

Navigating the Sarbanes-Oxley Act of 2002

OVERVIEW AND OBSERVATIONS



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PRICEWATERHOUSECOOPERS 



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The information and considerations presented in this paper do not constitute the provision of accounting or legal advice. Readers should consult with appropriate professional advisors before taking any action based on the contents herein.

A New Beginning – The Sarbanes-Oxley Act (the Act)

The Legislation of Accountability

Overview:

The Sarbanes-Oxley Act contains provisions impacting many of the key players in the capital formation process. For auditors, there is a new system of private oversight, a revised set of independence rules and a new level of public reporting. For management, there are enhanced safeguards against conflicts of interest, explicit certifications of certain filings, reporting on internal controls over financial reporting and revised disclosure requirements. For audit committees, there is a continuation of the ever-expanding role in the corporate reporting framework including direct responsibility for overseeing the external audit process, preapproval of all audit and non-audit services, revised rules regarding independence and financial expertise and monitoring, receiving and presumably resolving anonymous complaints regarding corporate reporting and audit issues.

Attorneys will be subject to a new paradigm in respect of their professional conduct. Securities analysts will be subject to a revised compensation and internal review structure to strengthen their independence from the investment banking side of their firms. And regulators can look forward to a continuation of the frenetic pace of proposals, comment letters and final rulemaking as well as the need to publish the many studies that have been commissioned by the Act.

Applicability

Many of the provisions of the Sarbanes-Oxley Act are directed at "issuers." The term "issuer" is defined in Section 2 of the Sarbanes-Oxley Act as:

An issuer as defined in Section 3 of the Securities Exchange Act of 1934, the securities of which are registered under Section 12 of that Act, or that is required to file reports under Section 15(d) [of the Exchange Act] or that files or has filed a registration statement that has not yet become effective under the Securities Act of 1933, and that it has not withdrawn. [parenthetical references to the United States Code omitted].

Upon first consideration this definition appears to exclude a large number of Securities and Exchange Commission (SEC) registrants (e.g., companies filing voluntarily under Section 15(d) of the Exchange Act as a result of an indenture requirement).

However, the assumption that the provisions of the Sarbanes-Oxley Act (and the implementing rules) do not apply to companies other than those that meet the Sarbanes-Oxley Act definition of an issuer would be an over-generalization. For instance, Section 302 of the Sarbanes-Oxley Act indicates that it applies to "each company filing periodic reports under Section 13(a) or 15(d) of the Securities Exchange Act" thereby indicating an intended target population that is much broader than those that are required to file under either of those sections as would be specified in the Sarbanes-Oxley Act definition of an issuer. Company management, together with counsel, must carefully research each section of the Sarbanes-Oxley Act as well as any implementing rules to determine if the specific provision is applicable to their facts.

A New Beginning – The Sarbanes-Oxley Act

Implementation

Many of the Act's requirements are broad and untested, but expectations by both the public and regulators are high. In the early reporting stages, some companies have responded out of necessity with "fire-drill" or add-on reviews of controls in order to fulfill their reporting responsibilities. Over the long term, however, companies will need to build in the required processes to ensure that their corporate reporting on internal controls is part of the way they do business, not an afterthought.

A number of companies are working on implementing the new reporting requirements, though SEC rules impacting several key areas, such as Section 404, have yet to be finalized. To guide these companies in managing compliance efforts, management must understand the Act and SEC reporting obligations, and stay abreast of the evolving decisions and interpretations by lawmakers of key provisions of the Act.

The discussions and observations presented in this reference guide are intended to assist management in developing and executing effective, pragmatic, and tailored plans in meeting the Sarbanes-Oxley Act challenge. Success in these efforts will enable companies to satisfy reporting requirements to shareholders, the public, directors, and other stakeholders with greater confidence. Companies also will benefit from the enhanced credibility that comes from quality corporate reporting — a key advantage that can lower the cost of capital and increase their ability to operate at peak effectiveness.

Title I – Public Company Accounting Oversight Board (PCAOB)

PwC Summary:

Title I of the Act covers the establishment and organization of the PCAOB.

Section 101-Establishment; administrative provisions

Establishes an independent, non-governmental board to oversee the audits of public companies to protect the interests of investors and further public confidence in independent audit reports.

Section 102-Registration with the Board

Requires public accounting firms to register with the Board and take certain other actions to perform audits of issuers.

Section 103-Auditing, quality control and independence standards and rules

Requires the PCAOB to establish, through the adoption of standards proposed by one or more professional groups of accountants, auditing standards and related attestation standards to be used by registered public accounting firms in the preparation and issuance of audit reports.

Section 104-Inspections of registered public accounting firms

Requires the PCAOB to conduct a continuing program of inspections to assess the degree of compliance of each registered public accounting firm with the Act.

Section 105-Investigations and disciplinary proceedings

Requires the PCAOB to establish rules and procedures for the investigation and disciplining of registered public accounting firms.

Section 106-Foreign public accounting firms

Requires that any foreign public accounting firm that prepares or furnishes an audit report with respect to any issuer, shall be subject to the Sarbanes-Oxley Act, in the same manner and to the same extent as a U.S. public accounting firm, except that registration does not by itself provide a basis for subjecting the foreign public accounting firm to the jurisdiction of a U.S. Court.

Section 101: PwC Observations

- PCAOB inaugural members appointed in October 2002:
 - Judge William H. Webster (designated Chairman)
 - Kayla J. Gillan
 - Daniel L. Goelzer
 - Willis D. Gradison, Jr.
 - Charles D. Niemeier
- Shortly after his appointment, the designated chairman submitted his resignation.
- On January 8, 2003 the SEC designated Charles D. Niemeier, exiting Chief Accountant of Enforcement, as Acting Chairman of the PCAOB.
- On March 4, 2003 the PCAOB voted to issue proposed rules on the audit firms registration process. These rules will need to be approved by the SEC.

Title I – Public Company Accounting Oversight Board (PCAOB)

Section 107-Commission oversight of the Board

States that the SEC shall have oversight and enforcement authority over the PCAOB.

Section 108-Accounting standards

Amends Section 19 of the Securities Act of 1933 in that the SEC may recognize under Section 13(b) of the Securities Act of 1934 as "generally accepted" any accounting principles established by a standard setting body that meets certain criteria as further specified in the Act.

Section 108: PwC Observations

Those powers have been delegated by the SEC to the FASB .

Section 109-Funding

Provides for funding of the PCAOB pursuant to an amendment to Section 19(b) of the Securities Act of 1933.

Title 1: Effective Date and Transition

The SEC must determine no later than April 26, 2003 that the Board is properly organized and has the capacity to carry out the requirements of the Act. Public accounting firms then have 180 days after that determination to register with the Board (i.e., no later than October 26, 2003).

Title II – Auditor Independence

PwC Summary:

This title of the Act covers auditor independence and addresses, among other topics, the scope of an auditor's services and audit partner rotation.

On January 28, 2003, the SEC issued final rules that amend its auditor independence rules as required by Section 208(a) of the Act. The new rules affect the services provided by public accounting firms to audit clients registered with the SEC. The final rules address the following areas:

- Non-audit services - revises the SEC rules on the non-audit services that would impair independence if provided to an audit client, generally making them more restrictive than the current rules.
- Audit committee pre-approvals - requires that an issuer's audit committee pre-approve all audit and non-audit services provided by its auditor.
- Partner rotation - prohibits certain audit partners on the audit engagement team from providing audit services for more than five or seven consecutive years, depending on the partner's role in the audit.
- Cooling off period - prohibits an accounting firm from auditing an issuer's financials statements if certain members of the issuer's management had been members of the audit engagement team within the one-year period preceding the commencement of audit procedures.
- Communications with audit committees - requires the auditor to report certain matters to the issuer's audit committee, including critical accounting policies of the issuer.
- Proxy disclosures - revises the categories of disclosures currently required in proxy statements of fees billed by the auditor for audit and non-audit services and requires additional disclosures about the audit committee's pre-approval process.
- Partner compensation - provides that independence is impaired if an audit partner received compensation based on selling engagements to the audit client for services other than audit, review, and attest services.

Title II: PwC Observations

The new rules are long and complex; consequently, additional guidance and interpretation will likely be forthcoming. This summary is designed to provide a general overview and is not a substitute for a detail reading of the rules.

Section 201-Services outside the scope of practice of auditors

The final rules explicitly identify several categories of non-audit services that cannot be provided to an audit client. (See the following for a discussion of the term *audit client*.)

Title II – Auditor Independence

The explicit categories are:

1. Bookkeeping or other services relating 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 outsourcing services
6. Management functions
7. Human resource services
8. Broker/dealer, investment adviser, or investment banking services
9. Legal services
10. Expert services unrelated to the audit
11. Any other service that the Public Company Accounting Oversight Board determines, by regulation, is impermissible.

Section 201: PwC

The Commission noted that its conclusions about independence when non-audit services are provided by auditors to their audit clients are largely predicated on three overarching principles, violations of which would impair the auditor's independence; that is, an auditor cannot (1) function in the role of management, (2) audit his or her own work, or (3) serve in an advocacy role for the client.

Other non-audit services can be rendered without impairing independence only if the service has been pre-approved by the audit committee, provided that the Public Company Accounting Oversight Board had not previously determined the service to be impermissible. Under the final rules, it was made clear that virtually all tax services would be among the non-audit services that are permissible.

