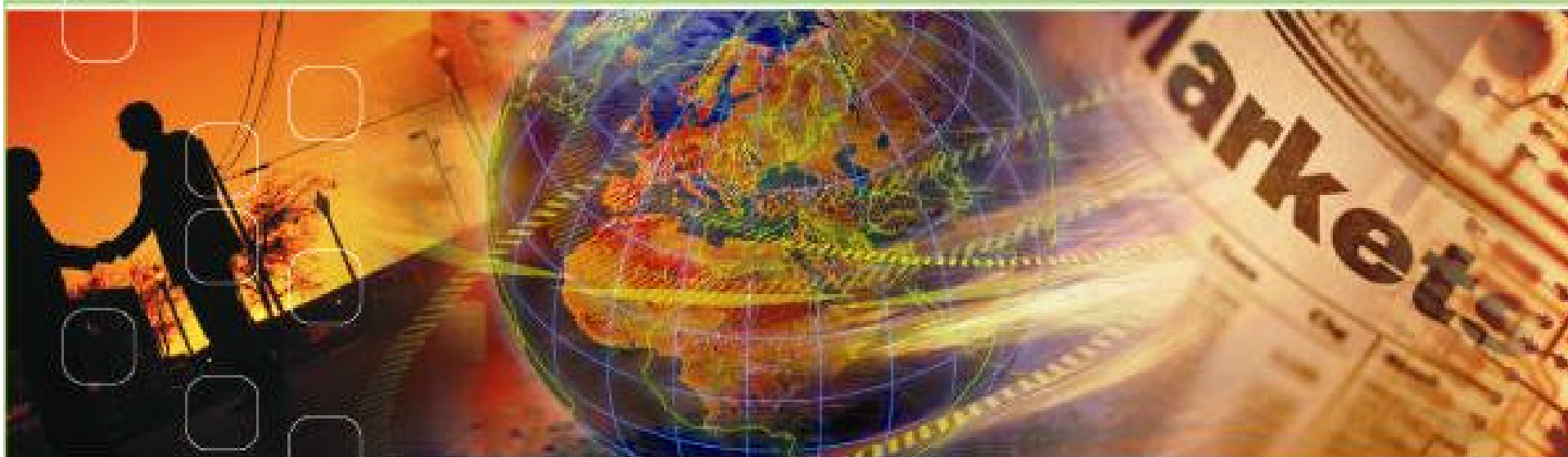


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Minding Your Ks and Qs in the New Disclosure Environment



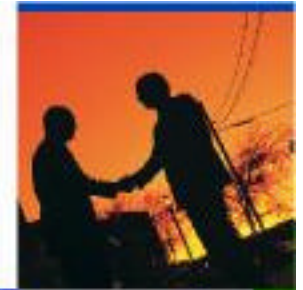
September 18, 2002

Agenda

- > How did we get here?
- > Where are we going?
 - Rules and proposed rules
 - Key themes
- > What should we do now?



How did we get here?



Where are we going?

- > Increased personal accountability of management
- > Enhanced reporting and disclosure obligations
- > Increased Board independence and oversight
- > Increased opportunity for stockholder oversight
- > Increased external oversight

