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## Reviewing Compensation Plans and Document Retention Policies

In light of Congress' and investors' views that excessive use of stock options and similar equity-based compensation has created incentives to manipulate stock prices, the time has come for boards and executives to review their compensation plans. The time has also come to review funding of compensation plans, especially those providing retirement and deferred compensation, in light of the losses suffered as a result of creditors' claims and bankruptcies.

### EDITOR'S NOTE

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Our second article examines a provision of Sarbanes-Oxley that is applicable not only to privately and publicly held companies, but also to all individuals. That provision provides new criminal penalties for document destruction. Suspending document destruction in today's world of electronic files is easier said than done. Our article recommends an immediate review of document retention policies and, more importantly, of IT systems in which such documents are written or stored.

Our lead article by David Fisher of Clark Consulting, formerly Clark/Bardes Consulting, offers guidance for such review.

## Designing Nonqualified Deferred Compensation Plans to Address the Recruit-Retain-Reward Challenge

By **David H. Fisher**, Senior Vice President,  
Executive Benefits Practice, Clark Consulting

Boards of directors, top officers and their human resource executives have come to realize that having the best leadership is the most critical corporate asset of all. For that reason, it is important to build benefit plans that succeed not only in recruiting, but also in retaining and rewarding the best executive talent. An attractive benefits package, along with compensation, can make or break the executive's decision to accept your offer or stay with your company, particularly when the opportunity to defer

various forms of compensation and taxes through a nonqualified plan is presented. As such, companies are rapidly learning to bring compensation and benefits together into a more unified and powerful package with the type of inventive solutions that effectively address the *recruit-reward-retain* challenge.

With the passage of Sarbanes-Oxley, Congress has outlawed loans by companies to executives and directors. Under rising pressure from shareholders, many companies now count

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**A**credula is the Latin word for "owl," connoting wisdom. This newsletter is intended as wise counsel for boards and executives.



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stock option grants as an expense against reported earnings. Those that elect not to expense stock options currently will be forced to do so in the future. As a result, signing bonuses and outright cash will likely replace loans and the use of restricted stock and performance-based retirement plans as alternatives to stock options. Offering nonqualified deferred compensation (NQDC) plans that already allow you to enhance an executive's retirement plan; restore an executive's retirement benefit lost to qualified plan restrictions; and offer a short-term investment vehicle to accumulate savings on a tax-favored basis will be very effective at allowing the executives to defer these forms of compensation and allowing companies to enhance the NQDC plan based upon job performance. To achieve this, professionals are fine-tuning NQDC plan objectives where necessary, boosting plan security, and implementing the principles of best practices throughout the process.

Deferral plans are designed in many different types and hybrids. A well-designed NQDC plan brings several advantages to both the executive and the employer, including flexibility and customization. These plans give employers and plan participants welcome freedom from ERISA and IRS restrictions. Recently, there has been an increased acceptance of certain best practices, or key design features, found in state-of-the-art NQDC plans. Simply put, "best practices" refers to a standard of planning and implementation that is beyond average, one that encompasses a wider range of contingencies and strives to offer a level of exceptional quality in benefits planning. Because all NQDC plans are not equal, companies preparing to design or redesign a NQDC plan will find it highly beneficial to adopt the following best practices design guidelines:

**Build Flexibility of Payout Options.**

A well-designed NQDC plan should offer participants short-term distribution options, especially among younger participants who are faced with short-term obligations such as college education for their children. Individuals may receive partial payout prior to retirement

without the 10% penalty they would have otherwise incurred for partial withdrawals from a qualified plan. There should be enough flexibility to allow participants to determine how and when they wish to receive their benefits. Generally, short-term distributions most often have at least a two-year minimum payment period. In 1998, 48% of the *Fortune 1000* respondents to our annual *Executive Benefits Survey* offered flexible payout options. In 2002, the figure increased to 68%.