Definition of "audit client"

The non-audit service provisions of the final rules apply with respect to audit clients. The term "audit client" refers to the entity for which financial statements or other information are being audited, reviewed, or attested and includes any affiliates of that entity. An affiliate includes any entity that has control over the audit client, is controlled by the audit client, or is under common control with the audit client; any entity that has significant influence over the audit client, unless the audit client is not material to the entity; any entity over which the audit client has significant influence, unless the entity is not material to the audit client; and each entity in an investment company complex in which an audit client is part.

Section 201: Effective Date and Transition

The non-audit services provisions of the rules take effect generally on May 6, 2003. Non-audit services that are being rendered pursuant to contracts in existence on that date can continue to be provided for up to 12 months after that date provided that the services did not impair independence under the existing auditor independence rules.

Title II – Auditor Independence

Section 202-Pre-approval requirements

The final rules require that audit committees pre-approve all audit, review, and attest services that are required under the securities laws and all other permissible non-audit services to be rendered by the audit firm. Before the firm is engaged to render a service, the engagement must be:

- Approved by the issuer's audit committee; or
- Pre-approved pursuant to policies and procedures established by the audit committee that are detailed as to the particular service, provided that the audit committee is informed on a timely basis of each service (and such policies do not include delegation to management).

The rules also contain a de minimis exception to the pre-approval requirement for non-audit services under which pre-approval is waived provided that:

1. All such services do not aggregate to more than five percent of total revenues paid by the audit client to the firm in the fiscal year when services are provided,
2. Such services were not recognized to be non-audit services at the time of the engagement, and
3. Each such service is promptly brought to the attention of the audit committee and approved prior to the completion of the audit by the audit committee or one or more designated representatives.

Additional pre-approvals are required of audit committees of registered investment companies (under the Investment Company Act of 1940).

Section 202: PwC Observation

The final rules have been modified to remove the appearance of an implicit preference of one pre-approval method over another. The second alternative method described will provide reasonable flexibility to audit committees to pre-approve non-audit services, eliminating the need to do so on an engagement-by-engagement basis.

We believe the level of detail in the policies and procedures should be sufficient to provide audit committee members with a clear understanding of the specific services being approved and enable them to determine that the service would not impair an auditor's independence. We suggest that the level of detail be consistent with the description of services the client is required to include in its proxy statement or annual report.

Section 202: Effective Date and Grandfathering

The pre-approval requirements are effective May 6, 2003. Accordingly, audit and non-audit services provided after that date are required to be pre-approved by audit committees. However, the provision of services under contracts in existence on that date that have not been pre-approved by the audit committee are grandfathered, provided that the services were permissible under existing auditor independence rules.

Title II – Auditor Independence

Section 203 - Audit partner rotation

The final rules contain new partner rotation requirements that apply to audit partners. The term *audit partner* is defined in the final rules to mean a partner who is a member of the audit engagement team and who:

- Has responsibility for decision making on significant auditing, accounting, and reporting matters that affect the client's financial statements; or
- Maintains regular contact with client management and the client's audit committee.

Section 203: PwC Observation

The transition provisions of the final rules would allow lead audit partners in their 5th, 6th, or 7th year of service to complete a fiscal year 2003 audit. Additionally, concurring review partners can complete their 2003 and 2004 review services before rotation is required.

The following audit partners are covered by this definition and are subject to the following rotation requirements:

Audit Partner	Rotation Requirement
<ul style="list-style-type: none"> ■ The lead audit partner 	<ul style="list-style-type: none"> ■ Rotate after 5 years; time out of 5 years; ■ Effective for the first fiscal year beginning after May 6, 2003; ■ Service includes time previously served as the lead or concurring partner.
<ul style="list-style-type: none"> ■ The concurring review audit partner 	<ul style="list-style-type: none"> ■ Rotate after 5 years; time out of 5 years; ■ Effective for the second fiscal year beginning after May 6, 2003; ■ Service includes time previously served as the lead or concurring partner.
<ul style="list-style-type: none"> ■ Other audit partners who are part of the audit engagement team if they: (a) provide 10 or more hours of audit services to the issuer or parent (other than specialty partners); or (b) serve as the lead audit partner on a subsidiary for which assets or revenues constitute 20% or more of the issuer's consolidated assets or revenues. 	<ul style="list-style-type: none"> ■ Rotate after 7 years; time out of 2 years; ■ Effective as of the beginning of the first fiscal year after May 6, 2003; ■ Service does not include time served on the audit engagement team prior to May 6, 2003.

Title II – Auditor Independence

Section 203-Audit partner rotation (*continued*)

"Specialty partners" are not subject to the rotation requirements. In the commentary accompanying the rules, *specialty partners* are defined as partners who consult with others on the audit engagement team during the audit, review, or attestation engagement regarding technical or industry-specific issues. The commentary cites as examples of such partners those who are tax or valuation specialists.

Partners assigned to "national office" duties, including technical partners at a local or national level and those assigned to a centralized quality control function, are also not required to rotate. Although they may be consulted on specific accounting issues related to a client, the SEC concluded that those partners serve primarily as a technical resource for the audit team and are not involved in the audit per se.

Section 204 - Auditor reports to audit committees

Type of Communications with Audit Committees

The rules amend SEC Regulation S-X to require auditors to report to the client's audit committee, prior to the filing of the report with the SEC:

- All critical accounting policies and practices used by the client; this would include discussion of the reasons why critical accounting estimates or accounting policies are or are not considered critical, and how current and anticipated future events impact those determinations;
- All alternative treatments (accounting and disclosure) of financial information within generally accepted accounting principles for policies and practices related to material items that have been discussed with client management, including the ramifications of the use of such alternatives and the treatment preferred by the auditor; and
- Other material written communications between the auditor and client management.

The following are examples, not all-inclusive, of written communications that the SEC would consider material and should be communicated:

- Schedules of unadjusted differences, including schedules of material adjustments and reclassifications proposed, and a listing of adjustments and reclassifications not recorded, if any
- Management's representation letter
- Reports on observations and recommendations on internal controls
- Engagement letters
- Independence letter.

The rules encourage auditors to critically consider what additional written communications, beyond those matters required by the rules and GAAS, should be provided to audit committees.

Title II – Auditor Independence

Timing of Communications

The Act requires that these communications occur on a timely basis. The rules specify that the communications must occur prior to the filing of the auditor's audit report with the SEC. As a result, these communications will occur, at a minimum, during the annual audit. The SEC noted, however, that it would expect them to occur as frequently as quarterly or more often on a real-time basis.

Section 204: Effective Date

These communications requirements are effective on May 6, 2003.

Section 205 - Conforming amendments

This conforms the meaning of certain defined terms throughout the Act with these same defined terms in the 1934 Exchange Act, such as the terms *Audit Committee* and *Registered Public Accounting Firm*.

Section 206 - Conflicts of interest - Cooling Off Period (Before Becoming Employed by an Issuer)

Under the final rules, independence would be impaired if the lead or concurring partner, or any other member of the audit engagement team who provides more than ten hours of audit, review, or attest services during the annual audit period for the issuer, accepts a position with the issuer in a *financial reporting oversight role* (see below), within a one-year period preceding the commencement of the audit for the year that included employment of the individual by the issuer. Accordingly, the prohibition would require that the accounting firm complete one annual audit subsequent to when an individual was a member of the audit engagement team.

The audit engagement team includes all partners and professional employees who participate in an audit, review, or attestation engagement of an audit client, including audit partners and all persons who consult with others on the audit engagement team during the audit, review, or attestation engagement regarding technical or industry-specific issues, transactions, or events.

The rule provides the following additional exemptions:

- Individuals employed by the issuer as a result of a business combination between an issuer that is an audit client and the employment entity, provided employment was not in contemplation of the business combination and the audit committee of the successor issuer is aware of the prior employment relationship; or
- Individuals that are employed by the issuer due to an emergency or other unusual situation provided that the audit committee determines that the relationship is in the interest of investors.

Title II – Auditor Independence

A *financial reporting oversight role* is a role in which an individual is in a position to, or does, exercise influence over the contents of the financial statements or related information (such as management's discussion and analysis) to be filed with the SEC, or influence over anyone who prepares them through, for example, direct responsibility or oversight of those persons. Examples in the rule of a *financial reporting oversight role* include:

- A member of the board of directors or similar management or governing body
- Chief executive officer
- President
- Chief financial officer
- Chief operating officer
- General counsel
- Chief accounting officer
- Controller
- Director of internal audit
- Director of financial reporting
- Treasurer or
- Any equivalent position

For purposes of the rule, audit procedures are deemed to have commenced for the current audit engagement period the day after the prior year's periodic annual report (e.g., Form 10-K, 10-KSB, 20-F or 40-F) is filed with the SEC. The audit engagement period for the current year is deemed to conclude the day the current year's periodic annual report is filed with the SEC. The rule includes specific requirements with respect to investment companies.

Section 206: Effective Date

The rule is effective for employment relations with an issuer that commence on and after May 6, 2003.

Other - Proxy Disclosures

The final rules change the categories of fees disclosed by audit clients and require that the disclosures be included in both proxy statements and annual reports (incorporation by reference from the proxy statement to the annual report is permissible), and that the disclosures cover two years instead of one as under prior rules. Fees are required to be disclosed in the following categories for each of the two most recent fiscal years: audit fees, audit related fees, tax fees and all other fees.

