Wiggin & Dana

Wiggin & Dana
Counsellors at Law

One Century Tower
P.O. Box 1832
New Haven, Connecticut
06103-3402
Telephone 203.498.4400
Telefax 203.782.2889

Offices in:
New Haven, CT
Stamford, CT
Hartford, CT
Philadelphia, PA
Cherry Hill, NJ

February 4, 2003

SEC ADOPTS FINAL RULES UNDER THE SARBANES-OXLEY ACT

On January 16, 2003, the SEC voted to adopt final rules implementing several provisions of the Sarbanes-Oxley Act (the "Act"). A discussion of the new rules is summarized below.

Audit Committee Financial Experts

Pursuant to Section 407 of the Act, a company will be required to disclose annually whether it has at least one "audit committee" financial expert on its audit committee, and, if so, the name of the audit committee financial expert and whether the expert is independent of management. If the company does not have a financial expert serving on its audit committee, the company must disclose that fact and explain why it has no financial expert.

The SEC significantly broadened the definition of audit committee financial expert from its original rule proposal. The final rule defines an audit committee financial expert as a person who has the following attributes:

1. An understanding of generally accepted accounting principles and financial statements;
2. The ability to assess the general application of such principles in connection with the accounting for estimates, accruals and reserves;
3. 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;
4. An understanding of internal controls and procedures for financial reporting; and

5. An understanding of audit committee functions.

Under the rules, an individual must possess all of the attributes listed above and may have acquired these attributes through any one or more of the following means:

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.

The rules include a safe harbor to make clear that an audit committee financial expert will not be deemed an "expert" for any purpose, including for purposes of Section 11 of the Securities Act, and that the designation of an individual as an audit committee financial expert does not impose any duties, obligations or liability that are greater than those imposed on the individual as a member of the audit committee.

The rules provide that the board of directors in its entirety is best equipped to make the determination as to whether an individual qualifies as an audit committee financial expert.

The rule requires companies to include the new audit committee financial expert disclosure in their annual reports on Forms 10-K, 10-KSB, 20-F or 40-F or through incorporation by reference to the company's proxy statement. The rules are effective for fiscal years ending on or after July 15, 2003, or, for small business issuers, fiscal years ending on or after December 15, 2003.

The full text of the final rules is available on the SEC's website at http://www.sec.gov/rules/final/33-8177.htm.

Code of Ethics for Senior Officers

Pursuant to Section 406 of the Act, the SEC has adopted final rules requiring a company to disclose in its annual report 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. A company that has not adopted such a code must disclose this fact and explain why it has not done so.

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

1. Honest and ethical conduct, including the ethical handling of actual or apparent conflicts of interest between personal and professional relationships;
2. 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;
3. Compliance with applicable governmental laws, rules and regulations;
4. Prompt internal reporting of violations of the code to an appropriate person or persons identified in the code; and
5. Accountability for adherence to the code.

The SEC refused to adopt suggestions from commentators that the rules set forth additional ethical principles that the code should address. The SEC noted its view that codes of ethics should vary from company to company and that decisions as to specific provisions of the code, compliance procedures and disciplinary measures are best left to the company.

Under the rules, a company may have separate codes of ethics for different types of officers and may include provisions required by the rules as part of a broader code addressing additional issues and covering additional persons within the company.

A company will be required to disclose either on Form 8-K or on its website any changes to, or waivers of, the code of ethics

within five business days, to the extent that the change or waiver applies to the company's principal executive officer or senior financial officers.

Finally, a company will be required to make available to the public a copy of its code of ethics, or portion of the code that applies to its principal executive officer or senior financial officers, by filing it as an exhibit to its annual report or by posting it on the company's website.

The rules are effective for fiscal years ending on or after July 15, 2003, or, for small business issuers, fiscal years ending on or after December 15, 2003.

The full text of the final rules is available on the SEC's website at http://www.sec.gov/rules/final/33-8177.htm.

Use of Pro Forma ("Non-GAAP") Financial Information

The SEC adopted final rules to implement Section 401(b) of the Act. The SEC voted to adopt new Regulation G, which will apply whenever a company publicly discloses or releases material information that includes a non-GAAP financial measure. Regulation G will prohibit material misstatements or omissions that would make the presentation of the material non-GAAP financial measure misleading and will require the company to provide a quantitative reconciliation (by schedule or other clearly understandable method) of the differences between the non-GAAP financial measure presented and the comparable financial measure calculated and presented in accordance with GAAP.

Under the rules, a "non-GAAP financial measure" will be defined as a numerical measure of a company's financial performance that (1) excludes amounts, or is subject to adjustments that have the effect of excluding amounts, that are included in the comparable measure calculated and presented in accordance with GAAP in the statement of income, balance sheet or statement of cash flows of the issuer; or (2) includes amounts, or is subject to adjustments that have the effect of including amounts, that are excluded from the comparable measure so calculated and presented.