**Allow for Company Contributions.** Even though a typical deferral plan is designed to allow plan

participants to defer their compensation to avoid current taxation and provide tax-free investment growth, corporate contributions should be allowed. These corporate contributions could be used to match any lost contributions to qualified plans due to plan restrictions or to enhance an executive's account balance and eventual retirement account based on pre-established job performance criteria.

**Create Investment Diversity with Unlimited Ability to Reallocate Funds.** The rate at which investment earnings are credited to the account of a plan participant can vary widely. A well-designed NQDC plan provides participants with the unlimited ability to reallocate their deferrals. This diversity allows participants to select an individualized wealth-building strategy from a variety of investment options.

**Develop Appropriate Funding Vehicles.** The funding question can be complex because a number of factors must be taken into account. To avoid unnecessary charges to a company's income statement, a well-designed plan will minimize its expenses, including the impact on cash flow at the point of payouts. What's more, for a plan to be successful, the participating executives must feel comfortable that they will be paid when scheduled. Our 2002 *Executive Benefits Survey* indicated that 67% of the *Fortune 1000* respondents informally fund their NQDC programs. With the collapse of Enron, WorldCom and others, appropriate funding of NQDC plans has become even more important, not only to the plan participants but also to management.

**Develop Appropriate Security Devices.** Consideration of risk management is a key aspect of plan design. NQDC plans are not covered or insured by the government against loss, leaving plan participants exposed as unsecured creditors. As such, you need to take extra precautions to protect the plan against unforeseen events. In an employer insolvency or bankruptcy, an executive could lose promised benefits, as company assets go to secured creditors first. We have all read in the press about the unfortunate loss of benefits as a result of bankruptcy. Other risks may include an employer's inability to pay benefits due to cash flow demands; a hostile takeover; an unfriendly change in corporate control; a management change of heart; or the decision to simply eliminate the plan.

**Offer Stock Option Gain Deferrals.** Even though the use of stock options has or may lessen, an attractive plan feature is the ability to defer any gains in the value of an executive's stock options back into his or her compensation account. A nonqualified equity plan enables the executive to defer taxes normally due when stock is granted, as well as defer capital gains when stock income is realized. Equity plans can become part of a NQDC plan designed to include stock that is granted or stock that is already optioned.

**Provide State-of-the-Art Communication.** A well-designed NQDC plan should offer plan enrollment,

Signing bonuses and outright cash will likely replace loans and the use of restricted stock and performance-based retirement plans as alternatives to stock options.

the ability to view investment options and investment performance, change elections and reallocated investment options online just like most company's 401(K) plans.

Before you focus on the specific steps recommended for a best practices benefits plan, decide who within your company should be involved in the design process. Consider establishing a project study group of representatives from your human resources, employee benefits, legal and finance departments. When designing the plan, it is important to remember that compensation and benefits are most effective when

woven together as a seamless whole. In this way, you can create the opportunity to drive the type of executive behavior and performance that reflects your commitment to best practices and address the *recruit-retain-reward* challenge.

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## Sarbanes-Oxley Requires Companies to Rethink Document Retention

By **John P. Beavers**, Bricker & Eckler LLP

The Sarbanes-Oxley Act of 2002 has companies and their boards and executives rethinking their document retention, as one of its provisions provides for criminal penalties of up to 20 years imprisonment and fines up to \$10 million for anyone who:

. . . knowingly alters, destroys, mutilates, conceals, covers up, falsifies, or makes a false entry in any record, document, or tangible object with the intent to impede, obstruct, or influence the investigation or proper administration of any matter within the jurisdiction of any department or agency of the United States or any case filed under [Bankruptcy Code], or in relation to or contemplation of any such matter or case. §802 of SOX which added §1519 to 18 USC.

These criminal penalties apply to everyone: Privately held businesses and public reporting companies; directors, officers, employees and other representatives of these businesses; and accountants, lawyers and other professionals providing services to these businesses. The penalties apply to individual persons with respect to their own records as well as their lawyers, accountants and other representatives.