Title II – Auditor Independence

The final rules also require audit clients to disclose in their proxy statements: (1) the audit committee's pre-approval policies and procedures for audit and non-audit services, and (2) the percentage of the auditor's fees where the de minimis exception was used by category.

Proxy Rules: Effective Date

The new proxy disclosure provisions are effective for periodic annual filings for the first fiscal year ending after December 15, 2003. Early application is encouraged. If early application is elected, the disclosure provisions must be adopted in total.

Other - Partner Compensation

The final rules provide that to be independent of an audit client, an audit partner may not earn or receive compensation based on the audit partner selling engagements to that audit client to provide any products or services other than audit, review, or attest services.

Partner Compensation: Effective Date

The new requirements are effective in the first fiscal period of the accounting firm that commences after May 6, 2003.

Section 207 - Study of mandatory rotation of registered public accounting firms

Requires the Comptroller General of the United States to conduct a study and review of the potential effects of requiring mandatory rotation of registered public accounting firms, and report its findings to Congress by July 30, 2003.

Section 208 - Commission authority

Under this section the SEC was required to issue final regulations regarding auditor independence by January 26, 2003, making it unlawful for any registered public accounting firm to prepare or issue any audit report if the firm has engaged in prohibited activity as defined by subsections (g) through (l) of Section 10A of the 1934 Exchange Act.

Section 209 - Considerations by appropriate State regulatory authorities

In supervising non-registered public accounting firms and their associated persons, appropriate State regulatory authorities shall make an independent determination of the proper standards applicable.

Title III – Corporate Responsibility

PwC Summary

This title of the Act mainly covers the requirements for public companies' audit committees, certifications by CEOs and CFOs and rules of professional conduct for attorneys.

Section 301 - Public company audit committees

Requires the SEC to direct the national securities exchanges and associations to prohibit the listing of any security of an issuer that is not in compliance with certain requirements.

The SEC issued a proposed rule in January 2003 to implement this section of the Act. The proposed rule addresses the following requirements: (1) the independence of audit committee members, (2) the audit committee's responsibility to select and oversee the issuer's independent accountant, (3) procedures for handling complaints regarding the issuer's accounting practices, (4) the authority of the audit committee to engage advisors, and (5) funding for the independent auditor and any outside advisors engaged by the audit committee. Under the proposed rule, the new listing requirements have to be operative by the exchanges no later than one year after the publication of the final rule. The final rule has to be issued no later than April 26, 2003.

Section 302 - Corporate responsibility for financial reports

The final rule implementing Section 302 was issued by the SEC in August 2002. The rule applies to a company that files periodic reports under Section 13(a) or 15(d) of the Exchange Act. The rule requires that a company's CEO and CFO each certify quarterly and annually that:

- He or she reviewed the report being filed.
- Based on his/her knowledge, the report does not contain any untrue statements or omit any material facts necessary to make the statements misleading in light of the circumstances in which they were made.
- Based on his/her knowledge, the financial statements and other financial information fairly present, in all material respects, the financial position, results of operations and cash flows.
- He/she is responsible for and has designed, established and maintained Disclosure Controls & Procedures (DC&P), as well as evaluated and reported on the effectiveness of those controls and procedures within 90 days of the report filing date.

Section 302: PwC Observations

Certifying officers need to ensure that the procedures they perform are sufficient to satisfy themselves with the effectiveness of disclosure controls and procedures in order to sign off on the certification. We believe the certifying officers have to consider the internal controls for financial reporting when they are assessing the effectiveness of disclosure controls and procedures. Please refer to PwC's Observations under Title IV of the Act for further discussion regarding Section 404 and Internal Control frameworks. In addition, the timing of the evaluation of DC&P may be readdressed at the time of issuance of the Section 404 final rules.

Title III – Corporate Responsibility

- All deficiencies and material weaknesses in internal controls have been disclosed to Audit Committees and auditors, as well as any fraud (material or not) involving anyone with a significant role in internal control.
- Significant changes in internal controls that could significantly affect internal controls subsequent to the most recent evaluation have been disclosed in the report, including corrective actions with regard to significant deficiencies and material weaknesses.

Section 302: Effective Date

All the certification requirements are effective for quarterly, semi-annual and annual reports covering periods that end after August 29, 2002. Transition provisions apply to reports filed after August 29, 2002 (but covering periods that ended before August 29, 2002).

Section 303-Improper influence on conduct of audits

States that it is unlawful for any officer or director of an issuer, or any person acting under the direction thereof, to take 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.

A proposed rule implementing those provisions was issued by the SEC in October 2002. The proposed rule would: (1) supplement the current rules which address the falsification of books, records and accounts and false or misleading statements or omissions to make certain statements to accountants and (2) would provide examples of actions that improperly influence an auditor that could result in "rendering the financial statements materially misleading."

Section 304-Forfeiture of certain bonuses and profits

States that if an issuer is required to prepare an accounting restatement due to the material noncompliance of the issuer, as a result of misconduct, with any financial reporting requirement under the securities laws, the chief executive officer and chief financial officer of the issuer shall reimburse the issuer for:

- Any bonus or other incentive-based or equity based compensation received by that person during the 12-month period following issuance of the financial statements including restatements.
- Any profits realized from the sale of securities of the issuer during that 12 month period.

Section 304: PwC Observations

Section 304 did not direct the SEC to undertake any rulemaking and therefore became effective on July 30, 2002. Section 304 did grant the SEC the authority to exempt any person from the requirements of this section; however the SEC staff has informally indicated that it was unaware of any current plans to exercise such exemptive authority.

Title III – Corporate Responsibility

Section 305-Officer and director bars and penalties

States that in any action or proceeding brought or instituted by the SEC under any provision of the securities laws, the SEC may seek, and any Federal court may grant, any equitable relief that may be appropriate or necessary for the benefit of investors.

Section 306-Insider trades during pension fund blackout periods

The SEC issued final rules implementing Section 306(a) of the Act in January 2003 (Regulation Blackout Trading Restrictions (BTR)). Section 306(a) of the Act makes it unlawful for any director or executive officer of an issuer to directly or indirectly purchase, sell or otherwise acquire or transfer any equity security of the issuer during a pension blackout period with respect to such security, if the director or executive officer acquired the security in connection with his or her service or employment as a director or executive officer.

To give effect to Section 306(a) in a manner consistent with congressional intent, the final rules incorporate into Regulation BTR a number of concepts developed under Section 16 of the Exchange Act. Regulation BTR covers:

- Issuers subject to trading prohibition
- Persons subject to trading prohibition
- Securities subject to trading prohibition
- Transactions subject to trading prohibition
- Blackout periods
- Remedies
- Notice

Section 306: Effective Date

The final rule became effective on January 26, 2003. Transaction provisions apply to notice requirements.

Section 307-Rules of professional responsibility for attorneys

The SEC issued final rules in January 2003 to implement this section of the Act. Section 307 of the Act requires the SEC to prescribe minimum standards of professional conduct for attorneys appearing and practicing before the SEC in any way in the representation of issuers. The standards must include a rule requiring an attorney to report evidence of a material violation of securities laws or breach of fiduciary duty or similar violation by the issuer up-the-ladder within the company to the chief legal counsel or the chief executive officer of the company (or the equivalent thereof); and, if they do not respond appropriately to the evidence, requiring the attorney to report the evidence to the audit committee, another committee of independent directors, or the full board of directors. The final rule responds to this directive and is intended

Title III – Corporate Responsibility

to protect investors and increase their confidence in public companies by ensuring that attorneys who work for those companies respond appropriately to evidence of material misconduct. The SEC is still considering the "noisy withdrawal" provisions that were included in its proposed rule and is seeking comments in an additional proposed rule.

Section 307: Effective Date

The final rule is effective August 5, 2003.

Section 308-Fair funds for investors

States that in a judicial or administrative action brought by the SEC under the securities laws of the Securities Exchange Act of 1934, the SEC obtains an order requiring disgorgement against any person for a violation of such laws or the rules or regulations thereunder, or such person agrees in settlement of any such action to such disgorgement, and the SEC also obtains pursuant to such laws a civil penalty against such person, the amount of such civil penalty shall, on the motion or at the direction of the SEC, be added to and become part of the disgorgement fund for the benefit of the victims of such violation.

Title IV – Enhanced Financial Disclosures

PwC Summary

Title IV of the Sarbanes-Oxley Act contains a number of provisions intended to improve financial disclosures. The SEC has recently released final rules on several of these provisions.

Section 401-Disclosures in periodic reports

Off-balance sheet arrangements and contractual obligations

The final rule on Section 401(a), *Disclosure of Material Off-Balance Sheet and Contractual Obligations*, issued by the SEC in January 2003 requires registrants, including foreign private issuers, to:

- Provide in a separately captioned subsection of "Management's Discussion and Analysis of Financial Condition and Results of Operations" (MD&A) an explanation of off-balance sheet transactions, arrangements, obligations and other relationships of an issuer with unconsolidated entities or other persons, that have, or are reasonably likely to have, a current or future material effect on financial condition, changes in financial condition, revenues or expenses, results of operations, liquidity, capital expenditures or capital resources, and
- Provide in MD&A an overview (for registrants other than small business issuers) of certain known aggregate contractual obligations in a tabular format.

Section 401(a): PwC Observations

The general principle throughout the final rule for off-balance sheet arrangements is that the registrant should disclose information to the extent that it is necessary for an understanding of its material off-balance sheet arrangements and their material effects on financial condition, changes in financial condition, revenues or expenses, results of operations, liquidity, capital expenditures or capital resources.

