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September 24, 2002

Re: *Sarbanes-Oxley Act of 2002*

Dear Interested Parties:

You may have already seen recent press releases and articles announcing that the United States Congress enacted new legislation, which provides for heightened corporate financial and accounting disclosure requirements, including the imposition of enhanced criminal penalties on corporate executives who engage in corporate abuses, such as securities fraud. The new legislation, otherwise known as the *Sarbanes-Oxley Act of 2002* (the "SOA"), passed both chambers of the United States Congress and was signed by President George Bush on July 30, 2002. In view of the civil and criminal implications resulting from the enactment of the SOA, we highlight for you below certain key provisions of the legislation. We are also attaching a copy of the draft SOA for your convenience.¹

The stated purpose of the SOA is to protect investors by improving the accuracy and reliability of corporate disclosures made in connection with federal securities law. In so doing, the SOA, *inter-alia*: (1) creates an independent auditing-oversight board under the U.S. Securities and Exchange Commission ("SEC"); (2) imposes white collar criminal penalty enhancements for criminal fraud offenses, including mail and wire fraud; (3) provides for enhanced and more extensive corporate financial disclosure and reporting; and (4) creates enhanced recourse procedures and safeguards for shareholders harmed by securities fraud. The following is a concise summary of these provisions, keeping in mind that compliance dates under each provision vary.

I. Corporate Accounting and Auditing Regulations

The SOA imposes heightened responsibilities with respect to corporate accounting and auditing, and creates a Public Company Accounting Oversight Board (the "Board") supervised by the SEC. The Board will consist of five-members who are to be appointed by the SEC within 90

¹ We caution that our discussion is neither comprehensive nor exhaustive and we encourage you to refer to the SOA, when published in final form, for specific information, provisions and exclusions.

days of the date of enactment of the SOA. The Board shall have investigative and disciplinary powers and shall be funded, in part, by publicly held companies. In addition, the SOA authorizes the SEC to conduct a study and report on the adoption of a principles-based accounting system – as opposed to a rules-based system currently in place.

The SOA amends Section 10A of the Securities Exchange Act of 1934 by imposing a number of auditing regulations, such as the imposition of an audit partner rotation requirement and prohibition of conflicts of interest between issuing and auditing companies. Pursuant to this amendment, a registered public accounting firm is prohibited from providing audit services to an issuing company if the lead (or coordinating) audit partner (having primary responsibility for the audit), or the audit partner responsible for reviewing the audit, has performed audit services for that issuing company in each of the issuing company's five previous fiscal years. Additionally, a registered public accounting firm is prohibited from performing an audit service for an issuing company, if a CEO, CFO, controller, chief accounting officer, or any person serving in an equivalent position for the issuing company, was employed by that registered public accounting firm and participated in any capacity in the audit of the issuing company during the one-year period preceding the date of the initiation of the audit. The SEC is required to issue final regulations with respect to these provisions within 180 days from the date of enactment of the SOA.

Finally, under this amendment, the following non-audit activities performed by a registered public accounting firm (and any associated person of that firm) in connection with an audit for any issuing company are prohibited: (1) bookkeeping or other services related to the accounting records or financial statements of the audit client; (2) financial information systems design and implementation; (3) appraisal or valuation services, fairness opinions, or contribution-in-kind reports; (4) actuarial services; (5) internal audit outsource services; (6) management functions or human resources; (7) broker or dealer, investment adviser, or investment banking services; (8) legal services and expert services unrelated to the audit; and (9) any other service that the Board determines, by regulation, is impermissible. This prohibition takes effect 180 days after the commencement of operations of the Board.

II. Criminal Penalties

The SOA imposes new and enhanced white-collar criminal penalties for corporate officials convicted of fraud and accounting improprieties. These include: (1) raising the maximum penalty for securities fraud to 25 years in prison; (2) increasing CEO and CFO penalties to a \$5 million fine and twenty year prison term for issuing false statements to the SEC or failing to certify financial reports; (3) increasing maximum penalties for mail and wire fraud to twenty years; (4) raising maximum penalties for defrauding pension funds to ten years; (5) requiring the preservation of key financial audit documents and e-mail for five years and imposing a ten year felony for destroying these documents; and (6) imposing a maximum ten year prison term and/or monetary fine for intentionally retaliating against corporate whistleblowers.