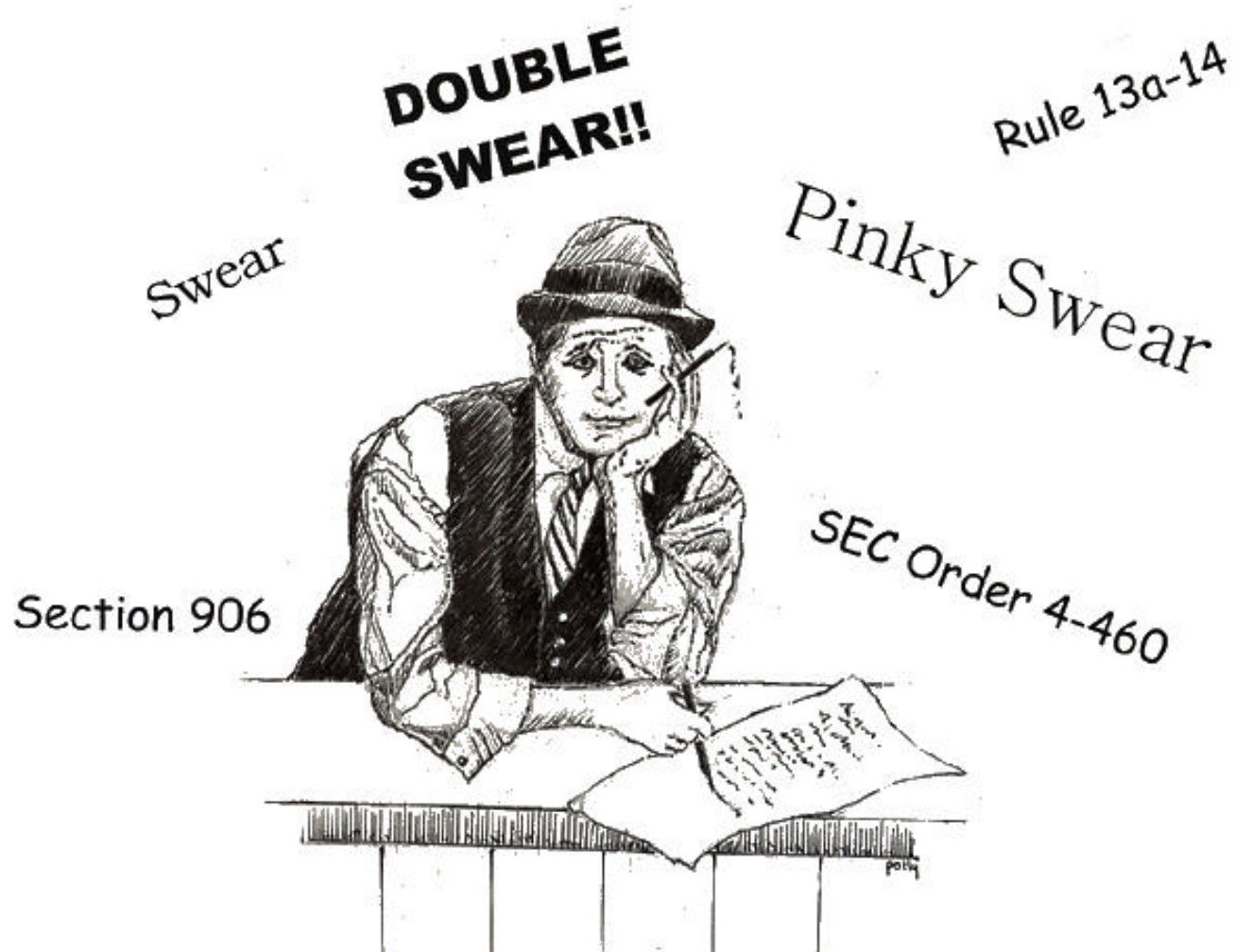


Where are we going?

- > Increased personal accountability of management
 - Certification of SEC reports
 - Prohibition on personal loans
 - Earlier reporting of stock transactions
 - Disgorgement of profits and other enhanced penalties



Management Accountability: CEO/CFO certifications



Management Accountability: CEO/CFO certifications

> Rule 13a-14

- Effective August 29, 2002
- Implements Section 302 of Sarbanes-Oxley Act
- Applies to all reporting issuers
- CEO and CFO must certify every:
 - 10-K and 10-K/A
 - 10-Q and 10-Q/A



Management Accountability: CEO/CFO certifications

> Rule 13a-14 certification:

- I have reviewed the report.
- To my 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 they were made, not misleading with respect to the period covered by the report.
 - Knowledge includes general duty of inquiry



Management Accountability: CEO/CFO certifications

> Rule 13a-14 certification:

- To my knowledge, the financial statements, and other financial information in the report, fairly present in all material respects the financial condition, results of operations and cash flows of the company as of, and for, the periods presented.
 - Scope includes MD&A
 - Not limited to compliance with GAAP



