

# Full Disclosure

## Overview

*“We are working diligently to enhance disclosure of important financial information. If market forces are also brought to bear, I am confident that together we will achieve that desirable objective, and markets will be better informed and more efficient as a result.”*

Alan Beller, Director  
Division of Corporation Finance

341 staff in the Division of Corporation Finance and 92 staff in the Office of Filings and Information Services:

- Reviewed Securities Exchange Act of 1934 (1934 Act) annual report filings of 2,975 reporting issuers.
- Reviewed 370 initial public offerings, 30 exempt offering filings of small business issuers, and 180 new issuer 1934 Act registration statements.
- Completed all 12 rulemaking projects required under the Sarbanes-Oxley Act of 2002.
- Provided advice to filers and investors through 500 no-action letters regarding shareholder proposals, 650 other no-action and interpretive letters, and responses to over 3,400 written inquiries (including e-mails) and over 37,000 telephone inquiries.

## Key Results

Issue	Result
Internal Control Over Financial Reporting	The Commission adopted rules to require that annual reports of public companies include a report of management on the company’s internal control over financial reporting.

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Electronic Filing of Insider Reports	The Commission adopted rules that require the electronic filing of beneficial ownership reports filed by officers, directors and principal security holders under Section 16(a) of the 1934 Act, and also require issuers with corporate websites to post these reports.
SRO Listing Standards Relating to Audit Committees	The Commission adopted a new rule directing all national securities exchanges and national securities associations to prohibit the listing of any security of an issuer that is not in compliance with the audit committee requirements established by the Sarbanes-Oxley Act of 2002.
Disclosure of Off-balance Sheet Arrangements in the Management's Discussion and Analysis (MD&A)	The Commission adopted amendments that require each company to disclose all material off-balance sheet arrangements in its MD&A.
Regulation G Addressing Financial Information Presentations Based on Methodologies not in Accordance with Generally Accepted Accounting Principals (GAAP)	The Commission adopted new Regulation G prohibiting material misstatements or omissions in the presentation of non-GAAP financial measures and requiring reconciliation to GAAP.
The Division reviewed filings under the Securities Act of 1933 and 1934 Act on a selected basis to monitor and enhance compliance with disclosure and financial statement requirements. These filings included those of new issuers	and issuers already reporting under the 1934 Act.  The Sarbanes-Oxley Act requires the Commission to review each reporting issuer at least once every three years. The Division is currently

refining its review procedures to comply with this provision of the Sarbanes-Oxley Act and to ensure Division resources are

directed toward those issuers, filings, or industries that most warrant review.

Main Activities	Fiscal 2003	Fiscal 2002	% Change
Reporting Issuer Reviews	2,975 <u>a/</u>	2,570 <u>b/</u>	+16%
New Issuer Reviews <u>c/</u>	550	950	-42%
Total Issuer Reviews	3,525	3,520	--

a/ 23% of the 12,830 reporting companies that filed annual reports.

b/ 19% of the 13,550 reporting companies that filed annual reports.

c/ Includes reviews of 1933 Act registration statements, 1934 Act registrations by companies not previously reporting under the 1934 Act, and Regulation A filings.

## Significant Rulemaking, Interpretive and Related Matters

### Management's Report on Internal Control over Financial Reporting

The Commission adopted rules implementing the requirements in Section 404 of the Sarbanes-Oxley Act to require that the annual reports of public

companies include a report of management on the company's internal control over financial reporting.<sup>95</sup>

### Mandated Electronic Filing and Website Posting for Forms 3, 4 and 5

The Commission adopted new rules and amendments to require the electronic filing of beneficial ownership reports filed by officers, directors and principal security holders under Section 16(a) of the 1934

Act, and to require issuers with corporate websites to post these reports.<sup>96</sup> The new rules and amendments implement the requirements of Section 16(a)(4), as amended by Section 403 of the Sarbanes-Oxley Act.