Section 401(a): Effective Date

The disclosure requirements for off-balance sheet arrangements are effective for annual reports, registration statements, and proxy or information statements that are required to include financial statements for fiscal years ending on or after June 15, 2003. The disclosure requirements relating to the table of contractual obligations are effective for annual reports, registration statements, and proxy or information statements that are required to include financial statements for fiscal years ending on or after December 15, 2003. Registrants may voluntarily comply with the new disclosure requirements before the compliance dates.

Title IV – Enhanced Financial Disclosures

Non GAAP Financial Measures

The final rule issued by the SEC in January 2003 on Section 401(b), covers:

- Public disclosure of material information that includes non-GAAP financial measures (new Regulation G)
- Non-GAAP financial measures in filings with the SEC - Amendments to Item 10 of Regulation S-K, Item 10 of Regulation S-B and Form 20-F
- Requirements to furnish on Form 8-K public announcements or releases of material non-public information regarding a registrant's results of operations or financial condition (e.g., earnings releases) for a completed quarterly or annual fiscal period (New Item 12 of Form 8-K)

Section 401(b): PwC Observations

For calendar-year end companies, compliance will be required for the quarter ended March 31, 2003. Although the new rules do not become effective until March 28, 2003, the SEC could encourage registrants to comply sooner.

For domestic registrants, a non-GAAP financial measure is defined as a numerical measure of a registrant's historical or future financial performance, financial position, or cash flows that:

- Excludes amounts, or is subject to adjustments that have the effect of excluding amounts, that are included in the most directly comparable measure calculated and presented in accordance with GAAP in the statement of income, balance sheet, or statement of cash flows (or equivalent statements) of the issuer; or
- Includes amounts, or is subject to adjustments that have the effect of including amounts, that are excluded from the most directly comparable measure so calculated and presented.

Section 401(b): Effective Date

The new rules and related amendments will be effective on March 28, 2003. Regulation G will apply to all subject disclosures as of March 28, 2003. The requirement to furnish earnings releases and similar materials to the SEC on Form 8-K will apply to earnings releases and similar announcements made after March 28, 2003. The amendments to Item 10 of Regulations S-K and S-B and Form 20-F will apply to any annual or quarterly report filed with respect to a fiscal period ending after March 28, 2003.

Section 402- Enhanced conflict of interest provisions

States that it shall be unlawful for any issuer directly or indirectly, including through any subsidiary, to extend or maintain credit, to arrange for the extension of credit, or to renew an extension of credit, in the form of a personal loan to or for any director or executive officer of that issuer.

Title IV – Enhanced Financial Disclosures

Section 403-Disclosures of transactions involving management and principal stockholders

Final rules were issued by the SEC in August 2002 to implement Section 403 of the Act. Section 403 makes certain changes to the Exchange Act shareholding and transaction reporting requirements for directors, officers and principal (i.e., greater than 10%) stockholders generally changing the deadline for filing statements regarding stock transactions of covered persons from 10 days following the end of the month in which the transaction occurred to 2 business days following the transaction's execution date. The initial statement upon becoming a covered person continues to be due within 10 days of achieving that status.

Section 403: Effective Date

The final rules were effective on August 29, 2002.

Title IV – Enhanced Financial Disclosures

Section 404-Management assessment of internal controls

Requires the SEC to prescribe rules requiring each annual report required by Section 13(a) or 15(d) of the Securities Exchange Act of 1934 to contain an internal control report, which shall -

- State the responsibility of management for establishing and maintaining an adequate internal control structure and procedures for financial reporting.
- Contain an assessment, as of the end of the most recent fiscal year of the issuer, of the effectiveness of the internal control structure and procedures of the issuer for financial reporting.
- The external auditor is required to attest to the assertions made by management in reference to their assessment of internal controls.
- Proposed rules were issued by the SEC in October 2002.

Section 405-Exemption

States that nothing in Sections 401, 402 or 404, or the rules of the SEC under those sections shall apply to any investment company registered under Section 8 of the Investment Company Act of 1940.

Section 404: PwC Observations

At this writing, the SEC has only proposed rules pertaining to a company's public reporting concerning its internal controls and procedures for financial reporting. The proposed effective date is for fiscal years ending on or after September 15, 2003. In the proposed rule, the SEC stated:

"We believe that the purpose of internal controls and procedures for financial reporting is to ensure that companies have processes designed to provide reasonable assurance that:

- The company's transactions are properly authorized;
- The company's assets are safeguarded against unauthorized or improper use; and
- The company's transactions are properly recorded and reported

to permit the preparation of the registrant's financial statements in conformity with generally accepted accounting principles."

Although rules and standards for reporting on internal controls and procedures for financial reporting pursuant to Sections 404 and Sections 103 of Sarbanes-Oxley have not been established, companies still need to establish reasonable guidelines and boundaries as a basis for identifying, designing, and maintaining controls and procedures for financial reporting. The COSO framework, or one that is similar, can be helpful in providing a reference point.

Our White Paper entitled "Strategies for Meeting New Internal Control Reporting Challenges" provides useful information on this topic and can be accessed electronically through our financial reporting website, www.cfodirect.com

Title IV – Enhanced Financial Disclosures

Section 406-Code of ethics for senior financial officers

The final rules require a company subject to the reporting requirements of Section 13(a) or 15(d) of the Exchange Act to disclose whether it has adopted a code of ethics that applies to the company's principal executive officer, principal financial officer, principal accounting officer or controller or persons performing similar functions. Companies that have not adopted such a code must disclose this fact and explain why they have not done so. Companies will also be required to promptly disclose amendments to, and waivers from, the code of ethics relating to any of those officers.

The final rules define the term "code of ethics" as written standards that are reasonably designed to deter wrongdoing and to promote:

- Honest and ethical conduct, including the ethical handling of actual or apparent conflicts of interest between personal and professional relationships;
- Full, fair, accurate, timely, and understandable disclosure in reports and documents that a registrant files with, or submits to, the SEC and in other public communications made by the registrant;
- Compliance with applicable governmental laws, rules and regulations;
- The prompt internal reporting of violations of the code of ethics to an appropriate person or persons identified in the code; and
- Accountability for adherence to the code.

The final rules require companies to choose among three alternative methods of making publicly available their codes of ethics. A company should include the new code of ethics disclosure in its annual report filed on Form 10-K, 10-KSB, 20-F, or 40-F.

Section 406: PwC Observations

The SEC noted that it believes it is reasonable to expect that a company would hold its chief executive officer to at least the same standards of conduct to which it holds its senior financial officers. Accordingly, the final rules go beyond what Congress mandated and include a company's principal executive officer.

The definition of "code of ethics" intentionally does not prescribe every detail a company must address in its code of ethics or specifically outline ethical principles that a code of ethics should contain. The SEC concluded that decisions as to the specific provisions of the code, compliance procedures, and disciplinary measures for ethical breaches are best left to individual companies to determine. However, the SEC strongly encourages companies to adopt codes that are broader and more comprehensive than necessary to meet the new disclosure requirements.

Section 406: Effective Date

All companies must comply with the code of ethics disclosure requirements in their annual reports on Form 10-K, 10-KSB, 20-F or 40-F for fiscal years ending on or after July 15, 2003. Companies must also comply with the requirements regarding disclosure of amendments to, and waivers from, their ethics codes on or after the date on which they file their first annual report in which disclosure of their ethics code is required.

Title IV – Enhanced Financial Disclosures

Section 407-Disclosure of audit committee financial expert

The final rules require a domestic registrant to annually disclose whether it has at least one "audit committee financial expert" serving on its audit committee, and if so, the name of the expert and whether the expert is independent of management. A company that does not have an audit committee financial expert must disclose this fact and explain why it has no such expert. Foreign private issuers have also been included within the scope of the final rule with certain exceptions.

The final rules define an audit committee financial expert as a person who has all of the following attributes:

- An understanding of generally accepted accounting principles and financial statements;
- The ability to assess the general application of such principles in connection with the accounting for estimates, accruals and reserves;
- Experience preparing, auditing, analyzing or evaluating financial statements that present a breadth and level of complexity of accounting issues that are generally comparable to the breadth and complexity of issues that can reasonably be expected to be raised by the registrant's financial statements, or experience actively supervising one or more persons engaged in such activities;
- An understanding of internal controls and procedures for financial reporting; and
- An understanding of audit committee functions.

Under the final rules, a person must have acquired such attributes through any one or more of the following:

- 1) Education and experience as a principal financial officer, principal accounting officer, controller, public accountant, or auditor, or experience in one or more positions that involve the performance of similar functions;
- 2) Experience actively supervising a principal financial officer, principal accounting officer, controller, public accountant, auditor or person performing similar functions;
- 3) Experience overseeing or assessing the performance of companies or public accountants with respect to the preparation, auditing, or evaluation of financial statements; or
- 4) Other relevant experience.

Section 407: PwC Observations

The proposed definition of "financial expert" was the most controversial and most commented on aspect of the rule proposal. Most commenters thought the proposed definition was too restrictive, would cause companies difficulty when trying to attract an audit committee member who would qualify as an expert under the definition, and would severely limit the number of persons qualified to be financial experts. The definition in the final rules is responsive to those concerns.