The provision is a direct result of Arthur Andersen's shredding of Enron documents. In October 2001, Arthur Andersen's in-house legal counsel composed the following memorandum, which was forwarded to Arthur Andersen's partner in charge of the Enron audit team, David Duncan:

It might be useful to consider reminding the engagement team of our documentation and

retention policy. It will be helpful to make sure that we have complied with the policy. Let me know if you have any questions.

Knowing that the SEC had begun investigating Enron, Duncan ordered destruction of Enron related documents on October 21, 2001. The destruction of documents continued until the day after Arthur Andersen received a subpoena requesting it to produce those and other documents. The result was Arthur Andersen's criminal conviction for obstruction of justice in June 2002 and its corporate demise shortly thereafter.

### Arthur Andersen's fatal mistakes

Arthur Andersen made two fatal mistakes. First, although it had a document retention and destruction policy, it did not regularly and consistently carryout that policy. The in-house legal counsel's email is evidence, at best, of an inconsistent execution of the policy and, at worst, a knowing directive to destroy documents contrary to customary practice.

Second, David Duncan allowed the destruction of documents to continue even after learning of the SEC's investigation. Arthur Andersen's destruction of documents was so massive until the subpoena was issued that it was found to be obstructing justice.

### Congressional response

In the new criminal penalty provisions, Congress has made it easier to prosecute the next Arthur Andersen because prosecutors will not need to go through the cumbersome process of establishing a

nexus between the document destruction and an obstruction of justice. The document destruction itself will be sufficient when there is a known investigation.

### Necessity to suspend changes and deletions of documents

Every business enterprise needs to review how it implements its document retention and destruction policy. The implementation needs to be carried out regularly and consistently for the policy to withstand later scrutiny. But more important, as a result of Sarbanes-Oxley, implementation needs to be suspended immediately and effectively when legal claims arise or, perhaps even earlier, when such claims are reasonably foreseeable.

But, suspending document destruction is easier said than done. The criminal penalties apply to destruction of any “record, document, or tangible object.” Because “record” and “tangible object” are disjunctive, the implication is that the penalties apply to destruction of documents in almost any medium, including electronic files such as email and voice mail in digital form and computer or electronic documents.

Congress has made it easier to prosecute the next Arthur Andersen because prosecutors will not need to go through the cumbersome process of establishing a nexus between the document destruction and an obstruction of justice.

### Review of the IT system and its structure

Suspending destruction of electronic documents, especially within a large business enterprise, is difficult. Most enterprises have some form of a distributive system where users have their own hard drives or other electronic write or storage devices or, even if there are central servers, where users have the right to change or delete their own files.

Accordingly, avoiding criminal penalties for document destruction must

involve review of the document retention policy and its implementation and, more importantly, review of the information technology system and its structure. Enterprises should consider eliminating distributive systems where individual users have access to hard drives and other write or storage devices that are not backed up or stored centrally. The information technology officers of enterprises need to determine either how to suspend distributive rights to change or delete files or how to create a cumulative backup of those files (gathering all files saved on at least a daily basis without deleting any of those files).

### Recommendations

**Define documents.** The policy of an enterprise must cover all documents or data that are (1) property of

the enterprise, (2) in the possession of any director, partner, officer, employee or other representative, and (3) in any medium containing documents or data, including both paper and electronic. Electronic media must include not only document and other data files, but also electronic mail and voice mail in digital form. It also must include all categories of electronic storage devices, including floppy discs, hard drives, CD ROM, and magnetic tape as well as non-electronic storage forms such as microfilm or microfiche that are used by the enterprise or any of its employees or agents to develop, maintain, or transmit documents or data that are property of the enterprise.

