

September 18, 2002

SEC Adopts Rules for Certification of Annual and Quarterly Reports

On August 27, the Securities and Exchange Commission adopted rules to implement Section 302 of the Sarbanes-Oxley Act. Section 302 requires an issuer's principal executive officer and principal financial officer to certify six separate statements in each annual and quarterly report filed with the SEC. The rules, which are effective for filings made after August 29, 2002, apply to all companies filing reports under Section 13(a) or Section 15(d) of the Securities Exchange Act of 1934, including foreign private issuers filing annual reports on Form 20-F or Form 40-F.

Under the rules, each signing officer will be required to provide a separate certification immediately following the Signatures on the report. The signing officer may not have the certification signed pursuant to a power of attorney or other form of confirming authority. The certification must be in exactly the form set forth on Annex A to this memorandum.

The certification requirement of Section 302 is distinct from the certification requirement under Section 906 of the Sarbanes-Oxley Act. The SEC and the Justice Department are in discussions to develop a mechanism to combine the certifications. Until the SEC provides further guidance, both the Section 302 and the Section 906 certifications should be included with each report. Our memorandum on the Section 906 certification is available at <http://www.hewm.com/news/articleDetails.asp?articleid=1010>.

The certification under Section 302 is made to the knowledge of the signing officers. The certification under Section 906 carries criminal penalties for knowingly or willfully making a false statement. Accordingly, it is imperative for each company to institute procedures designed to provide the signing officers with reasonable assurances that all relevant information concerning the information contained in the periodic reports has been made available to the persons preparing the reports and is accurate.

Compliance Suggestions

In light of these requirements, each company should review and evaluate its existing procedures for the preparation of its periodic reports. The SEC staff stated in the release adopting the certification rules that it does not require specific procedures be adopted by every reporting company, but instead believes that each company should develop a process that is consistent with its business and internal management and supervisory practices. We believe that companies should consider implementing the following procedures for providing the signing officers the information they need in order to sign the required certification:

- each signing officer should read the entire report at least once;
- the signing officers should have access to all supporting material compiled in connection with the preparation of the periodic report;
- the controller or other persons responsible for preparing the financial statements should provide a certification to the signing officers that they believe the financial information contained in the report is accurate in all material respects and that the financial statements have been prepared in accordance with GAAP;
- the heads of the major business units or functions should provide a certification to the signing officers that they have reviewed the report and believe to the best of their knowledge that the information in the report fairly presents, in all material respects, the financial condition and results of operations of the company;
- the signing officers should discuss with the independent auditors any accounting issues that arose during the preparation of the report and the resolution of those issues; and
- the signing officers should confer with the audit committee (or at least the chairperson of the audit committee) regarding any accounting or disclosure issues of which the committee is aware.

Disclosure Controls and Procedures

As part of the certification process under Section 302, the SEC has mandated that the signing officers certify that:

- the company has disclosure controls and procedures in place, and

- whether these procedures are effective based on an evaluation made within 90 days of the filing date of each periodic report.

Disclosure controls and procedures are a concept that go beyond and are in addition to the internal financial controls that most companies have in place. Disclosure controls and procedures must be designed to ensure that information required to be disclosed by the issuer in the reports that it files or submits under the Exchange Act is recorded, processed, summarized and reported, within the time periods specified in the SEC's rules and forms. In addition, disclosure controls and procedures must ensure that the company has captured all information relevant to the company's assessment of which developments and risks relating to the company's business require disclosure.

While disclosure controls and procedures are a new concept, for most companies compliance with this requirement should not result in the creation of a new set of policies. Each public company should currently have in place processes for determining what information is required to be disclosed in its periodic and other reports. As a result of the new regulations, companies will now need to formalize and document these internal procedures for the collection of information, the determination of what information is required to be disclosed and the preparation of their periodic and other reports in order to allow the signing officer to assess the effectiveness of the disclosure controls and procedures. The purpose of this process is not to create a new set of policies, but to formalize and document existing policies and make changes where necessary to ensure conformity with the SEC's rules and that the company's internal processes function so that operating and financial information flows to the appropriate collection and evaluation points in a timely manner.

As part of this process, we recommend that each company:

- establish a disclosure committee of officers with responsibility for considering the materiality of information and determining the company's disclosure obligations on a timely basis. This committee should include the senior legal officer responsible for disclosure, the principal accounting officer, a senior risk management officer, a senior investor relations officer and other officers or employees as appropriate and should report directly to the senior management;
- prepare a written work plan identifying each item or category of information to be collected for disclosure in the filing and the person responsible for collecting and verifying the information;
- establish and circulate a timeline for each step of the drafting and review process, including dates when drafts will be circulated and when comments are due;

- identify the executives who should review all or portions of the filing and establish a system to verify this review; this system should include review of relevant portions of the report by appropriate persons reporting to the reviewing executives to the extent necessary to provide assurance that the employees in a position to assess the accuracy of the filing have been consulted; and
- establish a procedure for legal review to verify compliance with the applicable disclosure requirements.

Transition Provisions

While the rules are effective for filings made after August 29, 2002, the adopting release provides a transition period for the certification regarding disclosure controls and procedures and internal controls. The statements in paragraphs 4, 5 and 6 in the attached certification form are required only for fiscal periods ending on or after August 29, 2002. Consequently, for calendar year issuers, the full certification set forth above will be required for filings relating to fiscal periods ending September 30, 2002.

The full text of the SEC release is available at <http://www.sec.gov/rules/final/33-8124.htm>.

If you would like to discuss these issues further, please call any of us at the numbers listed below:

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ANNEX A

CERTIFICATIONS

I, [identify the certifying individual], certify that:

1. I have reviewed this [quarterly][annual] report on Form [] of [identify registrant];

2. Based on my knowledge, this [quarterly][annual] report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this [quarterly][annual] report;

3. Based on my knowledge, the financial statements, and other financial information included in this [quarterly][annual] report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this [quarterly][annual] report;

4. The registrant's other certifying officers and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-14 and 15d-14) for the registrant and we have:

a) designed such disclosure controls and procedures to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this [quarterly][annual] report is being prepared;

b) evaluated the effectiveness of the registrant's disclosure controls and procedures as of a date within 90 days prior to the filing date of this [quarterly][annual] report (the "Evaluation Date"); and

c) presented in this [quarterly][annual] report our conclusions about the effectiveness of the disclosure controls and procedures based on our evaluation as of the Evaluation Date;

5. The registrant's other certifying officers and I have disclosed, based on our most recent evaluation, to the registrant's auditors and the audit committee of registrant's board of directors (or persons performing the equivalent function):

a) all significant deficiencies in the design or operation of internal controls which could adversely affect the registrant's ability to record, process, summarize and report financial data and have identified for the registrant's auditors any material weaknesses in internal controls; and

b) any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal controls; and

6. The registrant's other certifying officers and I have indicated in this [quarterly][annual] report whether or not there were significant changes in internal controls or in other factors that could significantly affect internal controls subsequent to the date of our most recent evaluation, including any corrective actions with regard to significant deficiencies and material weaknesses.

Date:

[Signature]
[Title]

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