



**JAECKLE
FLEISCHMANN &
MUGEL, LLP**
ATTORNEYS AT LAW

ALERT!

NEW RULES IMPACTING ANNUAL FILINGS ON FORM 10-K

The Securities and Exchange Commission's ongoing efforts of corporate governance and accounting reform have resulted in the proposal and adoption of numerous rules that revise the disclosure included in a company's annual report on Form 10-K. The following lists the revisions to Form 10-K that are required as a result of the newly adopted rules and details proposed rules that, once finalized, will impact a company's reporting obligations on Form 10-K.

FINAL RULES

1. *Securities Authorized for Issuance Under Equity Compensation Plans*

Pursuant to new Item 201(d) of Regulation S-K, companies are required to provide equity compensation plan information in a table format. The disclosure will be presented in three categories. The information will be aggregated for all compensation plans previously approved by security holders and aggregated for all compensation plans not previously approved by security holders. Totals for all plans must also be disclosed.

The disclosure will include the number of securities to be issued upon exercise of outstanding securities under the plans, the weighted-average exercise price of outstanding securities under the plans, and the number of securities remaining available for future issuance under equity compensation plans (other than those to be issued upon exercise). This rule is **currently effective**.

2. *Certifications*

Certifications in writing from the chief executive officer and chief financial officer are required to be included immediately following the signature pages on the Form 10-K pursuant to Section 302 and Section 906 of the Sarbanes-Oxley Act of 2002. These rules are **currently effective**.

Section 906 requires CEOs and CFOs to certify in writing that the report containing financial statements fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934, and fairly presents, in all

material respects, the financial condition and results of operations of the company.

Section 302 requires CEOs and CFOs to certify in each annual report that:

(i) the officers have reviewed the report;

(ii) based on the officer's 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 such statements were made, not misleading;

(iii) based on the officer's knowledge, the financial statements included in the report fairly present in all material respects the financial condition and results of operations of the company as of, and for, the periods presented in the report;

(iv) the officers have designed internal controls to ensure that material information concerning the company is made known to them, have evaluated the effectiveness of the internal controls within 90 days, and have presented their conclusions about the company's internal controls in the periodic report;

(v) the officers have disclosed to the company's auditors and the audit committee all significant deficiencies in the design or operation of internal controls and any fraud, whether or not material, that involves management or other employees who have a significant role in the issuer's internal controls; and

(vi) the officers have indicated in the report whether or not there were significant changes in internal controls subsequent to the date of their evaluation, including any corrective actions.

3. *Disclosure Controls and Procedures and Internal Controls*

Pursuant to Item 307 of Regulation S-K, companies, other than “asset-backed issuers,” are required to disclose the conclusions of their principal executive officer or officers and principal financial officer or officers about the effectiveness of the company’s *disclosure controls and procedures* based upon their evaluation of these controls and procedures as of a date within 90 days of the filing date of the annual report. Disclosure controls are procedures designed to ensure that information required to be disclosed is recorded, processed, summarized and reported on a timely basis.

In addition, a company must disclose whether or not there were significant changes in the company’s *internal controls* or in other factors that could

significantly affect these controls subsequent to the date of their evaluation, including any corrective action with regard to significant deficiencies and material weaknesses. Internal controls are procedures designed to assure that transactions are properly authorized, that assets are safeguarded and that transactions are properly recorded for financial reporting purposes. This rule is *currently effective*.

4. Use of Non-GAAP Financial Measures

New Regulation G has been adopted that prohibits material misstatements or omissions that would make the presentation of the material non-GAAP financial measure, under the circumstances in which it is made, misleading. Regulation G also requires a quantitative reconciliation (by schedule or other clearly understandable method) of the differences between the non-GAAP financial measure presented and the most directly comparable financial measure or measures calculated and presented in accordance with GAAP. Regulation G is effective and will apply to all disclosures as of March 28, 2003.

