

PAUL, WEISS, RIFKIND, WHARTON & GARRISON

MARCH 2002

SEC ANNOUNCES REPORTING REQUIREMENTS FOR COMPANIES AUDITED BY ARTHUR ANDERSEN LLP

Following the indictment of Arthur Andersen LLP, the SEC has released orders and temporary rules designed to ensure that investors and capital markets continue to receive adequate financial information about public companies that have been or currently are audited by Andersen. The SEC action addresses filings under the 1933 Act as well as reports under the 1934 Act.

The SEC is requiring companies that rely on audit reports signed by Andersen after March 14, 2002 to obtain representations from Andersen that the audit was subject to internal control systems, conducted in compliance with professional auditing standards, and that there was appropriate continuity of Andersen personnel working on the audit. Audit reports issued on or before March 14, 2002 are not affected by the temporary rules and no action need to be taken by companies who have obtained such reports.

For companies that are unable, or elect not, to obtain a signed report from Andersen for audits that are currently in process, the SEC has established a framework that has five primary components, which are described below. We have attached as an annex, a chart that details the impact of the orders and temporary rules on various reports and registration statements required under the 1933 Act, the 1934 Act and the Trust Indenture Act of 1939.

The framework for delayed audit reports:

- Companies must file their annual reports on Form 10-K or Form 20-F on time, but may include unaudited financial statements. Within 60 days of the original due date for filing, companies must file an amendment presenting the financial statements audited by a firm other than Andersen, a discussion of any material changes from the unaudited financial statements and any other section of the report that should be amended to reflect any changes in the financial statements.

1285 Avenue of the Americas
New York, New York 10019-6064
(212) 373-3000

1615 L Street, NW
Washington, DC 20036-5694
(202) 223-7300

Alder Castle, 10 Noble Street
London EC2V 7JU England
(44-20) 7367 1600

2, rue du Faubourg Saint-Honoré
75008 Paris, France
(33-1) 53.43.14.14

Fukoku Seimei Building 2nd Floor
2-2, Uchisawaicho 2-chome
Chiyoda-ku, Tokyo 100, Japan
(81-3) 3597-8120

2918 China World Tower II
No. 1, Jianguomenwai Dajie
Beijing 100004, People's Republic of China
(86-10) 6505-6822

12th Fl., Hong Kong Club Building
3A Chater Road, Central
Hong Kong
(852) 2536-9933

- Issuers may file registration statements (other than for an initial public offering, going-private transaction or roll-up transaction) that include unaudited financial statements. The registration statements must be amended to include audited financial statements within 60 days after the date on which the audited financial statements would otherwise have been required.
- The temporary rules extend from 16 to 18 months the age of audited financial information that an issuer can include in a prospectus used nine months after the effectiveness of an underlying registration statement.
- Registration statements will not be required to include the consent of Andersen to use audit reports for prior years for which a consent cannot be obtained; the issuer must include a copy of the latest signed and dated audit report issued by Andersen and include disclosure as to limitations on any recovery by investors if a reissued audit report cannot be obtained.
- The current rules require issuers that expect to report a loss for the most recent fiscal year, or that had a loss for the last two fiscal years, to file audited financial statements within 45 days of the end of their fiscal year. The temporary rules provide relief allowing these issuers to continue to use their unaudited financial statements for registration statements or any other purpose provided they obtain audited financial statements within 60 days of the original due date.

A number of questions will need to be addressed over the coming days in relation to the measures announced by the SEC, including:

- Will issuers that have elected to use another audit firm, and the issuers' directors, feel comfortable filing registration statements containing year-end financial statements that have not been audited, in light of the possibility that material changes may thereafter be required as a result of the audit? Can such issuers expect that the audit by the new firm can be completed within 60 days?
- Will underwriters be prepared to market securities with offering materials based on unaudited year-end financial statements, with due diligence procedures and comfort letters reflecting the then uncompleted year-end audit? Will due diligence procedures be impacted by concern over the quality of audit procedures or over departures of audit teams to other firms?
- What information on potential disagreements regarding financial and accounting disclosures will companies that elect to change auditors need to disclose?

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This memorandum provides only a general overview of the release, orders and rules and is not intended to provide or constitute legal advice, and no legal or business decision should be based on its contents.