The SEC recognizes in the final rule that an audit committee financial expert can acquire the requisite attributes of an expert in many different ways. However, the SEC noted that it believes this expertise should be the product of experience and not merely education. Therefore, if a person qualifies as an audit committee financial expert because of other relevant experience, the registrant must provide a brief list of that person's relevant experience.

Title IV – Enhanced Financial Disclosures

The new audit committee financial expert disclosures are required to be presented in annual reports on Forms 10-K, 10-KSB, 20-F, or 40-F. Because of cost/benefit concerns, the SEC chose not to require these disclosures in proxy and information statements, registrations statements, and quarterly reports. However, the final rules acknowledge that domestic issuers that voluntarily include this disclosure in their proxy or information statements may incorporate the information by reference into their Forms 10-K or 10-KSB.

Section 407: Effective Date

Companies, other than small business issuers, must comply with the audit committee financial expert disclosure requirements in their annual reports for fiscal years ending on or after July 15, 2003. Small business issuers must comply with the disclosure requirements in their annual reports for fiscal years ending on or after December 15, 2003.

Section 408-Enhanced review of periodic disclosures by issuers

Directs the SEC to review the financial statements and disclosures of issuers on a regular and systematic basis and indicates that for purposes of scheduling the reviews, the SEC shall consider issuers that have had material restatements of financial results, that experience relatively significant stock price volatility, that have the largest market capitalization, that are emerging companies with disparate price-earnings ratios or that have operations that significantly affect any material sector of the economy. Section 408 also states that reviews must be performed no less frequently than once every three years.

Section 409-Real time issuer disclosures

Amends Section 13 of the Securities Exchange Act of 1934 to state that each issuer reporting under Section 13(a) or 15(d) shall disclose to the public on a rapid and current basis such additional information concerning material changes in the financial condition or operations of the issuer, in plain English, which may include trend and qualitative information and graphic presentations, as the SEC determines, by rule, is necessary or useful for the protection of investors and in the public interest.

Title V – Analyst Conflicts of Interest

Section 501 - Treatment of security analysts by registered securities associations and national security exchanges

The SEC issued a final rule in February 2003 adopting Regulation Analyst Certification ("Regulation AC"). Regulation AC requires that brokers, dealers, and certain persons associated with a broker or dealer include in research reports certifications by the research analyst that the views expressed in the report accurately reflect his/her personal views, and disclose whether or not the analyst received compensation or other payments in connection with his/her specific recommendations or views. Broker-dealers would also be required to obtain periodic certifications by research analysts in connection with the analyst's public appearances.

Section 501: Effective Date

Regulation AC becomes effective on April 14, 2003.

Title VI – Commission Resources and Authority

Section 601 - Authorization of appropriations

Provides additional funding to the SEC.

Section 602 - Appearance and practice before the Commission

Amends the Securities Exchange Act of 1934 by inserting after Section 4B a section stating the SEC may censure any person, or deny, temporarily or permanently, to any person the privilege of appearing or practicing before the SEC in any way, if that person is found by the SEC, after notice and opportunity for hearing in that matter -

- Not to possess the requisite qualifications
- To be lacking in character or integrity, or to have engaged in unethical or improper professional conduct
- To have willfully violated, or willfully aided and abetted the violation of, any provision of the securities laws or the rules and regulations issued thereunder.

Section 603 - Federal court authority to impose penny stock bars

Amends the Securities Exchange Act of 1934 by creating a section that states that in any proceeding against any person participating in, or, at the time of the alleged misconduct who was participating in, an offering of penny stock, the court may prohibit that person from participating in an offering of penny stock, conditionally or unconditionally, and permanently or for such period of time as the court shall determine.

Section 604 - Qualifications of associated persons of brokers and dealers

Amends the Securities Exchange Act of 1934 regarding the qualifications of associated persons of brokers and dealers.

Title VII – Studies and Reports

Sections 701, 702, 703, 704 and 705

Direct federal regulatory bodies to conduct studies regarding consolidation of accounting firms; credit rating agencies; violators, violations and enforcement actions involving securities laws; certain roles of investment banks and financial advisors.



Title VIII – Corporate and Criminal Fraud Accountability

Section 801-Short title

States that Title VIII may be cited as the "Corporate and Criminal Fraud Accountability Act of 2002".

Section 802-Criminal penalties for altering documents

Destruction, alteration, or falsification of records in Federal investigations and bankruptcy

Amends Chapter 73 of Title 18, United States Code such that whoever knowingly alters, destroys, mutilates, conceals, covers up, falsifies, or makes a false entry in any record, document, or tangible object with the intent to impede, obstruct, or influence the investigation or proper administration of any matter within the jurisdiction of any department or agency of the United States or any case filed under Title 11, or in relation to or contemplation of any such matter or cash, shall be fined under this title, imprisoned not more than 20 years, or both.

Destruction of corporate audit records

A final rule was issued by the SEC in January 2003 to implement those provisions. Under the final rule, auditors must retain records relevant to the audits and reviews of financial statements filed with the SEC, including workpapers and other documents that form the basis of the audit or review and memoranda, correspondence, communications, other documents and records (including electronic records) which (a) are created, sent or received in connection with the audit or review and (b) contain conclusions, opinions, analyses, or financial data related to the audit or review. The final rule requires retention of such documents for a 7-year period.

Section 802: Effective Date For Destruction of Corporate Audit Records

The final rule is effective for audits and reviews completed on or after October 31, 2003.

Section 803-Debts nondischargeable if incurred in violation of securities fraud laws

Amends Section 523(a) of Title 11, United States Code such that debts are nondischargeable if incurred in violation of securities laws.

Section 804-Statute of limitations for securities fraud

Amends Section 1658 of Title 28, United States Code regarding statute of limitations for securities fraud.

Section 805-Review of Federal sentencing guidelines for obstruction of justice and extensive criminal fraud

Provides for a review of federal sentencing guidelines for obstruction of justice and extensive criminal fraud.

Title VIII – Corporate and Criminal Fraud Accountability

Section 806-Protection for employees of publicly traded companies who provide evidence of fraud

Provides for protection of employees of publicly traded companies who provide evidence of fraud.

Section 807-Criminal penalties for defrauding shareholders of publicly traded companies

Amends Chapter 63 of Title 18, United States Code regarding criminal penalties for defrauding shareholders of publicly traded companies.

Section 806: PwC Observations

Several key considerations for ensuring Whistleblower protection and effective incident management are as follows:

- Establish multiple avenues for reporting compliance concerns
- If the reporting options are narrow, at the senior level in the organization, or require reporting to one's direct supervisor, it is unlikely that the employees will be encouraged to use it without fear of retaliation.
- Employees must be informed that every effort will be made to keep their concerns confidential and/or anonymous.
- Where a "serious" ethics and compliance program has been established, there may be a hierarchy of people to report concerns to, including:
 - A compliance officer or manager
 - Legal department
 - Any supervisor or manager
- Establish guidelines for the investigation of purported misconduct.

Title IX – White-Collar Crime Penalty Enhancements

Section 901-Short Title

States that Title IX may be cited as "White-Collar Crime Penalty Enhancement Act of 2002."

Section 902-Attempts and conspiracies to commit criminal fraud offenses

Amends Chapter 63 of Title 18, United States Code such that any person who attempts or conspires to commit any offense under this chapter shall be subject to the same penalties as those prescribed for the offense, the commission of which was the object of the attempt or conspiracy.

Section 903-Criminal penalties for mail and wire fraud

Amends Section 1341 of Title 18, United States Code regarding criminal penalties for mail and wire fraud.

Section 904-Criminal penalties for violations of Employee Retirement Income Security Act of 1974

Amends Section 501 of the Employee Retirement Income Security Act of 1974 to increase the criminal penalties for violations of the Employee Retirement Income Security Act of 1974.

Section 905-Amendment to sentencing guidelines relating to certain white collar offenses

Amends the Federal Sentencing Guidelines related to certain white-collar offenses.

Section 906-Corporate responsibility for financial reports

Section 906 requires an issuer's periodic reports containing financial statements to be accompanied by a two item CEO and CFO certification indicating that the report fully complies with the Exchange Act and that the information contained in the periodic report fairly presents, in all material respects, the issuer's financial condition and results of operations. This certification carries with it direct criminal penalties with fines up to \$5 million and up to 20 years in prison.

Section 906: PwC Observations

Section 906 certifications are subject to the jurisdiction of the U.S. Department of Justice and the Act did not direct the SEC to undertake any implementing rulemaking. The provisions of Section 906 became effective on July 30, 2002. It is important to note that the certifications required under Section 302 and Section 906 are two separate certifications and that both must be filed/submitted. The SEC Staff has indicated that it is engaged in ongoing discussions with the Department of Justice to explore whether it would be possible to integrate the two certifications.

Title X – Corporate Tax Returns

Section 1001-Sense of the Senate regarding the signing of corporate tax returns by chief executive officers

Conveys the sense of the Senate that the CEO should sign a company's federal income tax return.

Title X: PwC Observations

A sense of Congress statement is not law. In order to bring this requirement into effect, there will have to be specific legislation on this matter. This matter needs to be followed because intervening factors, like another financial scandal, etc., could force the issue in that case.

Accordingly, current rules regarding permissible return signers are still in effect. Similarly, unless a particular state has adopted such a rule, the same holds true for state tax returns.

Title XI – Corporate Fraud and Accountability

Section 1101-Short title

States that Title XI may be cited as "Corporate Fraud Accountability Act of 2002."

