

**REQUIREMENTS FOR
ARTHUR ANDERSEN LLP
AUDITING CLIENTS**

SIMPSON THACHER & BARTLETT LLP

MARCH 28, 2002

The Securities and Exchange Commission (the “SEC”) issued releases outlining the orders and rules it announced on March 14, 2002 to assure an orderly flow of information to investors and to minimize potential disruptions to U.S. capital markets that may occur as a result of the recent indictment of Arthur Andersen LLP (“Andersen”)¹. The releases were issued on March 18, 2002 and are entitled “Order Under Section 36 of the Securities Exchange Act of 1934 Granting Exemptions from Certain Provisions of the Act and Rules Thereunder” (No. 34-45589 – the “34 Act Order”) and “Requirements for Arthur Andersen LLP Auditing Clients” (Nos. 33-8070; 34-45590- the “Andersen Release”)². This memorandum describes the application of the principal provisions of the three releases to filings under the Securities Act of 1933, as amended (the “1933 Act”) and the Securities and Exchange Act of 1934, as amended (the “1934 Act”). This memorandum is divided into three parts: special disclosure rules for Andersen clients receiving audits after March 14, 2002 (Part I); rules for 1934 Act filings by issuers who are not able, or elect not to, obtain audits from Andersen (Part II); and the application of these rules to 1933 Act filings and rules (Part III).

**I. POST MARCH 14, 2002
ANDERSEN AUDITS**

The Andersen Release and the 34 Act Order affect those companies to which Andersen issues signed audit reports after March 14, 2002. Companies for whom Andersen issues a manually signed audit report after March 14, 2002 in a filing under the 1933 Act or 1934 Act must include as an exhibit (under Exhibit 99) to their filing a letter by the issuer addressed to the SEC that states that Andersen has represented to the issuer:

¹ Includes all foreign affiliates of Arthur Andersen LLP.

² Companion releases also provide relief under the Public Utility Holding Company Act of 1935, the Trust Indenture Act of 1939, the Investment Company Act of 1940 and the Investment Advisers Act of 1940. These releases are not covered by this memorandum but may be found at www.sec.gov (Nos. 35-27503; 39-2395; IA-2018; IC-25464).

- that the audit was subject to Andersen's quality control system for the U.S. accounting and auditing practice to provide reasonable assurance that the engagement was conducted in compliance with professional standards;
- that there was appropriate continuity of Andersen personnel working on audits; and
- that there was availability of national office consultation and availability of personnel at foreign affiliates of Andersen to conduct the relevant portions of the audit.

While the Andersen Release does not mandate that the issuer receiving a post March 14, 2002 report provide specific disclosure regarding Andersen, the SEC implies that the issuer should include disclosure consistent with the letter and any other disclosure which the issuer believes is relevant in light of the facts and circumstances of the issuer.

II. 1934 ACT FILINGS

The 34 Act Order outlines a set of procedures relating to the inclusion of financial statements in filings under the 1934 Act by current or former Andersen clients. The 34 Act Order establishes a framework for Andersen clients that are unable to obtain from Andersen or elect not to obtain from Andersen a signed audit report that is currently in process. Under this framework, the SEC is permitting issuers to make certain filings by the original due date with unaudited financial statements so long as they file amended filings containing audited financial statements within 60 days after the due date.

GENERAL APPLICATION OF 34 ACT ORDER

The 34 Act Order applies to any issuer:

- Whose report, registration statement, amendment, or certain other 1934 Act documents, will include financial statements being examined or reviewed by Andersen after March 14, 2002 as the independent public accountant;
- That on or before March 14, 2002, had not obtained a manually signed audit report from Andersen in respect of those financial statements (or a review report in the case of interim financial statements);
- That is unable to obtain from Andersen or elects not to have Andersen issue a manually signed audit report in respect of those financial statements (although not specified in the order, or a review report in the case of interim financial statements); and

- That is not a “blank check company”³.

To take advantage of the 34 Act Order the issuer must comply with the following conditions:

- Adheres to existing filing deadlines and responds to all items required by the appropriate form. Any audit report previously issued by Andersen that is required to be included in a filing should be included as required.
- Provides disclosure in accordance with the following guidance:
 - on the cover page of its filings a prominent statement that the filing includes unaudited financial statements in lieu of audited financial statements because the issuer was unable to obtain from Andersen (or a foreign affiliate of Andersen) or elected not to have Andersen (or a foreign affiliate of Andersen) issue an audit report and a cross reference to the additional information described below;
 - in the body of the filing immediately before the financial statements:
 - the statement referred to in the prior bullet;
 - a statement as to when and how the issuer intends to provide the audited financial statements; and
 - a statement that no auditor has opined that the unaudited financial statements present fairly, in all material respects, the financial position, the results of operations, cash flows and the changes in shareholders’ equity of the company for each of the periods reported in accordance with generally accepted accounting principles.

