

Capital Markets and Securities

A bulletin prepared by the Capital Markets Group at Vedder Price designed to keep corporate executives and investment banking professionals informed of major developments in the securities industry.

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DUE DILIGENCE CHECKLIST FOR CEO AND CFO CERTIFICATIONS *Recommended Procedures*

As we discussed in prior Client Alert memos, calendar year companies filing second quarter Form 10-Q reports after July 29, 2002 must provide the new CEO and CFO certifications required pursuant to Section 906 of the Sarbanes-Oxley Act of 2002. CEO and CFO due diligence is an important aspect of this process. We strongly encourage companies to consider taking the following steps before the August 14 filing deadline:

- Each of the CEO, CFO, and other members of senior management as appropriate, should review the draft second quarter 10-Q carefully and should also review the 2001 Form 10-K and the first quarter 10-Q to make sure that this quarter's 10-Q fully addresses any disclosure issues raised by the earlier filings.
- The CEO and CFO should have discussions with senior management and other officers involved in gathering and preparing the information contained in the 10-Q, as well as the Company's independent accountants regarding the financial statements to be included in the report. The CEO and CFO should make inquiries regarding:
 - Any areas of concern regarding the accuracy or meaning of information or statements contained in the report;
 - All significant developments, as well as trends in the business, during the second quarter;
 - The company's procedures for verifying the accuracy and completeness of the information contained in the report and any issues which arose while those procedures were being conducted;
 - Any material changes in critical accounting policies or estimates that impacted the company over the course of the quarter, the rationale for selecting those estimates or policies as opposed to any alternatives and the potential impact on the financial statements had alternative methods been followed;
 - Any information in the report that is unclear or inconsistent with previously disclosed information;
 - Any concerns of senior management or other officers of the company regarding the thoroughness of the review and preparation of the 10-Q or a portion thereof;

- The 10-Q’s compliance with the requirements of sections 13(a) or 15(d) of the Securities Exchange Act and the related rules and the steps taken to verify technical compliance, including an inquiry regarding the involvement of legal counsel and any issues addressed with legal counsel; and
 - Whether there is any additional material information about the company that should be disclosed in the filing.
- The CEO and CFO also may consider obtaining certificates from senior management or other officers of the company involved in preparing the report, including a description of the steps each individual took in preparation of a particular portion of the report that he or she has responsibility for and their procedures for verifying the accuracy and completeness of the information in such portion of the report.
 - The CEO and CFO should confirm with the company’s outside auditors (separately or as part of an Audit Committee conference) that they are not aware of any untrue statements in the 10-Q or any material omissions, that they have completed their quarterly SAS 71 review and believe the presentation of the interim financial statements conforms to GAAP, and that they are comfortable with the presentation of the company’s financial results as set forth in the report.
 - We recommend that the CEO and CFO establish a written record of the procedures followed in their review of the 10-Q report and discuss this with the Company’s Audit Committee (or the Chairman of the Audit Committee), prior to filing the report and the Section 906 certifications, including:
 - The procedures they have followed in order to be able to make the Section 906 certifications;
 - Any questions or issues arising from such procedures; and
 - Actions taken in response to any such questions or issues.

Minutes of a telephonic conference with the Audit Committee covering these points would suffice as the record. A detailed memo to the Audit Committee is an alternative approach.

The entire arena of CEO/CFO Certifications is evolving rapidly. Within the next few weeks, the SEC will be issuing its rules to implement the broader certification requirements of Section 302 of the new Act and this will necessitate the implementation of expanded procedures regarding quarterly financial reporting. We will keep you informed of developments and recommended measures to address these significant changes. Please check our website, www.vedderprice.com, for updates as well.

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- international offerings of securities and compliance by foreign issuers with U.S. securities laws;
- litigation and administrative and arbitration proceedings involving various securities fraud claims, disclosure issues, and regulatory enforcement matters; and
- municipal bond financings.

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