

**Current Accounting and Disclosure Issues
in the Division of Corporation Finance**

March 4, 2005

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Table of Contents

I. RECENT RULES, PROPOSED RULES AND INTERPRETIVE BULLETINS	1
A. Final Rules Regarding Asset-Backed Securities (Revised)	1
B. Final Rules and Concept Release Regarding the Use of Tagged Data (Revised)	1
C. Additional Form 8-K Disclosure Requirements and Acceleration of Filing Date	2
D. Accelerated Filer	3
E. Management’s Report on Internal Control over Financial Reporting and Certification of Disclosure in Exchange Act Periodic Reports (Revised)	7
F. Management’s Discussion and Analysis	8
1. Disclosure in Management’s Discussion and Analysis about Off-Balance Sheet Arrangements and Aggregate Contractual Obligations	8
2. MD&A Interpretive Release	10
3. Disclosure in MD&A about the Application of Critical Accounting Policies	11
4. Commission Statement About MD&A	12
G. Conditions for Use of Non-GAAP Financial Measures	12
H. Disclosure of Nominating Committee Functions and Communication Between Security Holders and Boards of Directors	14
I. Proposed Rule regarding IFRS First-time Adopters	15
J. Proposals Regarding Use of Form S-8 and Form 8-K by Public Shell Companies	16
K. Proposed Rules Regarding Securities Offering Reform	16
L. Proposals Regarding Security Holder Director Nominations	17

II. OTHER CURRENT ACCOUNTING AND DISCLOSURE ISSUES.....	17
A. Statement of Cash Flows (New).....	17
1. Classification of Cash Receipts from Inventory Sales.....	17
2. Classification of Payments Related to Settlement of Pension Liabilities	18
B. Oil and Gas (New)	19
C. Leasing (New)	19
1. Accounting	19
2. Disclosure.....	20
D. Revenue	20
1. Buy/Sell Arrangements (New)	20
2. Service Contracts and the use of EITF 81-1	21
3. Disclosure.....	22
E. Business Combinations	23
1. Purchase Price Allocation and Use of Residual Method	23
2. Date of Annual Goodwill Impairment Testing	24
F. Investments	24
1. Other Than Temporary Declines in Value.....	24
2. Government-Sponsored Enterprises	26
3. Auction Rate Securities (New).....	26
G. Contingencies and Loss Reserves.....	27
H. Pension, Post Retirement, and Post Employment Plans	27
1. Selection of Discount Rates under FASB Statement Nos. 87 and 106 (New).....	27
2. Disclosure.....	28
I. FIN 46 and Deconsolidation	30
J. Segment Disclosure	31
1. Identification of Operating Segments	31
2. Aggregation of Operating Segments	31
3. Other Compliance Issues	32
4. Changes in segments	32
K. Issues Associated With SFAS 133, Accounting for Derivative Instruments and Hedging Activities... 	33
1. Formal Documentation Under Statement 133 (Revised).....	33
2. Financial Statement Presentation and Disclosure (Revised).....	34
3. Auditing Fair Values and SFAS 133	35
L. Market Risk Disclosures.....	35
M. Allowance for Loan Losses	36
1. Disclosure.....	36
2. Financial statement presentation.....	37
N. Loans and Other Receivables.....	38
1. Accounting for Loans or Other Receivables Covered by Buyback Provisions	38
2. Disclosures About Restructured Loans and Other Receivables.....	38
3. Potential Problem Loans.....	39

4.	Loans Held for Sale (New).....	39
O.	Materiality Assessments and the Use of Sampling (New)	40
P.	Change of Accountants	40
1.	Merger of Firms.....	40
2.	PCAOB Registration	41
 III. OTHER INFORMATION ABOUT THE DIVISION OF CORPORATION FINANCE AND OTHER COMMISSION OFFICES AND DIVISIONS		41
A.	Other Sources of Information	41
B.	Corporation Finance Staffing and Phone Numbers	42
C.	Division Employment Opportunities for Accountants	43
1.	Staff Accountant.....	43
2.	Professional Accounting Fellowships.....	44
3.	Professional Academic Fellowships	44

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I. Recent Rules, Proposed Rules and Interpretive Bulletins

A. *Final Rules Regarding Asset-Backed Securities (Revised)*

On December 15, 2004, the Commission voted to adopt new and amended rules and forms to address comprehensively the registration, disclosure and reporting requirements for asset-backed securities under the Securities Act and the Exchange Act (see Release No. 34-50905). Principally, the amendments will accomplish the following:

- update and clarify the Securities Act registration requirements for offerings of asset-backed securities, including expanding the types of asset-backed securities that may be offered in delayed primary offerings on Form S-3;
- consolidate and codify existing interpretive positions that allow modified Exchange Act reporting that is more tailored and relevant to asset-backed securities;
- provide tailored disclosure guidance and requirements for Securities Act and Exchange Act filings involving asset-backed securities; and
- streamline and codify existing interpretive positions that permit the use of written communications in a registered offering of asset-backed securities in addition to the statutory registration statement prospectus.

