

# Review of Corporate Compliance Issues Under the Sarbanes-Oxley Act of 2002

August 19, 2002

# Overview



- **Signed into law by President Bush on July 30, 2002**
- **Provides for private oversight of accounting firms that perform public company audits**
- **Imposes new obligations on public companies and their officers and directors**
- **Defines an audit committee and specifies its overall purpose and requirements for composition**
- **Addresses auditor independence issues**
- **Provides for enhanced disclosure of certain items**

# Provisions Effective Immediately

- **Financial reports filed with the Securities and Exchange Commission (SEC)**
  - Must reflect all correcting adjustments identified by the auditors
  - Auditors must be a public accounting firm in accordance with Generally Accepted Accounting Principles (GAAP) and registered under the SEC's rules and regulations
- **Prohibits personal loans to or for any director or executive officer of the issuer**
- **Certification by officers regarding compliance with the Securities and Exchange Act of 1934 and fair presentation of the financial statements**

★ **Per Heller Ehrman, each of these provisions is applicable to Chugach**

# Provisions Effective Immediately Continued

- If an issuer must prepare an accounting restatement because, as a result of misconduct, the issuer failed to provide materially accurate and complete financial disclosure, the issuer's CEO and CFO must reimburse the issuer for any incentive-based compensation received during the 12 months following the erroneous report
- Imposes criminal penalties for knowingly filing a false certification

★ Per Heller Ehrman, each of these provisions is applicable to Chugach

# Provisions Effective Within 30 Days (August 29, 2002)

- CEOs and CFOs must certify in each annual or quarterly report the following:
  - They have reviewed the report
  - The report is materially true
  - The report does not omit any material facts if the omission would cause the statements to be misleading
  - The report fairly present the issuer's financial condition and results of operations
- Officers also required to make certain certifications regarding the issuer's internal controls

★ Per Heller Ehrman, each of these provisions is applicable to Chugach

# Provisions Effective Within 180 Days (January 26, 2003)

- **Disclosure requirements will be increased for off-balance sheet transactions and the SEC will provide standards for:**
    - Pro-forma financial information
    - Limitations on non-audit services
    - Audit partner rotation and conflicts of interest
    - Increasing the responsibilities and addressing ethical conflict issues for audit firms and attorneys
  - **The SEC must issue final rules requiring issuers to disclose:**
    - Adoption of a code of ethics for senior financial officers
    - Whether audit committees have at least one member who is a “financial expert”
- ★ **Per Heller Ehrman, each of these provisions is applicable to Chugach**

# Provisions Effective Within 270 Days (April 26, 2003) – Relating to Audit Committees

- The SEC is required to adopt rules that prohibit market listing for any security unless the issuer's audit committee complies with the following requirements:
  - Be comprised solely of independent directors
  - Be directly responsible for the appointment, compensation and oversight of the issuer's certifying accountants
  - Establish procedures for receiving, retaining and addressing accounting and audit related complaints
  - Possess the authority to engage independent counsel and other advisers
  - Responsible for resolving disagreements between the external auditor and management
  - Must have a chair that meets certain criteria with regard to financial and accounting knowledge
  - Must establish a "whistleblower" system
  - Must not be an affiliate of the entity
- ★ Per Heller Ehrman, these provisions are not applicable to Chugach, as these only apply to companies listed on the NYSE or NASDAQ

# Auditor Independence

- Certain non-audit services prohibited
- Audit committee pre-approval of all non-audit services not prohibited
- Audit can not be performed if Company's CEO, CFO, CAO, or Controller were employed by audit firm and participated in audit during the 1-year period preceding the date of initiation of the current audit
- Auditor must report specific information to Audit Committee
  - All critical accounting policies
  - GAAP alternatives discussed with management
  - Other material written communications with management
- Audit partner rotation required
- Audit firm rotation will be studied

★ Per Heller Ehrman, each of these provisions is applicable to Chugach

# Provisions Having An Unspecified Effective Date

- **To the extent provided in SEC regulations, an issuer's annual reports will be required to contain:**
  - **Certain disclosures regarding management's assessments of the internal control structure and financial reporting procedures**
  - **The issuer's audit firm will be required to attest to and report on this assessment**
- **The SEC may adopt rules requiring “rapid and current” disclosure of information concerning material changes in the issuer's financial condition or operations**