III. Corporate Responsibilities

In addition to the new provisions governing corporate accounting, auditing and white-collar criminal activity, the SOA imposes certain enumerated regulations governing executive-level corporate activities, such as: (1) requiring CEOs and CFOs to certify financial reports² and to reimburse any bonuses, profits or other incentive-based or equity-based compensation received by that individual during the twelve month period following the first public issuance or filing with the SEC (whichever occurs first) of the financial document embodying such financial reporting requirement when earnings are restated due to securities fraud;³ (2) prohibiting officers and directors from taking any action to fraudulently influence, coerce, manipulate or mislead any independent public or certified accountant engaged in the performance of an audit of the financial statements of the corporate issuing company for the purpose of rendering such financial statements materially misleading;⁴ (3) prohibiting officers and directors from selling company stock during blackout periods;⁵ (4) preventing officers and directors from receiving company loans, which are otherwise unavailable to outsiders;⁶ and (5) requiring companies to immediately disclose “in plain English” material changes to their financial condition.⁷

We note also that, under the mandate of the SOA, the SEC has undertaken to establish new professional standards governing corporate attorneys who appear and practice before the SEC. The standards would include a rule requiring attorneys to report evidence of a material violation of a securities law or breach of fiduciary duty or similar violation by the company or its agent, to the chief legal counsel or the CEO of the company (or the equivalent). The standards further would require that, if the legal counsel or CEO does not appropriately respond to the evidence presented (i.e. adopting, as necessary, appropriate remedial measures or sanctions with respect to the violation), the attorney would have to report the evidence to the audit committee of the board of directors of the issuing company or to another committee of the board of directors comprised solely of directors not employed directly or indirectly by the issuing company. The SEC is required to issue these professional standards within 180 days from the date of the enactment of the SOA.

² This provision takes effect within 30 days from the date of enactment of the SOA.

³ This provision shall take effect 180 days after the date of enactment of the SOA.

⁴ The SEC is required to propose the rules and regulations under this provision within 90 days after the date of enactment of the SOA and issue the final rules within 270 days thereof.

⁵ This provision shall take effect 180 days after the date of enactment of the SOA.

⁶ We understand that, at the request of Federal Reserve Chairman Alan Greenspan, the prohibition on companies making loans to their executives would not extend to banks. Banks are already governed by Regulation O, which bans loans on preferential terms and requires a bank’s board to approve loans above certain limits.

⁷ As you may be aware, on June 28, 2002, the SEC published a list of 945 companies whose CEOs and CFOs are required to personally certify in writing, under oath, the accuracy and completeness of the following reports filed with the SEC: (1) the most recent Annual Reports on Form 10-K; (2) all of the company’s reports on Form 10-Q; (3) all reports on Form 8-K; and (4) all definitive proxy materials filed with the SEC subsequent to the filing of the most recent Form 10-K; and (5) any amendments to each of the forms. The officers are required to file their written statements with the SEC no later than the close of business on the first date that their company is required to file a Form 10-K or Form 10-Q with the SEC on or after August 14, 2002. We understand that officers who make false certifications will face personal liability.

In connection with the SOA provision, we understand that the American Bar Association (“ABA”) Task Force on Corporate Responsibility is also recommending a series of steps designed to strengthen the role of attorneys in fighting corporate fraud and corruption. The ABA Task Force is seeking to amend the ABA Model Rules of Professional Conduct (“ABA Model Rules”) to promote corporate responsibility and to adopt practices in which both outside and inside counsel to the corporation have a direct line of communication through which counsel may proceed in circumstances in which the attorney reasonably believes that the corporate client is involved in a violation or potential violation of law or in a breach of duty that will adversely affect the interests of the corporation in a material manner. The findings and recommendations of the Task Force are published in a preliminary report released by the ABA on July 16, 2002. We are attaching a copy of this report for your review.

IV. Additional Protections and Considerations

Additional protections for victims of securities fraud and other corporate abuses contained with the SOA include: (1) prohibiting officials facing fraud judgments from using bankruptcy to escape liability; (2) increasing the statute of limitations on securities fraud claims from three years to five years, or two years from the date of discovery;⁸ (3) prohibiting investment firms from retaliating against analysts who criticize firm clients; (4) facilitating the ability of whistleblowers to sue and prove retaliation by their employers; (5) creating a restitution fund that apportions civil penalties from SEC enforcement actions accounts set up to benefit investors harmed by securities fraud; and (6) increasing the SEC budget to \$776 million for fiscal-year 2003, which assist the SEC in collecting judgments and fines from individuals.

While it is too early to predict with any degree of certainty the impact of the SOA on shareholders (harmed by corporate abuses), issuing companies, and insurers of directors’ and officers’ liability and professional liability programs, it is conceivable, at this point, that the lengthened statute of limitations will affect the substantive rights of shareholders because it will provide for a greater period of time to file suit. While the SOA does not speak to any private causes of action, it does impose additional duties on accounting firms, officers and directors and corporate attorneys engaged in business practices governed by the SEC. This may ultimately provide a basis for exercising the rights of private parties in private causes of action. We expect there will be much analysis and commentary of the SOA in the upcoming months. We will provide you with updated commentary when such additional and significant information is made available.

In the meantime, please do not hesitate to contact us with any questions or comments regarding this report.

⁸ This provision applies to all proceedings commenced on or after the date of enactment of the SOA.

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Very truly yours,

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Enclosures