Section 1102-Tampering with a record or otherwise impeding an official proceeding

Amends Section 1512 of Title 18, United States Code, stating that whoever corruptly alters, destroys, mutilates, or conceals a record document, or other object, or attempts to do so, with the intent to impair the object's integrity or availability for use in an official proceeding or otherwise obstructs, influences, or impedes any official proceeding, or attempts to do so, shall be fined under this title or imprisoned not more than 20 years, or both.

Section 1103-Temporary freeze authority for the Securities and Exchange Commission

Provides for the authority of the SEC to temporarily freeze the funds of an issuer they believe may have violated federal securities laws.

Section 1104-Amendment to the Federal Sentencing Guidelines

Requests for immediate consideration by the United States Sentencing Commission to:

- Promptly review the sentencing guidelines applicable to securities and accounting fraud and related offenses.
- Expeditiously consider the promulgation of new sentencing guidelines or amendments to existing sentencing guidelines to provide an enhancement for officers or directors of publicly traded corporations who commit fraud and related offenses.
- Submit to Congress an explanation of actions taken by the sentencing commission and any additional policy recommendations the SEC may have for combating offenses described above.

Section 1105-Authority of the Commission to prohibit persons from serving as officers or directors

Provides authority to the SEC to prohibit persons from serving as officers or directors of an issuer.

Section 1106-Increased criminal penalties under Securities Exchange Act of 1934

Provides for increased criminal penalties under the Securities Exchange Act of 1934.

Section 1107-Retaliation against informants

Amends Section 1513 of Title 18, United States Code, such that whoever knowingly, with the intent to retaliate, takes any action harmful to any person, including interference with the lawful employment or livelihood of any person for providing to a law enforcement officer any truthful information relating to the commission or possible commission of any Federal Offense, shall be fined under this title or imprisoned not more than 10 years, or both.



Mission Critical: Section 302 and Section 404 Key Observations

Questions That Must be Asked:

- What does our control structure look like and how does it operate?
- Who is accountable?
- How does it deal with change?
- What are the critical control activities?
- Are they monitored?
- Is all of this documented?
- How will I demonstrate that I have reviewed the controls every quarter?

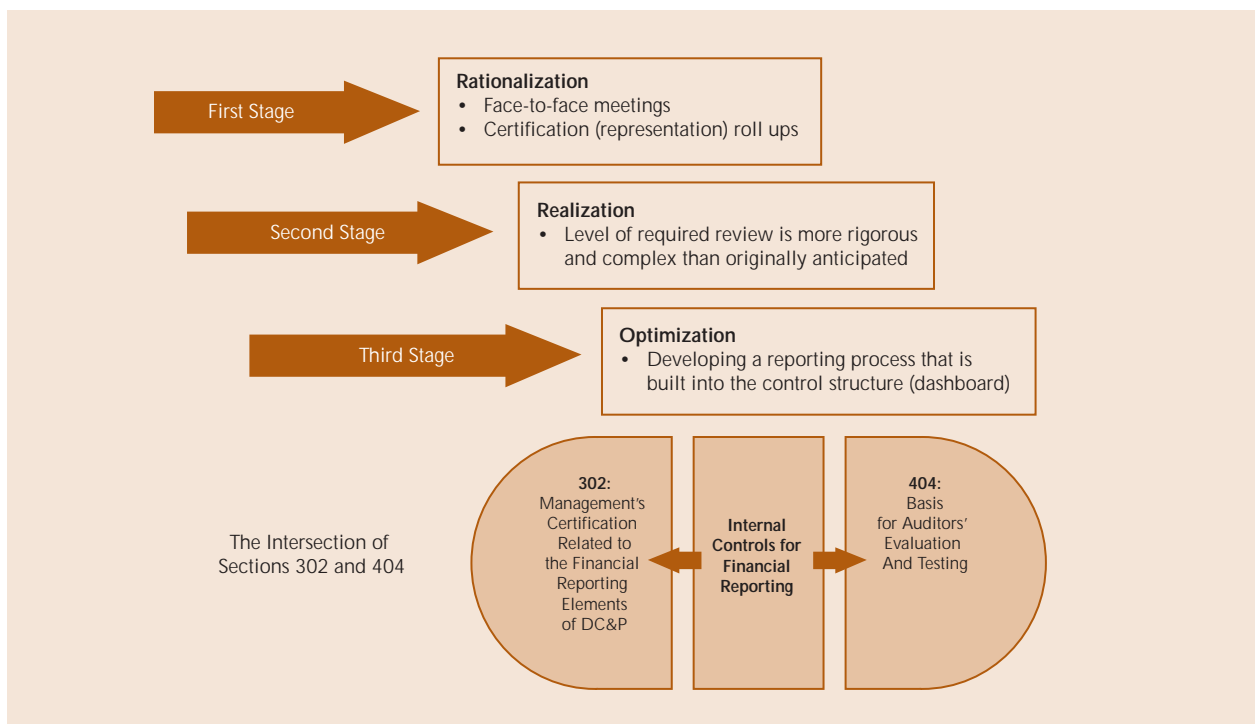
Audit of Financial Statements vs. Section 404 Controls Attestation

Audit of Financial Statements

- Understanding and consideration of internal controls only to develop the audit approach
- Overall objective is the rendering of an opinion on the financial statements, not to opine on internal controls

404 Attestation

- 100% controls-based approach
- Must evaluate and test controls across business and functional areas to attest to managements' assertions regarding the assessment of internal controls over financial reporting made by management.
- Lack of errors, historically, in financial statements is not de-facto evidence unto itself, of an appropriate internal control structure



Appendix A - Listing of Titles and Sections

Title	Sections
I Public Company Accounting Oversight Board	101 Establishment; administrative provisions
	102 Registration with the Board
	103 Auditing, quality control and independence standards and rules
	104 Inspections of registered public accounting firms
	105 Investigations and disciplinary proceedings
	106 Foreign public accounting firms
	107 Commission oversight of the Board
	108 Accounting standards
	109 Funding
II Auditor Independence	201 Services outside the scope of practice of auditors
	202 Pre-approval requirements
	203 Audit partner rotation
	204 Auditor reports to audit committees
	205 Conforming amendments
	206 Conflicts of interest
	207 Study of mandatory rotation of registered public accounting firms
	208 Commission authority
	209 Considerations by appropriate State regulatory authorities
III Corporate Responsibility	301 Public company audit committees
	302 Corporate responsibility for financial reports
	303 Improper influence on conduct of audits
	304 Forfeiture of certain bonuses and profits
	305 Officer and director bars and penalties
	306 Insider trades during pension fund blackout periods
	307 Rules of professional responsibility for attorneys
	308 Fair funds for investors
IV Enhanced Financial Disclosures	401 Disclosures in periodic reports
	402 Enhanced conflict of interest provisions
	403 Disclosures of transactions involving management and principal stockholders
	404 Management assessment of internal controls
	405 Exemption
	406 Code of ethics for senior financial officers
	407 Disclosure of audit committee financial expert
	408 Enhanced review of periodic disclosures by issuers
	409 Real time issuer disclosures

Appendix A - Listing of Titles and Sections – *Continued*

V Analyst Conflicts of Interest	501	Treatment of security analysts by registered securities associations and national securities exchanges
VI Commission Resources and Authority	601	Authorization of appropriations
	602	Appearance and practice before the Commission
	603	Federal court authority to impose penny stock bars
	604	Qualifications of associated persons of brokers and dealers
VII Studies and Reports	701	GAO study and report regarding consolidation of public accounting firms
	702	Commission study and report regarding credit rating agencies
	703	Study and report on violators and violations
	704	Study of enforcement actions
	705	Study of investment banks
VIII Corporate and Criminal Fraud Accountability	801	Short title
	802	Criminal penalties for altering documents
	803	Debts nondischargeable if incurred in violation of securities fraud laws
	804	Statute of limitations for securities fraud
	805	Review of Federal Sentencing Guidelines for obstruction of justice and extensive criminal fraud
	806	Protection for employees of publicly traded companies who provide evidence of fraud
	807	Criminal penalties for defrauding shareholders of publicly traded companies
IX White Collar Crime Penalty Enhancements	901	Short title
	902	Attempts and conspiracies to commit criminal fraud offenses
	903	Criminal penalties for mail and wire fraud
	904	Criminal penalties for violations of the Employee Retirement Income Security Act of 1974
	905	Amendment to sentencing guidelines relating to certain white-collar offenses
	906	Corporate responsibility for financial reports
X Corporate Tax Returns	1001	Sense of the Senate regarding the signing of corporate tax returns by chief executive officers
XI Corporate Fraud and Accountability	1101	Short title
	1102	Tampering with a record or otherwise impeding an official proceeding
	1103	Temporary freeze authority for the Securities and Exchange Commission
	1104	Amendment to the Federal Sentencing Guidelines
	1105	Authority of the Commission to prohibit persons from serving as officers or directors
	1106	Increased criminal penalties under Securities Exchange Act of 1934
	1107	Retaliation against informants

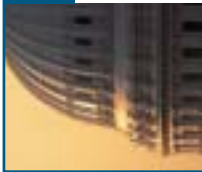
NAVIGATING THE SARBANES-OXLEY ACT OF 2002