Management Accountability: CEO/CFO certifications

- > “Fairly presents” encompasses:
 - selection of appropriate accounting policies
 - proper application of appropriate accounting policies
 - disclosure of financial information that is informative and reasonably reflects the underlying transactions and events
 - inclusion of any additional disclosure necessary to provide investors with a materially accurate and complete picture



Management Accountability: CEO/CFO certifications

> Rule 13a-14 certification:

- Together with the other certifying officer, I am responsible for establishing and maintaining “disclosure controls and procedures”; we have designed these controls and procedures to ensure material information is made known to us; we have evaluated the effectiveness of these controls and procedures within the last 90 days; and the report contains our conclusions about their effectiveness.



Management Accountability: CEO/CFO certifications

> Rule 13a-14 certification:

- Together with the other certifying officer, I have disclosed to the auditors and to the audit committee:
 - any significant deficiencies in our internal controls; and
 - any fraud, whether or not material, involving employees who have a significant role in internal controls.



Management Accountability: CEO/CFO certifications

- > Rule 13a-14 certification:
 - The report discloses whether or not there were any significant changes in internal controls or other factors since their evaluation that could significantly affect the internal controls, including any corrective actions with regard to significant deficiencies and material weaknesses.



Management Accountability: CEO/CFO certifications

- > Sarbanes-Oxley Section 906
 - Effective July 30, 2002
 - Separate from Rule 13a-14 Certification
 - CEO/CFO certification required for each “periodic report” including financial statements:
 - the report fully complies with the applicable reporting requirements of the Exchange Act; and
 - the information contained in the report fairly presents, in all material respects, the financial condition and results of operations of the company.



Management Accountability: CEO/CFO certifications

- > SEC Order 4-460
 - One-time obligation covering past filings
 - 947 companies, picked based on revenues
 - Due date in most cases was August 14
- > NYSE (proposed)
 - Annual CEO certification to NYSE
 - CEO is not aware of any violation of NYSE corporate governance standards



Management Accountability: CEO/CFO certifications

- > Do the certifications increase exposure to liability?
 - At the margins, yes
 - As a practical matter, the incremental exposure may not be dramatic
 - What is dramatic, is the change in the underlying environment



Management Accountability:

Ban on personal loans

- > Effective July 30, personal loans to executive officers and directors are prohibited
 - Ban prohibits a public company from, directly or indirectly, extending or maintaining credit, arranging for an extension of credit or renewing an extension of credit
 - Existing loans can remain outstanding, but no material modification or renewal



Management Accountability: Ban on personal loans

- > Breadth of provision has raised many interpretive questions
 - What is a “personal” loan?
 - Are cashless exercises OK?
 - Split-dollar life insurance?
 - Advancement of travel expenses?
 - Advancement of expenses under indemnification provisions?
 - Can a company forgive an existing loan?



Management Accountability: Section 16 reporting

> Effective August 29:

- Form 4's are now due by end of second business day after transaction
 - Up to 3 business days longer for limited class of transactions where insider does not control timing
- Scope of Form 4 has expanded
 - Now includes most 16b-3 exempt transactions between a company and its insiders
 - > Option grants
 - > Dispositions to the issuer



Management Accountability: Section 16 reporting

- > No later than July 30, 2003, Section 16 filings must be:
 - made electronically
 - posted on company web site
- > Actual deadline likely to be much sooner
- > SEC encourages voluntary early compliance



Management Accountability: New crimes; tougher penalties

- > Sarbanes-Oxley increased personal accountability:
 - Provides for forfeiture of bonus compensation and stock profits by CEO and CFO following restatement due to material noncompliance resulting from “misconduct”
 - Prohibits discharge in bankruptcy of securities fraud related debts
 - Restricts insider stock transactions during pension fund blackout periods



Management Accountability: New crimes; tougher penalties

- > New criminal penalties for:
 - Document destruction or falsification
 - Knowing or willful false CEO/CFO certification
 - Securities fraud
 - Mail and wire fraud
 - Attempts and conspiracies
- > Extended statute of limitations for private securities fraud litigation (earlier of 2 years after discovery or 5 years after violation)
- > Enhanced SEC enforcement powers
- > Penalties for retaliating against whistleblowers



Management Accountability:

Key themes

- > The environment has changed – radically.
- > Top executives and boards are going to be under the microscope for some time to come.