The amendments are intended to clarify the regulatory requirements for asset-backed securities in order to increase market efficiency and transparency and provide more certainty for the overall ABS market and its participants. In response to comments, the amendments have delayed compliance dates until January 1, 2006, to allow market participants to prepare for the new requirements.

The full text of the release can be found at <http://www.sec.gov/rules/final/33-8518.htm>.

B. *Final Rules and Concept Release Regarding the Use of Tagged Data (Revised)*

On February 3, 2005, the Commission adopted rules, in Release No. 33-8529, to establish a voluntary program related to eXtensible Business Reporting Language (XBRL). Registrants may voluntarily furnish XBRL data in an exhibit to specified EDGAR filings under the Exchange Act and the Investment Company Act. This program begins with the 2004 calendar year-end reporting season. The primary purpose of the voluntary program is to assess XBRL

technology, including both the ability of registrants to tag their financial information using XBRL and the benefits of using tagged data for analysis.

On September 27, 2004, the same day the Commission issued the proposing release to establish the voluntary program to allow XBRL information to be filed, the Commission also issued a concept release, Release No. 33-8497. The concept release seeks public comment on the benefits of tagging data to improve reporting quality and efficiency, the implications of tagging data for filers, investors, the Commission and other market participants, and the adequacy and efficacy of XBRL as a format for reporting financial information.

Data tagging is gaining prominence as a format for enhancing financial reporting data using eXtensible Mark-Up Language (XML) derivatives, such as XBRL. Tagging provides greater context to data through standard definitions that turn text-based information, such as the filings currently contained in the Commission's EDGAR system, into documents that can be retrieved, searched and analyzed through automated means. Data tags describe information such as items included in financial statements. This enables investors and other marketplace participants to analyze data from different sources and allows for the automatic exchange of financial information across various software platforms, including web services.

Additional information on the Commission's tagged data and XBRL initiatives can be found at <http://www.sec.gov/spotlight/xbrl.htm>.

C. Additional Form 8-K Disclosure Requirements and Acceleration of Filing Date

On March 16, 2004, the Commission adopted in Release No. 33-8400 (see also Release No. 33-8400A, issued on August 4, 2004, for certain technical corrections) amendments to Form 8-K, the Exchange Act form used by public companies to disclose important corporate events on a current basis. The amendments add ten disclosure items to Form 8-K, including transferring two items to the current report from the periodic reports. The amendments also provide investors with timelier disclosure by replacing the current five business and 15 calendar day deadlines with a four business day deadline. The amendments are responsive to the current disclosure goals of Section 409 of the Sarbanes-Oxley Act by requiring public companies to disclose, on a "rapid and current basis," material information regarding changes in a registrant's financial condition or operations as the Commission, by rule, determines to be necessary or useful for the protection of investors and in the public interest.

The eight new disclosure items are:

- entry into a material non-ordinary course agreement,
- termination of a material non-ordinary course agreement,
- creation of a material direct financial obligation or a material obligation under an off-balance sheet arrangement,
- triggering events that accelerate or increase a material direct financial obligation or a material obligation under an off-balance sheet arrangement,
- material costs associated with exit or disposal activities,

- material impairments,
- notice of delisting or failure to satisfy a continued listing rule or standard; transfer of listing, and
- non-reliance on previously issued financial statements or a related audit report or completed interim review (restatements).

The two disclosure items transferred, in part, from the periodic reports are:

- unregistered sales of equity securities and
- material modifications to rights of security holders.

Expanded disclosure items include:

- departure of directors or principal officers, election of directors, or appointment of principal officers and
- amendments to Articles of Incorporation or Bylaws and change in fiscal year.