Item 10 of Regulation S-K and Item 10 of Regulation S-B have also been amended to provide additional guidance to registrants that include non-GAAP financial measures in SEC filings. The rule requires registrants using non-GAAP financial measures in their SEC filings to comply with Regulation G and also to provide the following:

- (i) a presentation, with equal or greater prominence, of the most directly comparable financial measure calculated and presented in accordance with GAAP;
- (ii) a quantitative reconciliation (by schedule or other clearly understandable method) of the differences between the non-GAAP financial measure disclosed with the most directly comparable financial measure calculated and presented in accordance with GAAP;
- (iii) a statement disclosing the reasons why the registrant's management believes the non-GAAP financial measures provide useful information to investors regarding the registrant's financial condition and results of operations; and
- (iv) to the extent material, a statement disclosing the additional purposes, if any, for which the registrant's management uses the non-GAAP financial measure.

The amendments to Regulation S-K and Regulation S-B would also prohibit registrant's from the following:

- (i) excluding charges or liabilities that required, or will require, cash settlement, or would have required cash settlement absent an ability to

settle in another manner, from non-GAAP liquidity measures other than the measures EBIT and EBITDA;

- (ii) adjusting a non-GAAP performance measure to eliminate or smooth items identified as non-recurring, infrequent or unusual, when (a) the nature of the charge or gain is such that it is reasonably likely to recur within two years or (2) there was a similar charge or gain within the prior two years;
- (iii) presenting non-GAAP financial measures on the face of the registrant's financial statements prepared in accordance with GAAP or in the accompanying notes;
- (iv) presenting non-GAAP financial measures on the face of any pro forma financial information required to be disclosed by Article 11 of Regulation S-X; and
- (v) using titles or descriptions of non-GAAP financial measures that are the same as, or confusingly similar to, titles or descriptions used for GAAP financial measures.

The rules are effective March 28, 2003 and will apply to all reports filed with respect to fiscal periods ending after March 28, 2003.

5. *Acceleration of Filing Dates and Disclosure Concerning Website Access to Reports*

Companies with public float of at least \$75 million, that have been subject to the reporting requirements of the Securities Exchange Act of 1934 for at least 12 months, that have previously filed at least one annual report and that are not eligible to use Form 10-KSB will be required to file their annual reports on Form 10-K on an accelerated basis. Accelerated filings will be phased in over a three-year period. Filings for year one will remain due 90 days after fiscal year-end. Filings for year two will be due 75 days after fiscal year-end and filings for year three and future years will be due 60 days after fiscal year-end.

In addition, accelerated filers must also disclose (i) their website address, if any; (ii) the availability of reports on the website; (iii) if the reports are not available on the website, why not; and (iv) if the reports are not available on the website whether the company will provide copies (paper or electronic) free of charge and upon request.

The phase-in period for accelerated deadlines will begin for reports filed by companies that meet the definition of "accelerated filer" as of the end of their ***first fiscal year ending on or after December 15, 2002***. These filers must comply with the new rules regarding website access for annual reports on Form 10-K filed for the ***fiscal years ending on or after December 15, 2002***.

6. ***Audit Committee Financial Expert***

Pursuant to Section 407 of the Sarbanes-Oxley Act, companies must disclose whether they have at least one “audit committee financial expert” on their audit committee and if so, the name of the expert and whether the expert is independent of management. If the company does not have an expert they must disclose this fact and explain why they do not have such an expert on the audit committee.

Disclosure must be provided in annual reports for fiscal years ending on or after July 15, 2003. Small business issuers must provide this disclosure for fiscal years ending on or after December 15, 2003.

7. ***Code of Ethics***

Pursuant to Section 406 of the Sarbanes-Oxley Act, companies must disclose annually whether they have adopted a code of ethics for the principal executive officer, principal financial officer, the principal accounting officer or controller (or persons performing similar functions). If the company has not adopted a code of ethics for these persons, it must disclose this fact and explain why not.

Companies will be required to make the code of ethics available to the public and will have to disclose on a current basis any amendments to and waivers from the code of ethics as it relates to any of these officers. ***Disclosure must be provided in annual reports for fiscal years ending on or after July 15, 2003.***

8. ***Off-Balance Sheet Arrangements, Contractual Obligations and Contingent Liabilities and Commitments***