**Review the IT system.** The IT system evaluation must include review of all distributive rights of individual users to change or delete documents or data that are property of the enterprise. The IT officers should determine whether it is more practical to eliminate or reduce those distributive rights or to create a cumulative backup, without deletions, of document and data files. At the very least, it may be necessary to eliminate individual user’s access to hard drives, floppy disks and other write or storage devices.

**Define when destruction must be suspended.** The policy should clearly define when document destruction is to be suspended. Because the statutory or judicial law of most states, including federal courts, creates a duty in a litigant to preserve documents relevant to the litigation or reasonably likely to constitute, or lead to, discoverable evidence, suspending destruction of documents can begin at several different points in time.

1. With respect to claims against the enterprise, suspension of destruction should start:
  - When legal process is served or commencement of such process is overtly threatened by any person asserting a claim against the enterprise, or
  - When legal process is served or commencement of such process is overtly threatened by any adjudicative tribunal or governmental agency investigating any possible claim against the enterprise or against any person to which the enterprise may be a party.
2. With respect to claims by the enterprise, suspension of destruction should start:
  - When legal process is considered likely or commencement of such process is threatened by the enterprise asserting a claim against another, or
  - When legal process is served or commencement of such process is overtly threatened by any adjudicative tribunal or governmental agency investigating any possible claim against the enterprise.

3. With respect to claims involving other persons, suspension of destruction should start:
  - When legal process is served or commencement of such process is overtly threatened requiring the production of testimony, documents or other evidence by the enterprise

before any court or other adjudicative tribunal or governmental agency of competent jurisdiction. (The starting point for lawyers, accountants and other professionals begins when the professional learns that legal process has been served or threatened.)

# Internal Controls: What We Can Learn from Regulators

By **John P. Beavers**, Bricker & Eckler LLP

In recent years, federal banking regulators<sup>1</sup> have led the way in recognizing the importance of and providing guidelines for the establishment and implementation of the internal audit function. Congress and the SEC have learned from these federal banking regulators. Companies other than financial institutions can learn from the guidance of these regulators, too.

## Requirement for internal accounting controls

Congress adopted the Foreign Corrupt Practices Act in 1978. Congress believed that American businesses were falsely characterizing as tax-deductible expenses payments that the Internal Revenue Service viewed as non-deductible bribes of foreign officials. The Foreign Corrupt Practices Act added section 13(b) to the Securities Exchange Act of 1934 requiring public reporting companies (i.e., companies required to file period annual reports with the SEC on Form 10-K or 10-KSB) to devise and maintain a system of *internal accounting controls* sufficient to provide reasonable assurances that:

- (1) Transactions are executed in accordance with management's general or specific authorization;
- (2) Transactions are recorded as necessary to permit preparation of financial statements in conformity with generally accepted accounting principles or any other criteria applicable to such statements, and to maintain accountability for assets;
- (3) Access to assets is permitted only in accordance with management's general or specific authorization; and
- (4) The recorded accountability for assets is compared with the existing assets at reasonable intervals and appropriate action is taken with respect to any differences.

The Foreign Corrupt Practices Act, however, did not delegate responsibility for establishing and maintaining internal controls except to the company as a whole. In 1979, the SEC attempted to require limited respon-

sibility of directors and officers when it adopted Rule 13b2-2, which provides that no director or officer of an issuer shall, directly or indirectly:

- (1) Make or cause to be made a materially false or misleading statement; or
- (2) Omit to state, or cause another person to omit to state, any material fact necessary in order to make statements made, in light of the circumstances under which such statements were made, not misleading to an accountant in connection with:
  - (a) Any audit or examination of the financial statements of the issuer required to be made pursuant to this subpart; or
  - (b) The preparation or filing of any document or report required to be filed with the Commission pursuant to this subpart or otherwise.

## Banking regulators' delegation of responsibility for internal control

Although neither Congress nor the SEC focused on internal control before Sarbanes-Oxley, banking regulators did in 1997. The banking regulators found that effective internal control is a foundation for the safe and sound operation of a financial institution. These regulators then admonished that both the board of directors and senior management of an institution are responsible for ensuring that the system of internal control operates effectively.