The SEC also voted to adopt amendments to Item 10 of Regulation S-K and Item 10 of Regulation S-B, which will require companies using non-GAAP financial measures in their public filings to provide the following information:

1. A presentation, with equal or greater prominence, of the most directly comparable financial measure calculated

and presented in accordance with GAAP;

2. A reconciliation (by schedule or other clearly understandable method), which shall be quantitative for historical non-GAAP measures presented, and quantitative, to the extent available without unreasonable efforts, for forward-looking information, of the differences between the non-GAAP financial measure disclosed or released with the most directly comparable financial measure or measures calculated and presented in accordance with GAAP;

3. A statement disclosing the reasons why the registrant's management believes that presentation of the non-GAAP financial measure provides useful information to investors regarding the registrant's financial condition and results of operations; and

4. To the extent material, a statement disclosing the additional purposes, if any, for which the registrant's management uses the non-GAAP financial measure that are not otherwise disclosed.

In addition to these mandated disclosure requirements, amended Item 10 of Regulation S-K and Item 10 of Regulation S-B prohibit the following:

1. Excluding charges or liabilities that required, or will require, cash settlement, or would have required cash settlement absent an ability to settle in another manner, from non-GAAP liquidity measures, other than the measures EBIT and EBITDA;

2. Adjusting a non-GAAP performance measure to eliminate or smooth items identified as non-recurring, infrequent or unusual, when (i) the nature of the charge or gain is such that it is reasonably likely to recur within two years, or (ii) there was a similar charge or gain within the prior two years;

3. Presenting non-GAAP financial measures on the face of the registrant's financial statements prepared in

accordance with GAAP or in the accompanying notes;

4. Presenting non-GAAP financial measures on the face of any pro forma financial information required to be disclosed by Article 11 of Regulation S-X; and

5. Using titles or descriptions of non-GAAP financial measures that are the same as, or confusingly similar to, titles or descriptions used for GAAP financial measures.

Amendments to Form 8-K

Pursuant to the requirement of Section 409 of the Act, requiring "rapid and current" disclosure, the SEC amended Form 8-K to add new Item 12, "Disclosure of Results of Operations and Financial Condition." Item 12 will require companies to furnish to the SEC a Form 8-K within five business days of any public announcement or release disclosing material non-public information regarding a company's results of operations or financial condition for an annual or quarterly period that has ended. Although targeted at "earnings releases," this new rule may extend to other types of announcements or releases. Item 12 requires a company to identify briefly the announcement or release and include the announcement or release as an exhibit to the Form 8-K. Information that is disclosed orally, telephonically, by Web cast, by broadcast or by similar means does not have to be filed if (i) the presentation occurs within 48 hours of a related release or announcement that is filed on Form 8-K; (ii) the presentation is broadly accessible to the public; and (iii) the information is posted in the company's Web site.

The final rules permits a company to "furnish" the Form 8-K, rather than "file" it. Unlike information filed with the SEC, information furnished to the SEC is not subject to liability under Section 18 of the Securities Exchange Act or automatically incorporated by reference into shelf registration statements and thereby made subject to the liability provisions of Sections 11 and 12(a)(2) of the Securities Act. The information contained in the 8-K, however, is subject to liability under Section 10(b) of the Securities Exchange Act and Rule 10(b)(5) thereunder.

Regulation G, the amendments to Item 10 of Regulation S-K and Item 10 of Regulation S-B, and the new Form 8-K disclosure requirements are effective March 28, 2003.

The full text of the final rules is available on the SEC's website at http://www.sec.gov/rules/final/33-8176.htm.

Prohibitions on Trading During Pension Plan Blackouts

Pursuant to Section 306(a) of the Act, the SEC has adopted Regulation BTR which provides that directors and officers of a public company may not acquire or dispose of equity securities of the company during any "blackout" period when at least half the plan participants are unable to make similar acquisitions or dispositions for more than three consecutive business days.

Regulation BTR is limited to equity securities that a director or officer acquires in connection with his or her service or employment as a director or officer. Regulation BTR applies to indirect, as well as direct, acquisitions or dispositions of equity securities where a director or officer has a "pecuniary interest" in the transaction. "Pecuniary interest" will have the same meaning as under the rules promulgated under Section 16 of the Securities Exchange Act. Accordingly, acquisitions or dispositions of equity securities by family members, partnerships, corporations, limited liability companies and trusts will be deemed to be acquisitions or dispositions by a director or officer if he or she has a pecuniary interest in the equity securities.

Certain types of transactions that occur automatically, are made pursuant to an advance election or are otherwise outside the control of the director are exempted from the prohibition. Examples include transactions made pursuant to Rule 10b5-1 plans, and acquisitions under dividend or interest reinvestment plans, acquisitions or dispositions involving a bona fide gift or transfer by will.

Regulation BTR became effective on January 26, 2003. The full text of the final rule is available on the SEC's website at http://www.sec.gov/rules/final/34-47225.htm.

This document is intended as an informational reminder and does not constitute legal advice. If you have any questions or would like to discuss a particular situation, you should contact your usual W&D attorney or one of us.

David B. Fein	203-363-7603	dfein@wiggin.com
Michael Grundei	203-363-7630	mgrundei@wiggin.com
Patricia Roer	203-363-7623	proer@wiggin.com

For more information about Wiggin & Dana's White-Collar Defense, Investigations and Corporate Compliance Practice Group, visit our web site at www.white-collardefense.com. For more information about the firm and our Securities and Venture Capital Group, please visit www.wiggin.com.