New rules require added disclosure of all material off-balance sheet transactions, arrangements, obligations (including contingent obligations) and other relationships of the issuer with unconsolidated entities or other persons, that may have a material current or future effect on the financial condition, changes in financial condition, results of operations, liquidity, capital expenditures, capital resources, or significant components of revenues or expenses that is material to investors. Off-balance sheet arrangements would be disclosed under a separately captioned subsection of “Management’s Discussion and Analysis of Financial Condition and Results of Operations” in the Form 10-K. Disclosure must be made of (i) the nature and business purpose of the off-balance sheet arrangement; (ii) the importance to the registrant for liquidity, capital resources, market risk or credit risk support or other benefits; (iii) the financial impact and exposure to risk; and (iv) known events, demands, commitments, trends or uncertainties that implicate the registrant’s ability to benefit from its off-balance sheet arrangements. Also, any other information that is necessary for an understanding of the off-balance sheet arrangement and its specified material effects must be disclosed.

In addition, companies would be required to provide, in a tabular format, the amounts of payments due under specified contractual obligations, aggregated by category of contractual obligation, for certain time periods. ***Registrants must comply with the disclosure requirements for off-balance sheet arrangements in filings that are required to include financial statements for the fiscal years***

ending on or after June 15, 2003 and must comply with the disclosure requirements for the table of contractual obligations in filings required to include financial statements for the fiscal years ending on or after December 15, 2003. Voluntary early compliance is allowed.

PROPOSED RULES

1. *Internal Control Report*

Pursuant to Section 404 of the Sarbanes-Oxley Act, the SEC has proposed rules that would require an internal control report assessing, as of the end of the fiscal year reported, the effectiveness of the company's internal controls and would also require an auditor's attestation of the company's assessment. If these rules are adopted as proposed, they would apply to all companies whose fiscal year ends on or after September 15, 2003.

2. *Issuer Repurchases*

This proposed rule would add a new Item 703 to Regulation S-K and would require disclosure in tabular format of all issuer repurchases of its Section 12 registered equity securities whether effected in open market or private transactions. The disclosure would include the total number of shares purchased, the average price paid per share, the identification of any broker-dealers that were used to effect the purchases, the number of shares purchased as part of a publicly announced repurchase plan or program, and the maximum number or approximate value of shares that may yet be purchased under the plan or program.

3. *Audit Committee Information*

Proposed rules would add required disclosure under Part III of Form 10-K to include disclosure regarding audit committee pre-approval policies and procedures for audit and non-audit services and professional fees billed by auditors. This disclosure may be incorporated in the Form 10-K by reference to the company's proxy material.

4. *The Application of Critical Accounting Policies*

Proposed rules would require added disclosure in "Management's Discussion and Analysis of Financial Condition and Results of Operations" on Form 10-K regarding any accounting estimates utilized in the report in applying its accounting policies. Such estimates would have to be identified and disclosure added if different estimates could have been used or changes to those estimates used are likely to occur that would have a material impact on the presentation of the company's financial condition, changes in financial condition or results of operations. Also, upon the initial adoption of an accounting policy that has a material impact on the company's financial presentation, disclosure must be made as to why the policy was adopted, its impact, what it is and how it is applied and the choices it had among accounting principles.

5. ***Improvement of the Auditing Process***

Proposed rules would require disclosure if an executive officer, director or nominee for director has been sanctioned as a member accountant by a Public Accountability Board within the last 5 years and the sanction has not been reversed, suspended or vacated.

6. ***Form 8-K Revisions***

Under proposed rules, two disclosure items would be removed from the Form 10-K and be included on Form 8-K. This would include disclosure regarding the unregistered sales of equity securities by the company and material modifications to the rights of holders of the company's securities. Proposed rules are pending that would result in major modifications to the filing requirements on Form 8-K.

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The information in this Alert is intended for general information purposes only and should not be considered legal advice or opinion on any specific facts or circumstances. You are urged to contact a professional advisor concerning any specific question you may have relating to your own situation. The discussion with respect to the accelerated filing deadlines for Forms 10-Q and 10-K is based upon public statements by the SEC and the SEC's adopting releases may contain additional requirements of which we are not presently aware.

If you would like to discuss the matters presented in this Alert you may contact:



James J. Tanous
Joseph P. Kubarek
William I. Schapiro
Michael C. Donlon

(716-843-3905; jtanous@jaeckle.com)
(716-843-3862; jkubarek@jaeckle.com)
(716-843-3896; wschapiro@jaeckle.com)
(716-843-3881; mdonlon@jaeckle.com)

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