The amendments include a limited safe harbor under Exchange Act Section 10(b) and Rule 10b-5 for failure to file timely seven of the new items on Form 8-K. The safe harbor does not apply to, or impact, any other duty to disclose that a registrant may have and extends only until the due date of the registrant's periodic report for the relevant period. Compliance with these amendments was required as of August 23, 2004.

Since the Commission's publication of the amendments, the staff have received a number of questions regarding the implementation and interpretation of the new Form 8-K items. Responses to some of these frequently asked questions are available at <http://www.sec.gov/divisions/corpfin/form8kfaq.htm>. Registrants and their counsel are reminded that one of the principal purposes of the revisions to Form 8-K is to increase the number of unquestionably or presumptively material events that must be disclosed currently, in accordance with the goals of Section 409 of the Sarbanes-Oxley Act. Registrants also should ensure that they have implemented appropriate disclosure controls and procedures in accordance with Exchange Act Rules 13a-14 and 15d-14 in order to ensure that information required to be disclosed by Form 8-K is brought to the attention of management and disclosed within the timeframes contemplated by Form 8-K.

D. Accelerated Filer

Summary

On September 5, 2002, the Commission adopted final rules requiring that every registrant meeting the definition of "accelerated filer" file its annual report on Form 10-K and its quarterly reports on Form 10-Q on an accelerated basis. The changes for these accelerated filers will be phased-in, eventually paring down the due dates from 90 to 60 days after the end of the fiscal year for 10-Ks and from 45 to 35 days after the end of the first, second and third fiscal quarters for 10-Qs.

The Commission voted in November 2004 to postpone the final phase-in period for acceleration of periodic report filing dates (see Release No. 33-8507). As a result, for an additional year the deadline for accelerated filers will remain at 75 days after year end for annual reports and at 40 days after quarter end for quarterly reports. The accelerated filing phase-in will resume for reports filed for fiscal years ending on or after December 15, 2005, when an accelerated filer will have to file its annual report within 60 days after year end and file its quarterly reports within 35 days after quarter end. This will complete the phase-in and these deadlines will then remain in place for all subsequent periods.

Accelerated Filer Definition

A registrant becomes an accelerated filer if it meets all of the following criteria at the end of its fiscal year:

- the registrant has been a reporting company under Section 13(a) or 15(d) of the Exchange Act for a period of at least 12 calendar months,
- the registrant has filed at least one annual report pursuant to Section 13(a) or 15(d) of the Exchange Act,
- the registrant had a non-affiliated common equity public float of \$75 million or more as of the last business day of its most recently completed second fiscal quarter, and
- the registrant is not eligible to use small business forms (10-KSB and 10-QSB) for its annual and quarterly reports.

A registrant remains an accelerated filer until it becomes eligible to file small business reports. In order to become eligible to file small business reports, a registrant’s non-affiliated float and its annual revenues cannot exceed \$25 million for two consecutive years. Thereafter, a registrant would again have to satisfy the accelerated filer definition to become subject to the accelerated filing requirements.

Foreign private issuers filing on Forms 20-F or 40-F are not subject to the new rules. However, a foreign private issuer electing to file on Forms 10-K and 10-Q in lieu of Form 20-F or 40-F will be subject to the accelerated filing rule if it meets the definition of an accelerated filer.

Accelerated Filing Phase-In Schedule

Registrants meeting the accelerated filer criteria will be required to accelerate their 10-K and 10-Q filings on the following schedule.

<u>For Fiscal Years</u>	<u>Form 10-Q Deadline</u>	<u>Form 10-K Deadline</u>
<u>Ending On Or After</u>		
December 15, 2003	45 days after fiscal quarter end	75 days after fiscal year end
December 15, 2004	40 days after fiscal quarter end	75 days after fiscal year end
December 15, 2005	40 days after fiscal quarter end	60 days after fiscal year end

December 15, 2006 35 days after fiscal quarter end 60 days after fiscal year end

The deadlines provide for a scheduled phase-in over a defined period in time, so that all registrants who meet the definition of an accelerated filer will have the same reporting deadlines no matter when they became an accelerated filer.

Rule 12b-25 permits registrants an extension of time in which to file their Forms 10-K and 10-Q and still be considered to have filed those reports timely. The new rules do not change the 15 calendar day period (for Form 10-K) and 5 calendar day period (for Form 10-Q) provided for under Rule 12b-25.

Accelerated filers can file their Article 12 financial statement schedules by amendment within 30 days following the due date of their Form 10-K. Consequently, at the end of the phase-in period, accelerated filers will be required to file the schedules within 90 days of the end of the fiscal year.

