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## SEC ISSUES GUIDANCE REGARDING MD&A DISCLOSURES

*By Carl C. Hanemann and Amos J. Oelking, III*

On December 19, 2003, the SEC issued interpretative guidance to reporting companies regarding MD&A disclosures. The SEC's release does not modify existing disclosure requirements or create new disclosure requirements, but rather seeks to assist companies in providing more meaningful, easier-to-understand disclosures to investors. ([Click here to link to the full text of the SEC's interpretive release.](#))

The following is a summary of the recommendations made in the SEC's release, which becomes effective December 29, 2003.

### *Overall Presentation of MD&A*

- Companies should consider beginning their MD&A with an "executive-level" overview that would provide context for the more-detailed discussion and analysis to follow.
- MD&A disclosures should not contain any unnecessary duplicative disclosure and should be presented such that the most material information is most prominently presented.
- Presentation of relevant financial and non-financial information in tabular format should also be considered if that would increase investors' understanding of the information. Similarly, companies should consider whether the headings in their disclosures assist readers in following the MD&A, and whether additional headings would be beneficial.

### *Content and Focus of MD&A*

- Companies should focus on material information in their MD&A and seek to eliminate immaterial information which does not facilitate an understanding of the company's financial condition, capital resources and results of operations (*e.g.*, information that has become stale).
- MD&A disclosures should contain a discussion of the key performance factors, both financial and non-financial, that are used by management and that would be material to investors.

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- Companies should discuss known trends, events, demands, commitments and uncertainties that are “reasonably likely” to materially affect the company’s financial condition or performance. In doing so, companies are “expected” to consider all relevant information, regardless of whether the information is required to be disclosed. Further, companies should consider quantitative disclosure of the effects of such matters; according to the SEC’s release, such information “may be required” if material quantitative information is “reasonably available.”
- Material information disclosed other than in companies’ SEC filings (e.g., in earnings releases or during analyst calls accessible by the public) should also be evaluated for inclusion in MD&A.

### *Liquidity and Capital Resources*

- Rather than a mere recitation of the items in their cash flow statements, companies should consider enhanced explanation and discussion of their cash requirements, uses of cash, and sources of cash. Moreover, companies should address material changes in their underlying cash flow “drivers” (e.g., cash receipts from sales of goods).
- Companies should also “separately” evaluate their ability to meet their short-term and long-term cash requirements.
- Companies should further consider enhanced disclosure in their MD&A regarding their outstanding debt and guarantee instruments and related covenants, particularly if the company is or is likely to be in breach of the covenants, as well as the impact of the covenants on the company’s ability to obtain additional debt or equity financing.

### *Critical Accounting Estimates*

- Companies should consider enhanced discussion and analysis of their critical accounting estimates that supplements, but does not duplicate, the description of accounting policies contained in the notes to the company’s financial statements.

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- Companies should also specifically address why their accounting estimates and assumptions are subject to change, and provide quantitative disclosures of the effect of reasonably likely, material changes (in addition to qualitative disclosures) when that information is “reasonably available” and will further investors’ understanding of the company’s financial information.

*Please remember that these legal principles may change and vary widely in their application to specific factual circumstances. You should consult with counsel about your individual circumstances. For further information regarding these issues you may contact the head of our Corporate and Securities practice group:*

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