Appendix B - Timeline of Sarbanes-Oxley Act Requirements

Topic	Main requirements of the Act	Key provisions of the SEC's final rules (if applicable)	Effective Date	Responsibility	Required Action
101 (d) Public Company Oversight Board	SEC must determine the Public Company Oversight Board is properly organized and has the capacity to carry out its responsibilities under the Act		SEC determination no later than April 26, 2003	SEC	
102(a) Registered Accounting Firms	No later than 180 days after the SEC declares that the Public Company Accounting Oversight Board has the ability to function and carry out its responsibilities, no unregistered accounting firm may prepare or issue an audit report for a public company.		No later than 180 days after the SEC's determination that the Oversight Board is ready to carry out its responsibilities.	External Auditor	
103(a) Auditing standards	The Oversight Board must establish rules or adopt standards requiring auditing and related attestation standards (including requiring auditors to maintain audit papers for seven years).		No deadline provided	Oversight Board	
201 Restrictions on Non-Audit Services	Independent auditor may not perform the following non-audit services: Bookkeeping related to accounting records or financial statements; Financial information systems design and implementation; Appraisal or valuation services and fairness opinions; Actuarial services; Internal audit outsourcing services; Management or human resource functions; Broker, dealer, investment adviser or investment banking services; Legal services and expert services unrelated to the audit; and any other service that the Oversight Board determines impermissible.	Explicitly identifies several categories of non-audit services that cannot be provided to an audit client. The explicit categories are (1) bookkeeping, (2) financial information system design and implementation, (3) appraisal or valuation services, fairness opinions or contributions in kind reports, (4) actuarial services, (5) internal audit outsourcing services, (6) management functions, (7) human resource services, (8) broker-dealer, investment adviser, or investment banking services, (9) legal services, (10) expert services unrelated to the audit, and (11) any other service that the PCAOB determines impermissible. Permits virtually all tax services provided they are pre-approved by the audit committee.	Final rules issued on January 28, 2003. Rule is effective May 6, 2003. An auditor may render non-audit services on or after May 6, 2003 if those services are rendered pursuant to contracts that existed on May 6, 2003 and are completed before May 6, 2004, provided that the services did not impair independence under the existing auditor independence rules.	Audit Committee, External Auditor	

Timeline of Sarbanes-Oxley Act Requirements

Topic	Main requirements of the Act	Key provisions of the SEC's final rules (if applicable)	Effective Date	Responsibility	Required Action
202 Pre-Approval for Audit and Non-Audit Services	Audit committee must pre-approve all audit and non-audit services provided by the independent auditor.	Requires the audit committee to pre-approve all audit and non-audit services either engagement by engagement or pursuant to policies and procedures established by the audit committee that are detailed as to the particular service and do not include delegation to management.	Final rule issued by the SEC on January 26, 2003. Rule is effective on May 6, 2003.	Audit Committee	
203 Rotation of Audit Partners	Lead audit partner and audit partner responsible for reviewing the audit must be rotated at least once every five years.	Requires the lead and concurring partners to rotate after 5 years, with a time out period of 5 years. Other partners who are part of the engagement team must rotate after 7 years, with a time out period of 2 years.	Final rules issued by the SEC on January 28, 2003. Rule is effective on the first day of the fiscal year beginning after May 6, 2003 for the lead and other partners, and on the first day of the fiscal year beginning after May 6, 2004 for the concurring partner. Special provisions apply for purposes of calculating the periods of service.	External Auditor	
204 Specific Reports and Responsibilities	Independent auditors must report to Audit Committees (a) critical accounting policies and practices, (b) alternative GAAP treatments discussed with management, and (c) all other material written communications between the independent auditor and management.	Requires the auditor to report to the audit committee prior to the filing of the report: (a) all critical accounting policies, (b) all alternative treatments within GAAP related to material items discussed with the client and (c) other material written communications between the auditor and client management. The final rule also revises the proxy disclosure requirements for professional fees paid to the auditor for audit and non-audit services.	Final rule issued by the SEC on January 28, 2003. Rule is effective May 6, 2003. The new proxy fee disclosure requirements are effective for years ending after December 15, 2003.	Audit Committee, External Auditor, Company	



NAVIGATING THE SARBANES-OXLEY ACT OF 2002

Timeline of Sarbanes-Oxley Act Requirements

Topic	Main requirements of the Act	Key provisions of the SEC's final rules (if applicable)	Effective Date	Responsibility	Required Action
206 Prohibition of Conflicts of Interest	An accounting firm is prohibited from providing any audit service if the Company's CEO, CFO, controller, chief accounting officer or any person in an equivalent position was employed by that firm and participated in the audit during the one-year period immediately preceding the initiation of the audit.	Provides that an accounting firm's independence is impaired if the lead or concurring partner, or any other member of the audit engagement team begins employment with the issuer in a "financial reporting oversight role" without a cooling-off period of one annual engagement period during which the person provided no services. The final rule also provides that an audit partner may not earn or receive compensation based on selling engagements to his or her audit clients to provide any products or services other than audit, review, or attest services.	Final rule issued by the SEC on January 28, 2003. Rule is effective for employment relationships commenced after May 6, 2003. The partner compensation requirements are effective for fiscal years beginning after May 6, 2003.	Company, External Auditor	
301 (2) Audit Committee - Selection and Oversight of Independent Auditor - Disagreements, Outside Advisors, and Complaints	Audit committee must be responsible for the appointment, compensation and oversight of the independent auditor, including the resolution of disagreements between the independent auditor and management regarding financial reporting. Audit committee authorized (and given adequate resources) to engage independent counsel and other advisors. Audit Committee must establish procedures for the receipt, retention and treatment of complaints regarding accounting, controls or auditing matters and for confidential submission of concerns by employees.		Proposed rule issued by the SEC on January 8, 2003. The final rule must be issued no later than April 26, 2003. The new listing requirements must be operative no later than the first year anniversary of the publication of the final rule in the Federal Register.	Audit Committee	

NAVIGATING THE SARBANES-OXLEY ACT OF 2002

Timeline Sarbanes-Oxley Act Requirements

Topic	Main requirements of the Act	Key provisions of the SEC's final rules (if applicable)	Effective Date	Responsibility	Required Action
302 CEO/CFO Certification of Annual and Quarterly Reports	Must certify that (a) they have reviewed the report, (b) the report does not contain any misrepresentation, (c) the financial information in the report is fairly presented, (d) they are responsible for internal controls, (e) they have reported any deficiencies in internal controls and fraud involving management to the audit committee, and (f) they have indicated any material changes in internal controls.	Must certify that (a) they have reviewed the report, (b) the report does not contain any misrepresentation, (c) the financial information in the report is fairly presented, (d) they are responsible for "disclosure controls and procedures," (e) they have reported any deficiencies in internal controls and fraud involving management to the audit committee, and (f) they have indicated any material changes in internal controls.	Final rule issued by the SEC on August 27, 2002. Rule is effective August 29, 2002.	Company	
303 Prohibition of Improper Influence on Audits	It is unlawful to fraudulently influence, coerce, manipulate or mislead the independent auditor for the purpose of rendering the financial statements materially misleading.		Proposed rule issued on October 18, 2002. Final rule must be issued no later than April 26, 2003.	External Auditor	
304 Forfeiture by CEO and CFO of Certain Bonuses and Profits	If company is required to restate its financial statements because of material non-compliance with any financial reporting requirement resulting from misconduct, then the CEO and the CFO will be required to reimburse any bonus or other incentive-based or equity-based compensation he received and any profits they realized from the sale of the company's securities during the 12 months following the filing of the financial statements embodying the non-compliance.		Effective immediately upon passage of Act	Enforcement and Penalties	
305/1105 Prohibition of Service As Director or Officer	SEC can obtain a court order (or in certain cases issue an order itself) barring an individual from serving as a director or officer, if the individual has violated the general anti-fraud provisions of the securities laws and their activities are found by the court to show them to be "unfit."		Effective immediately upon passage of Act	Enforcement and Penalties	

NAVIGATING THE SARBANES-OXLEY ACT OF 2002

Timeline of Sarbanes-Oxley Act Requirements

Topic	Main requirements of the Act	Key provisions of the SEC's final rules (if applicable)	Effective Date	Responsibility	Required Action
306 Trading Restrictions	No director or executive officer will be allowed to trade stock during any 401(k) plan "blackout period."	Embodies a number of concepts developed under Section 16 of the Exchange Act. Includes detailed rules on issuers, persons, securities and transactions subject to the trading prohibition, blackout periods, remedies and notice.	Final rule issued by the SEC on January 22, 2003. Rule is effective on January 26, 2003, but certain transition provisions apply.	Company	
307 Responsibilities of Counsel	Attorneys representing public companies before the SEC will be required to report "evidence of" material violations of securities laws.	Under the final rule, the triggering standard for reporting evidence of a material violation will be evaluated against an objective standard. The final rule includes a "safe harbor" provision to protect attorneys, law firms, issuers and officers and directors of issuers.	Final rule issued by the SEC on January 29, 2003. Rule is effective on August 6, 2003. An additional proposed rule has been issued on January 29, 2003 to address "noisy withdrawal" provisions.	Company Counsel	
401 Material Correcting Adjustments	Reports filed with the SEC containing GAAP financial statements must reflect all "material correcting adjustments" that have been identified by the registered public accounting firm.		Effective immediately upon passage of Act; however, the provision refers to adjustments identified by "registered accounting firms," and firms will not be registered until at least 180 days after the Board is established.	Company	