The Andersen Release notes that the exact language of the disclosure may vary depending on the facts and circumstances of the issuer, although the substance and placement of the disclosure described above is mandatory.

³ A “blank check company” as defined in Rule 419(a)(2) of the 1933 Act is:

- (i) a development stage company that has no specific business plan or purpose or has indicated that its business plan is to engage in a merger or acquisition with an unidentified company or companies, or other entity or person; and
- (ii) issuing “penny stock,” as defined in Rule 3a51-1 under the 1934 Act.

- Files an amendment to the filing within 60 days of the original due date of the filing, that presents:
 - the financial statements audited by an independent public accountant *other* than Andersen;
 - a discussion of any material changes from the unaudited financial statements filed originally; and
 - any other section of the filing that should be amended to reflect any changes in the financial statements so filed by amendment.

ANNUAL REPORTS ON FORM 10-K/FORM 10-KSB

An issuer that files annual reports on Form 10-K or Form 10-KSB with a fiscal year ending between and including November 30, 2001 and April 15, 2002 may file its annual report for that fiscal year under the conditions set forth in Part II of this memorandum. Further, if the original filing was on Form 10-K, the amendment to the report filed by the issuer within 60 days of the original due date of the report must disclose if Andersen had examined any of the issuer's financial statements and selected financial data.

QUARTERLY REPORTS ON FORM 10-Q/FORM 10-QSB

An issuer that has a fiscal quarter ending between and including January 26, 2002 and June 15, 2002 that is required to file quarterly reports on Form 10-Q or Form 10-QSB may file its quarterly report for those fiscal quarters under the conditions set forth in Part II of this memorandum. The 34 Act Order permits eligible issuers to file their quarterly reports with financial statements that have not been subject to review pursuant to Rule 10-01(d) of Regulation S-X (a so-called "SAS 71" review). If upon completion of the SAS 71 review there is a change to the interim financial statements, the issuer must file an amendment to the report in accordance with the conditions set forth in Part II of this memorandum. If upon completion of the review there is not a change to the interim financial statements, the issuer must state in its quarterly report for the next succeeding fiscal quarter that the interim financial statements for the previous quarter had been subsequently reviewed by an independent public accountant other than Andersen but no report of that independent accountant need be presented. The SEC, however, encourages the issuer to make earlier disclosure that the review has been completed and no material changes were required in the quarterly financial statements.

ANNUAL REPORTS ON FORM 20-F

A foreign private issuer that files annual reports on Form 20-F with a fiscal year ending between and including August 31, 2001 and April 15, 2002 may file its annual report for that fiscal year and comply with the conditions set forth in Part II of this memorandum. The 34 Act Order also requires that the filings include an unaudited reconciliation to U.S. GAAP if the

audited statements require this reconciliation. The foreign private issuer must further disclose pursuant to Part II of this memorandum if Andersen (or a foreign affiliate) had examined the foreign private issuer's financial statements and selected financial data.

PROXY STATEMENTS/INFORMATION STATEMENTS

Issuers that file either a Schedule 14A or 14C that requires audited financial statements of an entity with a fiscal year ending between and including

- November 30, 2001 and April 15, 2002, if the entity meets all of the conditions in Rule 3-01 (c) of Regulation S-X⁴, or
- December 29, 2001 and April 15, 2002, if the entity does not meet all of the conditions in Rule 3-01(c)

may file unaudited financial statements in satisfaction of that requirement if the issuer sends its proxy statement or information statement on or before September 13, 2002 and complies with the conditions set forth in Part II of this memorandum.⁵ Note that the issuer must file either revised materials or amended documents incorporated by reference no later than the following dates:

- if the issuer meets all of the conditions in Rule 3-01(c) the date shall be the earlier of (1) 60 days from the date the audited financial statements were required to be included in the proxy statement and (2) the date on which an amended Form 10-K or 10-KSB containing audited financial statements is filed; or
- if the issuer does not meet all of the conditions in Rule 3-01(c) the date shall be the earlier of (1) 106 days from the date the audited financial statements

⁴ Rule 3-01(c) of Regulation S-X ("Rule 3-01(c)") lists the following conditions:

- 1) The registrant files annual, quarterly and other reports pursuant to Section 13 or 15(d) of the 1934 Act and all reports due have been filed;
- 2) For the most recent fiscal year for which audited financial statements are not yet available the registrant reasonably and in good faith expects to report income, after taxes but before extraordinary items and cumulative effect of a change in accounting principle; and
- 3) For at least one of the two fiscal years immediately preceding the most recent fiscal year the registrant reported income, after taxes but before extraordinary items and cumulative effect of a change in accounting principle.

⁵ The relief is not available for "roll-up" transactions.

were required to be included in the proxy statement and (2) the date on which an amended Form 10-K or 10-KSB containing audited financial statements is filed.