If an accelerated filer changes its fiscal year end, the transition report deadlines are phased in under the same schedule as quarterly and annual reports on Forms 10-Q and 10-K.

Forms 10-K and 10-Q Disclosures

The new rules require that all Exchange Act registrants filing on Form 10-K include new cover page disclosures in their Forms 10-K for fiscal years ending on or after December 15, 2002. The amended cover page requires the registrant to indicate by check mark either that it is or is not an accelerated filer and to disclose its non-affiliated common equity public float as of the end of the last business day of the registrant's most recently completed second fiscal quarter. The accelerated filing status disclosure is also required on Form 10-Q.

If a registrant's cover page to its Form 10-K mistakenly discloses its non-affiliated common equity public float as of the date of filing, rather than as of the last business day of its most recently completed second fiscal quarter, it should file an amended Form 10-K. That amendment should include a corrected cover page, a new signature page, and Exhibit 31, a revised 302 certification required by Item 601 of Regulations S-K and S-B which includes the first 2 certifying statements. Note that both the share price and outstanding share amount must be as of the last business day of the most recently completed second fiscal quarter.

For purposes of completing the cover page to their first Form 10-K, we have advised registrants who complete their IPO after their most recently completed second quarter to compute their common equity public float as of a date within 60 days of filing the report. This method was used prior to the adoption of the new rules. Note that this is only to fulfill the cover page disclosure requirement. It does not mean the issuer uses that common equity public float to determine whether it is an accelerated filer. In this scenario, the registrant would not qualify as an accelerated filer because it was not a public company for 12 months and it had not filed at least one annual report as of its fiscal year-end.

Transactional Filings

In addition to accelerating the Form 10-Q filing deadlines, the new rules accelerate the updating requirements of interim financial statements required in registration statements at the time of effectiveness and in proxy statements at the time they are mailed to conform to the accelerated phase-in filing deadlines of Form 10-Q. Therefore, if the registrant meets the definition of an accelerated filer, its interim financial statements must meet the following:

<u>For Fiscal Years Ending On Or After</u>	<u>Interim Financial Statements Cannot be Older Than</u>
December 15, 2003	134 days
December 15, 2004	129 days
December 15, 2005	129 days
December 15, 2006	124 days

An accelerated filer that meets the three tests specified in S-X Rule 3-01(c) will have to update to include its audited year-end financial statements using the same phase-in schedule for its Form 10-K. Therefore, an accelerated filer meeting the tests must include its audited year-end financial statements according to the following schedule:

<u>For Fiscal Years Ending On Or After</u>	<u>Audited Year End Financial Statements Must be Included by</u>
December 15, 2003	75 days after year-end
December 15, 2004	75 days after year-end
December 15, 2005	60 days after year-end

If the filer does not meet the Rule 3-01(c) tests, it will still be able to delay updating to include its year-end financial statements until 45 days after its year-end. The 45-day period has not changed. Note that, despite the stipulated timeframes, registrants are required to include their year-end audited financial statements in definitive proxy statements and registration statements at the time of effectiveness if they are available.

Financial Statements under S-X Rules 3-05 and 3-09

The requirement for updating interim and fiscal year-end financial statements of an acquired business included in an acquirer's Form 8-K or in its proxy/registration statement under S-X Rule 3-05 has been accelerated only when the acquired company is itself an accelerated filer. Therefore, an acquirer that is either an accelerated or non-accelerated filer must include the financial statements of the acquired business at least as current as the financial statements required to be filed by the acquired company in its own periodic reports. Accelerated filers will still have 75 days from consummation to file 3-05 financial statements on Form 8-K.

Separate financial statements of unconsolidated subsidiaries and 50% or less owned persons required by S-X Rule 3-09 will not be accelerated for inclusion in the parent's Form 10-K unless both the parent and the subsidiary/investee are accelerated filers.

E. Management's Report on Internal Control over Financial Reporting and Certification of Disclosure in Exchange Act Periodic Reports (Revised)

Section 404 of the Sarbanes-Oxley Act directed the Commission to adopt rules requiring each annual report of a registrant, other than a registered investment company, to contain (1) a statement of management's responsibility for establishing and maintaining an adequate internal control structure and procedures for financial reporting; and (2) management's assessment, as of the end of the registrant's most recent fiscal year, of the effectiveness of the registrant's internal control structure and procedures for financial reporting. Section 404 also requires the registrant's auditor to attest to, and report on management's assessment of the effectiveness of the registrant's internal controls and procedures for financial reporting in accordance with standards established by the Public Company Accounting Oversight Board. The Commission adopted final rules on May 27, 2003, in Release No. 34-47986 concerning management's report on internal control over financial reporting and certification of disclosures in Exchange Act periodic reports.