Any questions concerning the foregoing should be addressed to members of the Paul Weiss Securities Group (see below). In addition, memoranda on related topics may be accessed under Securities Group publications on our web site (www.paulweiss.com).

Mark S. Bergman	(44 20) 7367 1601	John C. Kennedy	(1) 212-373-3025
Richard S. Borisoff	(1) 212-373-3153	Edwin S. Maynard	(1) 212-373-3024
Andrew J. Foley	(1) 212-373-3078	Paul G. Ginsberg	(1) 212-373-3131
John A. Myer	(44 20) 7367 1605		

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1285 Avenue of the Americas, New York, NY 10019-6064

Reporting Relief for Andersen Clients

	Action	Reference	Dates
1933 Act			
Issuer has an AA audit report signed on or before 3/14/02	No change		
Issuer continues to use an AA audit report issued after 3/14/02	<p>Disclose as exhibit a letter by issuer to SEC stating that AA has represented to the issuer that the audit was subject to AA control systems to provide reasonable assurance that the engagement was conducted in compliance with professional standards and there was appropriate continuity of AA personnel to conduct the audit</p> <p>SEC will continue to accept the relevant filing so long as AA continues to be in a position to provide such assurances</p>	Temporary Note 3T to Art. 3 of Regulation S-X; General Instruction A-T2 to Form 20-F	Filings after 3/14/02 through 12/31/02
Issuer unable to use, or chooses not to use, an AA audit report signed after 3/14/02			
Form Eligibility	S-2, S-3, F-2, F-3, S-8: If complying with 34 Act Order (see below), issuer will be deemed to be current and timely for purposes of eligibility	Rule 401a	
Financial Statements	<p>IPOs – financial statements must meet the timeliness and audit requirements – no relief provided.</p> <p>All other registration statements and pre-effective and post-effective amendments may include financial statements that meet the timeliness requirements, but are unaudited:</p>	Temporary Note 1T to Art. 3 of Regulation S-X; General instruction A-T1 to Form 20-F	FY ending between 11/30/01 (12/29/01 if Income Conditions are not met) and 4/15/02

	Action	Reference	Dates
	<p>Include: (a) prominent statement on cover page that unaudited financials are included instead of audited financials because issuer was unable to or chose not to use AA's audit report and (b) this disclosure, as well as a statement as to when and how audited financials will be provided and that no auditor has opined on the unaudited financials, immediately before the financial statements; any prior AA report required to be filed ("Required Disclosure")</p> <p>If offering not complete, and registration statement is not yet effective by the earlier of 60 days after the date the financials would have been required and date financials are filed in an annual report: file a pre-effective amendment or an amendment to documents incorporated by reference. If issuer expects to report a loss for the most recent fiscal year, or had a loss for the last two fiscal years (referred to herein as not meeting the "Income Conditions" of Regulation S-X Rule 3-01(c)), then the 60 day grace period is increased to 106 days to reflect that the audited financials would have been due within 45, and not 90 days, of the end of the fiscal year</p> <p>- OR -</p> <p>If offering is not complete and registration statement is effective, file amendment by the earlier of 60 days (106 days if the Income Conditions are not met) after the date the financials would have been required and date financials are filed in an annual report</p> <p>- AND -</p>	<p>Temporary Note 2T to Art. 3 of Regulation S-X</p> <p>Temporary Note 1T to Art. 3 of Regulation S-X; General Instruction A-T1 to Form 20-F</p> <p>Temporary Note 1T to Art. 3 of Regulation S-X; General Instruction A-T1 to Form 20-F</p>	<p>Expires 12/31/02</p> <p>Expires 12/31/02</p>