Management Accountability:

Key themes

- > SEC is seeking to enforce its rules on a “real-time” basis
 - Provide quicker, more effective protection for investors
 - Provide better oversight of markets with limited resources
 - Resolve cases and investigations before investors’ funds vanish
 - Take prompt corrective actions



Management Accountability:

Key themes

- > SEC reporting is the CEO/CFO's job
- > SEC: “[A]ny senior corporate official who considers his or her personal involvement in determining the disclosure to be presented in quarterly or annual reports to be an “administrative burden,” rather than an important and paramount duty, seriously misapprehends his or her responsibility to security holders.”



Where are we going?

- > Increased personal accountability of management
- > Enhanced reporting and disclosure obligations
- > Increased Board independence and oversight
- > Increased opportunity for stockholder oversight
- > Increased external oversight



Where are we going?

- > Enhanced reporting and disclosure obligations
 - From periodic to current reporting
 - Accelerated 10-K and 10-Q deadlines
 - Expanded and accelerated 8-K filings
 - Focusing on the quality of the numbers
 - Putting more “A” into MD&A
 - Focusing on controls and procedures



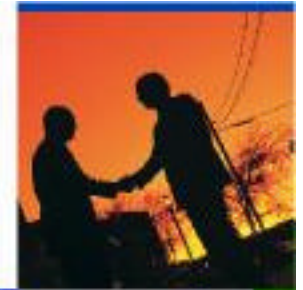
Enhanced Reporting: SEC report filing deadlines

- > SEC has new authority to require “real-time” disclosures in “plain English”
- > Acceleration of filing deadlines
 - Applies to “accelerated filers”
 - Domestic issuers
 - Public float of at least \$75 million
 - At least one year reporting history
 - Have filed at least one prior 10-K



Enhanced Reporting: SEC report filing deadlines

FY Ending On or After	10-K Deadline	10-Q Deadline
12/15/02	90	45
12/15/03	75	45
12/15/04	60	40
12/15/05	60	35



Enhanced Reporting: Expanded 8-K proposal

- > As proposed, most 8-K's would be due within 2 business days, rather than 5 to 15
- > 12 new and 4 revised/relocated events
- > Events affecting business and operations
 - Entry into a material agreement (not in the ordinary course)
 - Termination of a material agreement (not in the ordinary course)
 - Termination or reduction of a business relationship with a material customer



Enhanced Reporting: Expanded 8-K proposal

> Financial information

- Creation of a material direct or contingent financial obligation
- Triggering of a material direct or contingent financial obligation (e.g., default or acceleration of an obligation)
- Exit activities including material write-offs and restructuring charges
- Material impairments of assets



Enhanced Reporting: Expanded 8-K proposal

- > Securities and trading market
 - Change in rating agency decisions
 - Delisting of the company's securities or notice of failure to comply with a listing standard
 - Unregistered sales of equity securities (from 10-Q)
 - Material modifications to rights of security holders (from 10-Q)



Enhanced Reporting: Expanded 8-K proposal

> Other events

- Non-reliance on previously issued financial statements or related audit report
- Departure or election of directors or officers (expanded)
- Material amendment of charter or bylaws; Change in fiscal year (expanded)
- Material events regarding employee benefit, retirement and stock ownership plans



Enhanced Reporting: Expanded 8-K proposal

> Management transactions

- Require company reporting of:
 - Officers and directors entering into, modifying or terminating Rule 10b5-1 plans
 - Loans to executive officers and directors not prohibited by Sarbanes-Oxley

> Still to come – 8-K reporting of:

- Changes/Waivers of corporate codes of ethics
- Changes in accounting methods



Enhanced Reporting: Quality of the numbers

- > Pro forma financial reporting
 - Cautionary advice on reporting pro forma financial information (December 2001)
 - Trump Hotels
 - First “pro forma” enforcement action
 - Enforcement action can result if a company fails to disclose information necessary to ensure that investors will not be misled by pro forma numbers.
- > SEC to issue rules by January 26, 2003