The final rules require that management's annual internal control report include:

- a statement of management's responsibility for establishing and maintaining adequate internal control over financial reporting for the registrant,
- management's assessment of the effectiveness of the registrant's internal control over financial reporting as of the end of the registrant's most recent fiscal year,
- a statement identifying the framework used by management to evaluate the effectiveness of the registrant's internal control over financial reporting, and
- a statement that the registered public accounting firm that audited the registrant's financial statements included in the annual report has issued an attestation report on management's assessment of the registrant's internal control over financial reporting.

Under the new rules, a registrant is required to file the registered public accounting firm's attestation report as part of the annual report. The rules also require that management evaluate any change in the registrant's internal control over financial reporting that occurred during a fiscal quarter that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting.

The Commission also adopted amendments to rules and forms under the Securities Exchange Act of 1934 and the Investment Company Act of 1940 to revise the Section 302 certification requirements and to require registrants to provide the certifications required by Sections 302 and 906 of the Sarbanes-Oxley Act of 2002 as exhibits to certain periodic reports. The amendments permit registrants to furnish rather than file the Section 906 certifications with the Commission. Thus, the certifications will not be subject to liability under Section 18 of the Exchange Act. Moreover, the certifications will not be subject to automatic incorporation by reference into a registrant's Securities Act registration statements, which are subject to liability under Section 11 of the Securities Act, unless the registrant takes steps to include the certifications in a registration statement.

The compliance schedule for the rules regarding management's report on internal controls was revised in February 2004 in Release No. 33-8392 and further revised on March 2, 2005 in Release No. 33-8545. As a result of Release No. 33-8392, an accelerated filer must begin to comply with the rules regarding management's report on internal controls for its first fiscal year ending on or after Nov. 15, 2004 (originally June 15, 2004). As a result of Release No. 33-8545, a non-accelerated filer or foreign private issuer must begin to comply with these requirements for its first fiscal year ending on or after July 15, 2006 (originally April 15, 2005). As noted in Section I.D. of this outline, accelerated filer status is determined at the end of a registrant's fiscal year based on certain conditions, including its non-affiliated common equity public float as of the last business day of its most recently completed second fiscal quarter. Therefore, there may be registrants who are currently non-accelerated filers who become accelerated filers as of the end of their next fiscal year that will not be eligible for further extension under Release No. 33-8545.

On November 30, 2004 the Commission issued an exemptive order to grant certain accelerated filers up to an additional 45 days to include in their annual reports management's report on internal control over financial reporting and the related auditor's report on management's assessment of internal control over financial reporting. The exemptive order applies to an accelerated filer that has a fiscal year ending between and including November 15, 2004 and February 28, 2005, and that had a public equity float of less than \$700 million at the end of its second fiscal quarter in 2004. All other information required in annual reports, including audited financial statements, would have to be filed on the original due date for the annual reports. The Public Company Accounting Oversight Board (PCOAB) also adopted a temporary rule that permits the delayed filing of auditor's internal control reports consistent with the Commission's order.

The Commission staff has received questions regarding the implementation and interpretation of the rules. For answers to some of the questions most frequently posed, please see *Management's Report on Internal Control Over Financial Reporting and Certification of Disclosure in Exchange Act Periodic Reports, Frequently Asked Questions (revised October 6, 2004)* at <http://www.sec.gov/info/accountants/controlfaq1004.htm> and *Exemptive Order on Management's Report on Internal Control over Financial Reporting and Related Auditor Report, Frequently Asked Questions (January 21, 2005)* at <http://www.sec.gov/divisions/corpfin/faq012105.htm>. The PCAOB's Office of Chief Auditor has also issued staff questions and answers related to PCAOB Auditing Standard No. 2, *An Audit of Internal Control Over Financial Reporting Performed in Conjunction with an Audit of Financial Statements* available at http://www.pcaobus.com/Standards/Staff_Questions_and_Answers/index.asp

F. Management's Discussion and Analysis

1. Disclosure in Management's Discussion and Analysis about Off-Balance Sheet Arrangements and Aggregate Contractual Obligations

Section 401(a) of the Sarbanes-Oxley Act added Section 13(j) to the Securities Exchange Act of 1934, which required the Commission to adopt final rules by January 26, 2003, to require each annual and quarterly financial report required to be filed with the Commission, to disclose "all material off-balance sheet transactions, arrangements, obligations (including contingent obligations), and other relationships of the registrant with unconsolidated entities or other persons, that may have a material current or future effect on financial condition, changes in financial condition, results of operations, liquidity, capital expenditures, capital resources, or significant components of revenues or expenses."