	Action	Reference	Dates
	The filing or amendment must include the financials as audited by a firm other than AA, selected financial data pursuant to Regulation S-K Item 301 based on the audited financials, a discussion of any material changes from the unaudited financials and any other section (such as the MD&A) needed to be revised to reflect the audited financials (the “Audit Update”)	Temporary Note 1T to Art. 3 of Regulation S-X; General Instruction A-T1 to Form 20-F	
Shelf Registration	If offering is pursuant to an effective shelf registration statement that is updated through “forward incorporation,” the compliance with the 34 Act Order in updating 34 Act reports is sufficient. Failure to meet these requirements will require filing a post-effective amendment with the audited financials and suspension of the offering upon expiration of the 60 days (106 days if the Income Conditions are not met) and until the SEC declares the shelf effective once again	Release 33-8070	
Age of Prospectus Information	Section 10(a)(3) requirement that information in a prospectus be not more than 16 months old is increased to 18 months as it relates to financial statements audited by AA; issuer must provide unaudited statements meeting the 16 month rule and Required Disclosure; when audited statements are included, the updated prospectus must address any material changes from the unaudited statements	Temporary Rule 427T	Expires 12/31/02
Prior Reports	Issuers filing financials from previous periods audited by AA who cannot obtain a report may file a copy of the latest report they have and must prominently disclose that the report has not been reissued by AA	Amended Rule 2-02 of Regulation S-X	No expiration
Prior Consents	Written consents for the inclusion of financials audited by AA that cannot be obtained may be omitted if any limitations on recovery by investors are disclosed	Rule 437a	No expiration

	Action	Reference	Dates
Availability of other 33 Act Rules	Information requirements of Regulation D and Rules 144, 144A and 701 will be considered met if 34 Act reports are filed as outlined below	Release 33-8070	
Employee Benefit Plan Prospectuses	If latest fiscal year ended within 180 days (250 days for foreign private issuers) of delivery of a Form S-8 prospectus, issuers electing to comply with the temporary rules may deliver documents containing financials for the previous fiscal year, provided that within the 180 or 250 day period a document containing financials for the latest fiscal year is furnished to each employee	Temporary Instruction 2T to Rule 428	Until 9/13/02 (or 12/16/02 for foreign private issuers)
Change of Accountants	Letter from AA on its position as to dismissal or resignation may be omitted if not yet obtained or after reasonable efforts cannot be obtained, from filings that would require such letter pursuant to Items 304 and 601 of Regulation S-K	Temporary Items 304T and 601T of Regulation S-K	Expires 12/31/02
1934 Act			
Issuer has an AA audit report signed on or before 3/14/02	No change		
Issuer continues to use an AA audit report signed after 3/14/02	See 33 Act Above		
Issuer unable to use, or chooses not to use, AA audit report signed after 3/14/02			
Annual Reports	Requires timely filing of Form 10-K with unaudited financials and the Required Disclosure. Within 60 days, issuer files an Audit Update	34 Act Order	FY ending between 11/30/01 and 4/15/02

	Action	Reference	Dates
Quarterly Reports	<p>Requires timely filing of Form 10-Q with financials that have not been reviewed under Rule 10-01(d) of Regulation S-X, and Required Disclosure.</p> <p>Upon completion of the S-X review, if financials have changed as a result of the review, issuer must file an amendment including the changed financials and discussing any material changes, including amending the MD&A</p> <p>Upon completion of the review, if no change, issuer must state in its next 10-Q that that the statements for the prior quarter were subsequently reviewed; SEC also encourages public statement prior to next required 34 Act report that there were no material changes</p>	34 Act Order	Fiscal quarter ending between 1/26/02 and 6/15/02
Annual Report – Foreign Issuer	<p>Requires timely filing of Form 20-F with unaudited financials and an unaudited reconciliation to US GAAP, if financials are based on local GAAP or IAS, together with Required Disclosure</p> <p>Within 60 days after due date of filing, issuer must file an amendment presenting financials and reconciliation (if applicable) as audited by a firm other than AA, discussing any material changes, including amending the Operating and Financial Review and Prospects (MD&A)</p>	34 Act Order	FY ending between 8/31/01 and 4/15/02
Notification of Late Filing	If not obtained after reasonable efforts, no statement by AA as to the reasons why a report, opinion or certification cannot be timely furnished need be attached as an exhibit to a Form 12b-25 filing	34 Act Order	See Annual Reports, Quarterly Reports and Annual Report – Foreign Issuer

	Action	Reference	Dates
1939 Act			
Indentures	Delivering to the indenture trustee reports in compliance with the 34 Act Order satisfies TIA Section 314(a)(1) requirement to file with the indenture trustee all reports required to be filed with the SEC	TIA Rule 19a-1	