Enhanced Reporting: Quality of the numbers

- > Revenue recognition
 - Leading area of financial fraud
 - “Round-tripping”
 - Illusory swaps
 - Barter deals
 - Vendor financing arrangements
 - “Gross” reporting of revenue
- > “Capitalized” operating expenses



Enhanced Reporting: Quality of the numbers

- > “Cookie jar” reserves
 - Excess accruals stashed in good times for use in bad times
- > “Big bath” charges
 - Restructurings and other write-offs
- > SEC will be adopting rules requiring SEC reports to:
 - Reflect all material adjustments identified by auditors
 - Disclose all material off-balance sheet transactions
 - Include an assessment of internal controls



Enhanced Reporting: Putting more “A” into MD&A

- > Proposed disclosure about Critical Accounting Policies and Estimates
 - Pending proposals would require disclosure about:
 - Critical accounting estimates that are made by the company in applying its accounting policies
 - Initial adoption of material accounting policies



Enhanced Reporting: Putting more “A” into MD&A

- > What are the goals of this proposed disclosure?
 - To make investors more aware of the importance of accounting policies
 - To convey the subjectivity of judgments underlying accounting policies
 - To help investors understand how the reported numbers would be different if different estimates or assumptions were used or circumstances changed



Enhanced Reporting: Putting more “A” into MD&A

- > Proposed for existing critical accounting estimates:
 - Identify and describe the estimate, underlying methodology and assumptions, including related trends and uncertainties
 - Explain significance and affected line items
 - Quantitative and qualitative discussion of any material changes made to the accounting estimate and why change was made



Enhanced Reporting: Putting more “A” into MD&A

- > Proposed for existing critical accounting estimates:
 - Quantitative discussion of changes assuming either that (1) reasonably possible near-term changes occur, both negative and positive, in the most material assumption or assumptions underlying the accounting estimate, or (2) the accounting estimate was changed to each of the upper end and the lower end of the range of reasonable possibilities determined by the company in the course of formulating the estimate



Enhanced Reporting: Putting more “A” into MD&A

- > Proposed for new material policies:
 - Events giving rise to the initial adoption
 - Accounting principle that has been adopted and the method of applying that principle
 - Qualitative impact on the company’s financial condition, changes in financial condition and results of operations



Enhanced Reporting: Putting more “A” into MD&A

- > Proposed for new material policies:
 - If the company is permitted a choice between acceptable accounting principles, an explanation that it made such a choice, what the alternatives were, and why it made the choice it did (including, where material, qualitative disclosure of the impact that the alternatives would have had)
 - If no controlling accounting literature exists, an explanation of the company’s decision



Enhanced Reporting: SEC statement on MD&A

- > Enhanced disclosure about ...
 - Liquidity and capital resources, including off-balance-sheet arrangements
 - Trading activities involving non-exchange traded contracts accounted for at fair value
 - Related party transactions
- > Rulemaking on these topics is expected
- > Rulemaking on enhanced trend disclosure is also expected



Enhanced Reporting: Putting more “A” into MD&A

- > MD&A should perform 3 functions:
 - Provide narrative explanation of the company's financial statements through the eyes of management
 - Improve overall financial disclosure and provide a context within which financial statements should be analyzed
 - Provide information about the quality of, and potential variability of, earnings and cash flows, so investors can judge whether past performance is indicative of the future



Enhanced Reporting: Controls and procedures

- > Disclosure controls and procedures
 - New concept
 - Controls and procedures designed to ensure that information required to be disclosed in SEC reports is recorded, processed, summarized and reported, within required timeframe
- > Internal controls
 - Pre-existing term relating to internal controls regarding financial reporting



Enhanced Reporting: Controls and procedures

- > Disclosure controls and procedures
 - No mandated procedures
 - Each company is expected to develop a process that is consistent with its business and internal management and supervisory practices
 - SEC recommends Disclosure Committee
 - Ensure that information is accumulated and communicated to CEO and CFO, to allow timely decisions about disclosure