On January 22, 2003, the Commission adopted rule amendments to implement section 401 of the Sarbanes-Oxley Act (see Release No. 34-47264). The amendments, which are effective, require a registrant to provide an explanation of its off-balance sheet arrangements in a separately captioned subsection of the Management's Discussion and Analysis (MD&A) section in its disclosure documents. The amendments also require registrants (other than small business issuers) to provide an overview of certain known contractual obligations in a tabular format.

The amendments include a definition of off-balance sheet arrangements that primarily targets the means through which registrants typically structure off-balance sheet transactions or otherwise incur risks of loss that are not fully transparent to investors. The definition of off-balance sheet arrangements employs concepts in accounting literature in order to define the categories of arrangements with precision. Generally, the definition will include the following categories of contractual arrangements:

- certain guarantee contracts,
- retained or contingent interests in assets transferred to an unconsolidated entity,
- derivative instruments that are classified as equity, or
- material variable interests in unconsolidated entities that conduct certain activities.

The amendments require disclosure of off-balance sheet arrangements that either have, or are reasonably likely to have, a current or future effect on the registrant's financial condition, changes in financial condition, revenues or expenses, results of operations, liquidity, capital expenditures or capital resources that is material to investors. That disclosure threshold is consistent with the existing disclosure threshold under which information that could have a material effect on financial condition, changes in financial condition or results of operations must be included in MD&A.

The amendments require disclosure of the following specified information to the extent necessary to an understanding of off-balance sheet arrangements and their material effects:

- the nature and business purpose of the registrant's off-balance sheet arrangements,
- the importance to the registrant for liquidity, capital resources, market risk or credit risk support or other benefits,
- the financial impact and exposure to risk, and
- known events, demands, commitments, trends or uncertainties that implicate the registrant's ability to benefit from its off-balance sheet arrangements.

Consistent with other MD&A requirements, the amendments contain a principles-based requirement that a registrant provide such other information that it believes is necessary for an understanding of its off-balance sheet arrangements and their material effects. In addition, the amendments include a requirement for registrants to disclose, in a tabular format, the amounts of payments due under specified contractual obligations, aggregated by category of contractual obligation, for specified time periods. The categories of contractual obligations to be included in the table are defined by reference to the applicable accounting literature.

2. MD&A Interpretive Release

On December 19, 2003, the Commission issued an interpretive release providing guidance regarding MD&A disclosure in registrants' disclosure documents. The guidance reminds registrants of existing disclosure requirements and provides additional guidance, designed to elicit more informative and transparent MD&A, that satisfies the principal objectives of MD&A:

- to provide a narrative explanation of a registrant's financial statements that enables investors to see the registrant through the eyes of management,
- to enhance the overall financial disclosure and provide the context within which financial information should be analyzed, and
- to provide information about the quality of, and potential variability of, a registrant's earnings and cash flow, so that investors can ascertain the likelihood that past performance is indicative of future performance.

The guidance emphasizes that MD&A should not be merely a recitation of financial statements in narrative form or an otherwise uninformative series of technical responses to MD&A requirements, neither of which provides the important management perspective called for by MD&A. Instead, the release encourages top-level management involvement in the drafting of MD&A, and provides guidance regarding:

- the overall presentation and focus of MD&A (including through executive-level overviews, a focus on the most important information and a reduction of duplicative information),
- emphasis on analysis of financial information,
- known material trends and uncertainties,
- key performance indicators, including non-financial indicators,
- liquidity and capital resources, and
- critical accounting estimates (see also section below).

The release does not create new legal requirements, nor does it modify existing legal requirements. A copy of the release can be found on the Commission's Web site at <http://www.sec.gov/rules/interp/33-8350.htm> under Regulatory Actions / Interpretive Releases.