Issuers that have a fiscal year ending between and including November 30, 2001 and April 15, 2002 that file either a Schedule 14A or Schedule 14C that relates to the election of directors will satisfy the requirements for inclusion of audited financial statements in the annual report to security holders if the proxy statement or information statement is sent on or before September 13, 2002 and the issuer complies with the conditions set forth in Part II of this memorandum. The issuer must also announce in a press release, at the time it files its Form 10-K or Form 10-KSB that includes the audited financial statements, that these financial statements are available and may be found in that filing on the SEC's website at www.sec.gov and on the issuer's website, citing the issuer's address. This announcement need not be made if the issuer's solicitation or corporate action has been completed prior to the time these audited financial statements are filed.

SCHEDULES TO

Issuers whose Schedule TO requires audited financial statements of an entity with a fiscal year ending between and including November 30, 2001 and April 15, 2002 may file the Schedule TO with unaudited financial statements on or before September 13, 2002 if it satisfies the requirements in Part II of this memorandum.⁶ The issuer must also either file revised materials or amended documents incorporated by reference to provide the financial statements audited by an independent public accountant other than Andersen not later than the earlier of

- 60 days from the date the audited financial statements were required to be included in the Schedule TO, and
- the date on which an amended Form 10-K or 10-KSB containing audited financial statements is filed.

The filing or amendment shall not be required if the tender offer has been completed by such date. The revised materials, or the periodic report which satisfies this requirement through incorporation by reference, must also disclose if Andersen served originally as the independent public accountant for the issuer's financial statements and selected financial data.

III. 1933 ACT FILINGS

The SEC modified the requirements for including audited financial statements in registration statements filed under the 1933 Act by registrants that are unable to obtain from

⁶ The relief is not available for "going private" transactions.

Andersen or elect not to obtain from Andersen a signed report on audits if the report was not issued on or before March 14, 2002. Although the releases do not address the impact of proceeding with a transaction on the basis of unaudited financial statements, directors, officers and underwriters should be aware that the defenses to liability under the 1933 Act with respect to expertised sections of a registration statement would not be available for these financial statements. In addition, the failure to obtain a consent from Andersen, as described below, may also result in these defenses not being available for the audited financial statements. The modifications only apply to reporting companies and, accordingly, are not available for initial public offerings.

REGISTRATION STATEMENTS

Registration statements filed by issuers may include financial statements that meet the timeliness requirements of the SEC rules but that are unaudited. If the issuer includes unaudited financial statements in its filing it must provide the disclosure set forth in Part II of this memorandum. The issuer may then file a pre-effective amendment, post-effective amendment or an amendment to a document incorporated by reference containing the audited financial statements for the required periods if the registered offering has not been completed.

SHELF REGISTRATION STATEMENTS

Issuers with effective registration statements for offerings registered in accordance with Rule 415 (shelf registrations) must update the registration statement if events or facts occur that represent a “fundamental change in the registration statement”. The SEC has taken the position that the failure of an eligible issuer to include audited financial statements in the registration statement represents such a “fundamental change” and, accordingly, an issuer which takes advantage of the relief by filing unaudited financial statements must file a post-effective amendment to the registration statement to disclose the lack of audited financial statements. The Andersen Release does not cover the filing of interim statements pursuant to Rule 415.

MANUALLY SIGNED AUDIT REPORTS / WRITTEN CONSENTS

An issuer filing a 1933 Act registration statement containing financial statements audited by Andersen may be unable to obtain the required manually signed audit reports and consent from Andersen. An issuer may dispense with the requirement for the registrant to file the manually signed audit report or written consent of Andersen where:

- the registrant has not already obtained the manually signed audit report or written consent that would be required if not for this temporary rule;
- the registrant is not able to obtain the manually signed audit report or written consent after reasonable efforts; and

- the registrant discloses clearly any limitations on recovery by investors posed by the lack of consent. The disclosure should provide in substance that an expert, such as an accountant, who has consented to being named in a registration statement is liable under Section 11 of the 1933 Act for any material misstatements or omissions contained in or omitted from the section certified by the expert. Accordingly, if Andersen does not provide its consent, it will not have liability under Section 11 with respect to the financial statements audited by Andersen that are contained in the registration statement.

The rule may not be relied upon by any registrant that is a “blank check company”.

RULE 144 AND RULE 144A

The SEC has taken the position that resales under Rule 144 and Rule 144A will not be affected by the unavailability of audited financial information as a result of an issuer’s reliance on the 34 Act Order and temporary rules outlined in the Andersen Release.

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If you have any questions concerning this memorandum, please contact Michael D. Nathan (mnathan@stblaw.com; 212-455-2538) or Arthur Robinson (arobinson@stblaw.com; 212-455-7086) of our firm.

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