Enhanced Reporting: Controls and procedures

> Internal Controls

- Process designed to provide reasonable assurance regarding the achievement of objectives in the following categories:
 - reliability of financial reporting
 - effectiveness and efficiency of operations
 - compliance with applicable laws and regulations
- NYSE: Will require internal audit function



Enhanced Reporting: Key themes

- > When it comes to reporting, companies need to do it faster and better



Enhanced Reporting: Key themes

- > Compliance with GAAP is not enough
- > SEC: “Presenting financial information in conformity with GAAP may not necessarily satisfy obligations under the antifraud provisions of the federal securities laws.”



Enhanced Reporting: Key themes

- > All companies must have effective internal controls and disclosure controls and procedures



Where are we going?

- > Increased personal accountability of management
- > Enhanced reporting and disclosure obligations
- > Increased Board independence and oversight
- > Increased opportunity for stockholder oversight
- > Increased external oversight



Where are we going?

- > Increased Board independence and oversight
 - Board of Directors
 - Audit Committee
 - Compensation Committee
 - Nominating and Governance Committee
 - Governance Guidelines
 - Codes of Conduct and Ethics



Board Independence and Oversight: Board of directors

- > Independent directors must comprise a majority of a company's board
 - Exception for controlled companies
- > Board must hold regular executive sessions with non-management directors
- > NYSE: must also disclose name of director who presides at these meetings (or procedure for choosing presiding director)



Board Independence and Oversight: Board of directors

- > Additional NYSE proposals:
 - Tighten definition of “independent”
 - Require affirmative determination of independence by board and disclosure of basis
 - Impose 5-year cooling-off period
 - > Former employees of company
 - > Employees and former employees of present or former auditor
 - > Employees and former employees of any company with a compensation committee interlock
 - > Immediate family members of the above
 - > Employment of family member in a non-officer position does not preclude board finding of independence



Board Independence and Oversight: Board of directors

- > Additional Nasdaq proposals:
 - Tighten definition of “independence”
 - No payments (including political contributions and payments to family) over \$60,000 per year
 - > Does not limit compensation for board service
 - Limit on payments to charity where director is an executive officer, partner or controlling shareholder of the charity
 - > Can't exceed the greater of \$200,000 or 5% of the company's or charity's gross revenues
 - Exclude relatives of company's executive officers and former partners or employees of outside auditor who worked on the company's audit
 - Establish 3-year cooling-off period



Board Independence and Oversight: Audit committee

- > Members must be “super” independent
- > Can’t receive any payments other than directors’ fees
- > Can’t be affiliates of issuer
 - Unclear how this will affect directors with ties to significant stockholders
 - Nasdaq: Can’t own or control 20% or more of voting stock
- > At least one member should be a “financial expert”
 - If not, need to disclose why not
 - SEC to define, but high standard
 - Will likely require CFO or accountant



Board Independence and Oversight: Audit committee

- > Direct responsibility for hiring, firing and overseeing auditors
 - Auditor must report directly to the audit committee
- > Pre-approval of permissible non-audit services and all audit fees
- > Authority to retain and pay legal, accounting and other experts
- > Need procedures for handling anonymous tips from employees and other complaints
- > Auditors must make specified reports to audit committee



Board Independence and Oversight: Audit committee

> Additional Nasdaq Proposals:

- Must review and approve all related-party transactions
- All members must be able to read and understand financial statements upon appointment (rather than within a reasonable time thereafter)
- “Exceptional and limited circumstances”
exception more limited and exceptional



Board Independence and Oversight: Compensation committee

> NYSE proposals:

- Committee is required
- All members must be independent directors
- Mandatory charter provisions
 - Review and approve corporate goals relevant to CEO compensation
 - Evaluate CEO performance
 - Set CEO compensation
 - Make recommendations regarding incentive-compensation and equity-based plans



Board Independence and Oversight: Compensation committee

> Nasdaq proposals:

- Separate committee is not required
 - If used, all members must be independent directors (subject to “exceptional and limited circumstances” exception)
- Independent directors must approve CEO and executive compensation
- Approval of any non-stockholder approved inducement option grants



Board Independence and Oversight: Nominating committee

> NYSE proposals:

- Nominating/Corporate Governance Committee is required
- All members must be independent directors
- Mandatory charter provisions
 - Develop criteria for selecting new directors
 - Identify director nominees
 - Develop corporate governance principles
 - Oversee evaluation of board and management



Board Independence and Oversight: Nominating committee

> Nasdaq proposals:

- Separate committee is not required
 - If used, all members must be independent directors (subject to “exceptional and limited circumstances” exception and exception for 20% holders)
- Independent director approval of all director nominations



Board Independence and Oversight: Corporate governance guidelines

> NYSE proposals:

- Corporate governance guidelines required
 - Director qualification standards
 - Director responsibilities
 - Director access to management and advisors
 - Director compensation, orientation and continuing education
 - Management succession

> Nasdaq proposals:

- Not requiring published guidelines
- Mandatory director continuing education



Board Independence and Oversight: Codes of conduct and ethics

- > All public companies must adopt code of ethics for senior financial officers (or disclose why not)
 - Standards reasonably necessary to promote:
 - honest and ethical conduct
 - full, fair, accurate, timely and understandable disclosure
 - compliance with laws



Board Independence and Oversight: Codes of conduct and ethics

- > Additional NYSE proposals:
 - Code of business conduct and ethics for directors and employees addressing:
 - Conflicts of interest
 - Corporate opportunities
 - Confidentiality
 - Fair dealing
 - Protection and proper use of company assets
 - Compliance with laws
 - Reporting illegal or unethical conduct



Board Independence and Oversight: Codes of conduct and ethics

- > Additional Nasdaq proposals:
 - Mandatory Code of Conduct addressing:
 - Conflicts of interest policy
 - Compliance with laws
 - Compliance mechanism



Board Independence and Oversight: Key themes

- > The independence of the board – both actual and perceived – is of paramount concern
 - Lead independent director and audit committee chair have bigger role going forward
 - Board, like senior management, sets tone for entire organization



Where are we going?

- > Increased personal accountability of management
- > Enhanced reporting and disclosure obligations
- > Increased Board independence and oversight
- > Increased opportunity for stockholder oversight
- > Increased external oversight



Where are we going?

- > Increased opportunity for stockholder oversight
 - Stockholder approval rules
 - Making information more accessible



Stockholder Oversight:

Stockholder approval of plans

- > Proposed stockholder approval rules:
 - NYSE: new equity plans, material amendments and option repricings
 - Nasdaq: new option plans and material amendments
 - Exceptions:
 - Inducement grants for new employees
 - Exemption for tax-qualified plans
 - Exemption for assumption of outstanding grants in an acquisition
- > Elimination of NYSE “treasury stock” loophole
- > Proposed ban on broker discretionary voting on stock plans



Stockholder Oversight: “Accessible” information

- > Prompt disclosure of waivers of code of business conduct and ethics for executive officers or directors
- > NYSE: Web site posting of corporate governance guidelines, codes of business conduct and ethics and key committee charters
- > Nasdaq: Press release to disclose “going concern” opinion



Stockholder Oversight: “Accessible” information

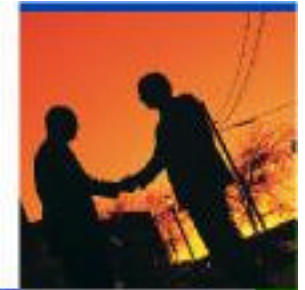
- > 10-K Disclosure Concerning Web site Access to Reports
 - Effective for fiscal years ending after Dec. 15, 2002, accelerated filers must disclose whether the company makes its periodic and current reports available, free of charge, on its web site as soon as reasonably practicable after such material is electronically filed with, or furnished to, SEC



Stockholder Oversight: “Accessible” information

> Think plain English

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					
Unconditional Purchase Obligations					
Other Long-Term Obligations					
Total Contractual Cash Obligations					



Stockholder Oversight: “Accessible” information

- > Disclosure of equity compensation information
 - Requires information regarding dilution from equity plans to be presented in a format and location designed to highlight the issue for investors
 - Information is required to be in proxy statement whenever a compensatory plan is being voted on, otherwise just appears in 10-K



Stockholder Oversight:

Key themes

- > Disclosures to stockholders need to be more transparent
 - Information needs to be understandable in form and content
 - Information needs to be disseminated in ways that will promote stockholder access



Where are we going?