3. Disclosure in MD&A about the Application of Critical Accounting Policies

Reported financial position and results often imply a degree of precision, continuity and certainty that can be belied by rapid changes in the financial and operating environment that produced those measures. As a result, even a technically accurate application of generally accepted accounting principles (GAAP) may nonetheless fail to communicate important information if it is not accompanied by appropriate and clear analytic disclosures to facilitate an investor's understanding of the registrant's financial status, and the possibility, likelihood and implication of changes in the financial and operating status.

To facilitate better disclosure in this area, on December 12, 2001 the Commission issued Financial Reporting Release (FRR) No. 60, *Cautionary Advice Regarding Disclosure About Critical Accounting Policies* (<http://www.sec.gov/rules/other/33-8040.htm>). The purpose of the release was to remind management, auditors, audit committees, and their advisors that the selection and application of the registrant's accounting policies must be appropriately reasoned.

On May 10, 2002, the Commission proposed, in Release No. 34-45907, disclosure requirements that would enhance investor's understanding of the application of registrants' critical accounting policies. The proposals would encompass disclosure in two areas: accounting estimates a registrant makes in applying its accounting policies and the initial adoption by a registrant of an accounting policy that has a material impact on its financial presentation.

Under the first part of the proposals, a registrant would have to identify the accounting estimates reflected in its financial statements that required it to make assumptions about matters that were highly uncertain at the time of estimation. Disclosure about those estimates would then be required if different estimates that the registrant reasonably could have used in the current period, or changes in the accounting estimate that are reasonably likely to occur from period to period, would have a material impact on the presentation of the registrant's financial condition, changes in financial condition or results of operations. A registrant's disclosure about these critical accounting estimates would include a discussion of: the methodology and assumptions underlying them; the effect the accounting estimates have on the registrant's financial presentation; and the effect of changes in the estimates.

Under the second part of the proposals, a registrant that has initially adopted an accounting policy with a material impact would have to disclose information that includes: what gave rise to the initial adoption; the impact of the adoption; the accounting principle adopted and method of applying it; and the choices it had among accounting principles.

As proposed, registrants would place all of the new disclosure in the MD&A section of their annual reports, registration statements and proxy and information statements. In addition, in the MD&A section of their quarterly reports, U.S. registrants would have to update the information regarding their critical accounting estimates to disclose material changes. The proposal remains under consideration.

4. Commission Statement About MD&A

In December 2001, the five largest national accounting firms, with support from the AICPA, petitioned the Commission to issue an interpretive release covering enhanced MD&A disclosures in three areas. On January 22, 2002, the Commission issued FR No. 61, *Commission Statement About Management's Discussion and Analysis of Financial Condition and Results of Operations* (<http://www.sec.gov/rules/other/33-8056.htm>), which covers many of the items in that petition.

Disclosures Concerning Liquidity and Capital Resources, Including "Off-Balance Sheet" Arrangements

The first section of the release discusses disclosures relating to liquidity and off-balance sheet arrangements. The release suggested that investors would find disclosure of aggregated information about contractual obligations and commercial commitments beneficial if it were provided in a single location in MD&A so that a total picture of obligations would be readily available. In particular, a registrant's liquidity and capital resources and the integral role of on- and off-balance sheet arrangements may best be shown in tabular presentations of contractual obligations and commercial commitments. The Commission's off-balance sheet rules discussed above supercede this section of FR No. 61, except for the tabular presentation of commercial commitments.

Certain trading activities involving non-exchange traded contracts accounted for at fair value

The second section of the release discusses disclosures relating to trading activities that include non-exchange traded contracts accounted for at fair value. A registrant engaged in these activities should be considering disclosure of its critical accounting policies in this area. The release provides additional disclosures to consider.

Relationships and transactions on terms that would not be available from clearly independent third parties

The last section of the release discusses disclosures of related party transactions. By their nature, transactions with related parties create uncertainty as to the terms of the arrangements. When those transactions are material, GAAP and SEC regulations require that they be disclosed. Informative disclosures could include the business purpose of the arrangement, the reason for entering into the arrangement with a related party, how the transactions are priced, the nature of the ongoing contractual or other commitments, and a comparison of the terms of the related party transactions with terms that would result from transactions with unrelated parties.

G. Conditions for Use of Non-GAAP Financial Measures

Section 401(b) of the Sarbanes-Oxley Act directed the Commission to issue rules requiring that any public disclosure or release of pro forma financial information by a public