### Standards Relating to Listed Company Audit Committees

The Commission adopted new 1934 Act Rule 10A-3 directing all national securities exchanges and national securities associations to prohibit the listing of any

security of an issuer that is not in compliance with the audit committee requirements established by the Sarbanes-Oxley Act.<sup>97</sup>

### Disclosure in MD&A Regarding Off-Balance Sheet Arrangements

The Commission adopted amendments, pursuant to Section 401(a) of the Sarbanes-Oxley Act, that require each company to describe all off-balance sheet arrangements

that may have a material current or future effect on financial operations of the company and to provide a table of its contractual obligations in the Management's Discussion and Analysis.<sup>98</sup>

### Disclosure Regarding Audit Committee Financial Experts and Company Codes of Ethics

The Commission adopted rules implementing Sections 406 and 407 of the Sarbanes-Oxley Act.<sup>99</sup> These rules require a company to disclose in its annual report whether the company has a corporate code of ethics and a financial expert on its audit committee. The rules also require a company to

make available to the public a copy of its code of ethics, or the portion of the code that applies to the company's principal executive officer, principal financial officer, principal accounting officer or controller, or persons performing similar functions.

### Insider Trades During Pension Fund Blackout Periods

The Commission adopted rules implementing the requirements in Section 306(a) of the Sarbanes-Oxley Act, which prohibits any director or executive officer of an issuer from directly or indirectly purchasing, selling, or otherwise acquiring or

transferring any equity security of the issuer during a pension plan blackout period that prevents plan participants and beneficiaries from engaging in transactions involving issuer equity securities held in their plan accounts.<sup>100</sup>

### Conditions for Use of Non-GAAP Financial Information

The Commission adopted new Regulation G and an amendment to the Form 8-K to implement the requirements in Section 401(b) of the Sarbanes-Oxley Act.<sup>101</sup> The new regulation prohibits material misstatements or

omissions that would make the presentation of a non-GAAP financial measure, under the circumstances in which it is made, misleading and requires reconciliation of that measure to GAAP.

### Disclosure Regarding Nominating Committee Functions and Communications Between Security Holders and Boards of Directors

The Commission proposed rule changes designed to strengthen disclosure requirements relating to the nomination

of directors and shareholder communications with directors.<sup>102</sup>

### Security Holder Director Nominations

The Commission proposed rules that would require companies to disclose in their proxy materials the names of nominees for director that

are submitted by certain shareholders, as well as certain information relating to those nominees.<sup>103</sup>

Proposed Conditional Exemption for Foreign Banks from Section 13(k) of the 1934 Act

The Commission proposed a rule that would exempt foreign banks, subject to certain conditions, from the insider

lending prohibition in Section 13(k) of the 1934 Act, as added by Section 402 of the Sarbanes-Oxley Act.<sup>104</sup>

## Small Business Initiatives

SEC/NASAA Conference Under Section 19(c) of the 1933 Act

We conducted the 20th annual federal/state uniformity conference in April 2003 in Washington, D.C. Commission officials met with representatives of the North American Securities Administrators Association,

Inc. and other regulators to discuss methods of achieving greater uniformity in federal and state securities regulation and maximizing the effectiveness of such regulation.

SEC Government-Business Forum on Small Business Capital Formation

We conducted the 22nd annual Government-Business Forum on Small Business Capital Formation. The Forum is the only government-sponsored national gathering for small

businesses that offers small businesses an opportunity to let government officials know how laws, rules, and regulations affect their ability to raise capital.

## Outlook for 2004

Our main objectives are to:

- Make recommendations to the Commission regarding final rules, if any, designed to strengthen disclosure requirements relating to the nomination of directors and shareholder communications with directors.
- Make recommendations to the Commission regarding final rules, if any, that would require companies to disclose in their proxy materials the names of nominees for director that are submitted by certain shareholders, as well as certain information relating to those nominees.
- Make recommendations to the Commission regarding final rules, if any, relating to current disclosure on Form 8-K.
- Make recommendations to the Commission regarding proposed rules regarding disclosure and filing requirements for asset-backed securities.
- Make recommendations to the Commission regarding proposed rules regarding Securities Act of 1933 reform.
- Continue to refine the Division's disclosure review process.