- > Increased personal accountability of management
- > Enhanced reporting and disclosure obligations
- > Increased Board independence and oversight
- > Increased opportunity for stockholder oversight
- > Increased external oversight



Where are we going?

- > Increased external oversight
 - Auditors
 - Attorneys
 - Research Analysts



External Oversight: Independent auditors

> Auditor independence

- Audit Committee pre-approval of auditing services and permitted non-audit services
- Prohibited non-audit services:
 - Bookkeeping
 - Financial information system design
 - Appraisals and fairness opinions
 - Actuarial services
 - Internal audit services
 - Management or HR functions
 - Investment advisor or banking services
 - Legal services
- Tax services are permitted



External Oversight: Independent auditors

> Auditor independence

- Lead audit partner and lead review partner must be rotated at least every 5 years
- Study required of mandatory audit firm rotation
- Audit firm not independent if company's CEO, CFO, CAO or controller was former employee of audit firm who worked on company's audit during past year



External Oversight: Independent auditors

- > Public Company Accounting Oversight Board
 - New 5 person board
 - Maximum of two CPAs
 - Independent, but subject to SEC oversight
 - Primary responsibilities
 - Register public accounting firms
 - Establish audit standards
 - Inspect, investigate and discipline auditors
 - Promote high professional standards
 - Funded by fees from public companies (based on market capitalization)



External Oversight: Attorneys

- > By January 26, 2003, SEC must issue rules setting minimum standards of professional conduct for attorneys
 - Attorneys will be required to report evidence of a material violation of securities laws or breach of fiduciary duty or similar violation to chief legal officer or CEO
 - If no “appropriate” response, attorneys must report to audit committee, committee of independent directors or full board



External Oversight: Research analysts

- > New rules affecting analysts' internal operations
 - Prohibition on investment banking personnel supervising or controlling research analysts
 - Imposition of trading and ownership restrictions on analysts' personal portfolios
 - Prohibition against tying analyst compensation to specific investment banking transactions



External Oversight: Research analysts

- > New rules affecting analysts' interaction with public companies
 - Prohibition against tying favorable research ratings to an award of investment banking business
 - Restrictions on the review of research reports by subject companies
 - Imposition of quiet periods following certain public offerings
 - Mandatory disclosure by analysts and their firms of financial interests in, and interested-party relationships with, covered companies



External Oversight: Research analysts

- > Proposed Regulation AC – Analyst Certification
 - Research analysts must certify that reports accurately reflect their personal views and disclose whether recommendation affects compensation
 - Quarterly certification covering recommendations made at public appearances
- > SEC must adopt rules addressing conflicts of interest affecting research analysts



Key Themes revisited

- > Environment has changed
- > Real-time SEC enforcement
- > Disclosure is CEO/CFO's duty
- > Faster and better SEC reporting
- > GAAP is not enough
- > Disclosure processes and controls
- > Director independence
- > Transparency of disclosures



What should we do now?

- > Don't Try To Do Too Much Too Soon
- > Educate Officers and Directors
- > Implement Section 16 Procedures
- > Assess and Implement Needed Enhancements to Disclosure Controls and Procedures
- > Assess and Implement Needed Enhancements to Financial Reporting Controls and Processes



What should we do now?

- > Revisit Use of Pro Forma Financials
- > Rethink How Your Board Operates
- > Review Board and Committee Composition for Expected Issues
- > Inventory Existing Compliance Programs/Develop Any Needed New Programs
- > Reexamine Stock Option Granting Practices
- > Set the Right Tone at the Top



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September 18, 2002