NAVIGATING THE SARBANES-OXLEY ACT OF 2002

Timeline of Sarbanes-Oxley Act Requirements

Topic	Main requirements of the Act	Key provisions of the SEC's final rules (if applicable)	Effective Date	Responsibility	Required Action
401(a) Off-Balance Sheet Transactions	Required to disclose all material off-balance sheet transactions, arrangement, obligations and other relationships with unconsolidated entities or persons that may have a material effect on financial condition.	Requires disclosure in MD&A of: (1) off-balance sheet arrangements that are reasonably likely to have a material effect, and (2) an overview of certain known aggregate contractual obligations in tabular format.	Final rule issued by the SEC on January 22, 2003. Rule is effective for fiscal years ending on or after June 15, 2003, except for the table of contractual obligations which is required for fiscal years ending on or after December 15, 2003. Voluntary compliance is permitted prior to these dates.	Company	
401(b) Use of Pro Forma Financial Information	Restricts the use and disclosure of "pro forma" financial information (i.e., non-GAAP information) in SEC filings, press releases or other public disclosures so that the information is presented in a manner that is not misleading and includes a reconciliation of the pro forma information to GAAP.	Covers: (1) requirements for public disclosure of material information that includes non-GAAP financial information, (2) requirements and prohibitions for non-GAAP financial measures in filings with the Commission and (3) requirements to furnish to the SEC earnings releases for quarterly and annual periods.	Final rule issued by the SEC on January 22, 2003. Rule is effective March 28, 2003.	Company	
402(a) Prohibition on Loans and Credit to Directors and Executives	Prohibits, directly or indirectly, extending, maintaining or arranging for the extension of personal loans to directors or executive officers or guaranteeing such loans.		Effective immediately upon passage of Act.	Company	
403 Accelerated Reporting of Insider Stock Transactions	Directors and executive officers are required to report stock transactions within two business days.	Requires transactions between officers or directors and the issuer to be reported within two business days on Form 4.	Final rules issued by the SEC on August 27, 2002. Rule is effective on August 29, 2002.	Company	

NAVIGATING THE SARBANES-OXLEY ACT OF 2002

Timeline of Sarbanes-Oxley Act Requirements

Topic	Main requirements of the Act	Key provisions of the SEC's final rules (if applicable)	Effective Date	Responsibility	Required Action
404(a) Internal Control Reports	Each annual report must include an "internal control report" stating that management is responsible for an adequate internal control structure and an assessment by management of the controls' effectiveness.		Proposed rule issued on October 22, 2002. Proposal states that rule would apply to companies whose fiscal years end on or after September 15, 2003. No statutory deadline for rulemaking.	Company	
404(b) External Auditor Attestation Related to Internal Controls	The registered accounting firm must attest to, and report on, managements' assertions regarding their assessment of the effectiveness of the company's internal controls.		Proposed rule issued on October 22, 2002. Proposal states that rule would apply to companies whose fiscal years end on or after September 15, 2003. No statutory deadline for rulemaking.	External Auditor	
406 Senior Management Code of Ethics	Requires to disclose in periodic reports whether company has adopted a code of ethics applicable to the principal financial officer and the principal accounting officer and, if not, the reasons why.	Requires to disclose in annual reports whether a company has adopted a code of ethics that applies to the company's principal executive officer, principal financial officer, principal accounting officer or controller or persons performing similar functions, and if, not the reasons why.	Final rule issued by the SEC on January 23, 2003. Rule is effective for fiscal years ending on or after July 15, 2003.	Company	

Timeline of Sarbanes-Oxley Act Requirements

Topic	Main requirements of the Act	Key provisions of the SEC's final rules (if applicable)	Effective Date	Responsibility	Required Action
407 Audit Committee - Expertise	Company must disclose in periodic reports whether the audit committee includes at least one member who is a "financial expert" and, if not, the reasons why.	Final rules require a company to annually disclose whether it has at least one "audit committee financial expert" and, if so, the name of the expert and whether the expert is independent of management, and, if not, the reasons why.	Final rule issued by the SEC on January 23, 2003. Rule is effective for fiscal years ending on or after July 15, 2003. For small business issuers, the rule is effective for fiscal years ending on or after December 15, 2003.	Audit Committee	
408 Enhanced SEC Review of Filings	Mandates regular review by the SEC of the periodic reports of public companies, including their financial statements, at least once every three years.		Effective immediately upon passage of Act.	Enforcement and Penalties	
409 Real Time Disclosure	Required to disclose "on a rapid and current basis such additional information concerning material changes in its financial condition or operations."		Awaiting the adoption of implementing rules by the SEC.	Company	
802 Criminal Penalties	A person who destroys, alters or falsifies records with the intent to obstruct a governmental investigation is subject to a fine and imprisonment for up to twenty years		Effective immediately upon passage of Act.	Enforcement and Penalties	
802 Criminal Penalties	The knowing and willful destruction of audit records (ie, workpapers, correspondence, communications, memoranda), which must be kept for five years, may result in a fine or imprisonment for up to ten years.	Requires retention of audit records for a period of 7 years to coincide with the 7-year requirement to be imposed by the PCAOB under Section 103 of the Act. Information related to a significant matter that is inconsistent with the auditor's final conclusions also need to be retained.	Final rule issued by the SEC on January 24, 2003. Compliance is required for audits and reviews completed on or after October 31, 2003.	Enforcement and Penalties	

NAVIGATING THE SARBANES-OXLEY ACT OF 2002

Timeline of Sarbanes-Oxley Act Requirements

Topic	Main requirements of the Act	Key provisions of the SEC's final rules (if applicable)	Effective Date	Responsibility	Required Action
806 Protection of "Whistle Blowers"	Unlawful to discharge, demote, suspend, threaten, harass, or discriminate in any other manner against any employee who provides information regarding conduct the employee reasonably believes constitutes financial fraud or a violation of the securities laws.		Effective immediately upon passage of Act.	Company	
807 Securities Fraud	Makes it a felony to scheme or defraud any person in connection with any security of a public company with a violator incurring a fine or imprisonment for up to 25 years.		Effective immediately upon passage of Act.	Enforcement and Penalties	
906 CEO/CFO Certification of Annual and Quarterly Reports	CEOs and CFOs must certify that quarterly and annual reports fully comply with Sec. 13(a) or 15(d) of the '34 Act and that information contained in those reports fairly presents, in all material respects, the financial condition and results of operations of the company. A CEO or CFO who knowingly submits a wrong Sec. 906 certification is subject to a fine of up to \$1 million and imprisonment for up to ten years. If the wrong certification was submitted "willfully," the fine can be increased to \$5 million and the prison term can be increased to twenty years.		Effective immediately upon passage of Act.	Company	

Sarbanes-Oxley Act Studies

Below are studies that are mandated by the Act:

By January 26, 2003

308(c) - SEC must conduct a study and report its findings to Congress analyzing (i) enforcement actions over the last five years by the SEC that have included civil penalties or disgorgements and (ii) other methods to more efficiently, effectively and fairly provide restitution in injured investors.

702 - SEC must conduct a study of the role and function of credit ratings agencies in the securities markets and report findings to the President and Congress.

704 - SEC must conduct a review relating to SEC enforcement actions over the last five years involving violations of reporting requirements and restatements of financial information and report its findings to Congress.

703 - SEC must conduct a study on violations by securities professionals.

By July 30, 2003

108(d) - SEC must conduct a study relating to the potential effects of the adoption in the US of principles-based accounting and report the results to Congress.

207 - The Comptroller General (GAO) must conduct a study relating to the potential effects of requiring mandatory rotation of registered public accounting firms and report results to Congress.

701 - The Comptroller General (GAO) must conduct a study to determine factors that have led to the consolidation of the accounting industry and the impact on securities markets and report results to Congress.

By January 26, 2004

401(c) - SEC must conduct a study to determine the extent of off-balance sheet transactions and whether GAAP results in financial statements that reflect the actual economics of these transactions in a transparent fashion and report findings to the President and Congress within six months after completion.

The following studies have been issued on January 24, 2003 - Key conclusions are as follows:

308 (c) - The report concludes that the Fair Fund provision (which currently permits the Commission to add penalty money to distribution funds in limited circumstances) is an innovative device that the Commission intends to use to return more funds to investors, although an amendment is necessary to improve its usefulness. The Commission also intends to continue "real time" enforcement and implement planned improvements in collection efforts.

702 - As a result of the study, the Commission has identified a number of issues that deserves further examination. The SEC plans to issue a Concept Release by March 25, 2003 to address the concerns and expects to issue a proposed rule after that. Topics include: information flow, potential conflicts of interest, alleged anti-competitive or unfair practices, reducing potential regulatory barriers to entry and ongoing oversight.

703 - The report concludes that 1,596 securities professionals were found to have aided and abetted violations of and/or violated the Federal Securities laws in calendar years 1998, 1999, 2000 and 2001. Only 13 of these 1,596 professionals were charged solely as aiders and abettors. The most common type of securities professionals against whom the SEC brought actions were individuals associated with broker-dealers such as registered representatives and branch managers.

704 - The SEC recommends addressing two areas of issuer disclosure: the uniform reporting of restatements of financial statements and improved MD&A disclosure. In addition, the Commission recommends enactment of legislation to (1) allow companies to produce internal reports and other documents pertaining to investigations without waiving any privileges, (2) provide access by the SEC staff to grand jury materials and (3) provide for nationwide service of process for testimony in SEC litigation.