## Blue Ribbon Committee declares importance of internal audit function

The Blue Ribbon Committee on Improving the Effectiveness of Audit Committees was the first to publicly recognize the importance of the internal audit function when it issued its report in 1999. The report states that:

A proper and well-functioning system exists, therefore, when the three main groups responsible for financial reporting — the full board including the audit committee,

financial management including the *internal auditors*, and the outside auditors — form a “three-legged stool” that supports responsible financial disclosure and active and participatory oversight.

## Management responsibility under Sarbanes-Oxley

After Enron and Worldcom, Congress believed that the most responsible officers of American businesses were avoiding responsibility for internal accounting controls.

Although in 1978 Congress required public reporting companies to establish and maintain a system of internal accounting controls, Congress did not delegate responsibility for establishing and maintaining those controls to any particular constituency within companies until the Sarbanes-Oxley Act of 2002. As a result of the accounting scandals involving Enron and Worldcom, Congress believed that the most responsible officers of American businesses were avoiding responsibility for establishing and maintaining internal accounting controls required

of companies by the Foreign Corrupt Practices Act. Congress did so by requiring both the CEO and the CFO of public reporting companies periodically to certify that they:

- Are responsible for establishing and maintaining internal controls;
- Have designed such internal controls to ensure that material information relating to the issuer and its consolidated subsidiaries is made known to such officers by others within those entities, particularly during the period in which the periodic reports are being prepared;
- Have evaluated the effectiveness of the issuer’s internal controls as of a date within 90 days prior to the report;
- Have presented in the report their conclusions about the effectiveness of their internal controls based on their evaluation as of that date;
- Have disclosed to the issuer’s auditors and the audit committee of the board of directors (or persons fulfilling the equivalent function) that:
  - (a) all significant deficiencies in the design or operation of internal controls which could adversely affect the issuer’s ability to record, process, summarize, and report financial data and have identified for the issuer’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 issuer’s internal controls.<sup>2</sup>

Sarbanes-Oxley requires the CEO and CFO to be responsible for establishing and maintaining internal controls, and to periodically evaluate the effectiveness of those controls.

The model for the Sarbanes-Oxley CEO and CFO certifications was existing legislation. Similar certifications were required of federally insured financial institutions pursuant to the Federal Deposit Insurance Corporation Act and regulations thereunder.

## SEC’s expansion into disclosure controls and procedures

The SEC’s rules implementing this provision of Sarbanes-Oxley require that the periodic evaluation of internal controls must be carried out under the supervision and with the participation of the issuer’s management, including the issuer’s principal executive officer or officers and principal financial officer or officers, or persons performing similar functions, of the effectiveness of the design and operation of the issuer’s disclosure controls and procedures. The SEC has also broadened the concept from “internal accounting controls” to “internal controls over financial reporting” intending to include both controls for reporting financial information as well as controls for reporting non-financial information.<sup>3</sup>

Again, the model for the broadened concept came from banking regulations. In 1997, federal banking regulators found internal controls to be the “foundation for the safe and sound operation” and broadly defined the required system of these controls as having the objectives of efficient and effective operations, including safeguarding of assets, reliable financial reporting, and compliance with applicable laws and regulations.

On May 27, 2003, the SEC announced its final rules on internal controls. These final rules define internal controls as a process designed by, or under the supervision of, the registrant’s principal executive and principal financial officers, or persons performing similar functions, and effected by the registrant’s board of directors, management and other personnel, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles and includes those policies and procedures that:

- Pertain to the maintenance of records that in reasonable detail accurately and fairly reflect the transactions and dispositions of the assets of the registrant;
- Provide reasonable assurance that transactions are recorded as necessary to permit preparation of financial statements in accordance with generally accepted accounting principles, and receipts and expenditures of the registrant are being made only in accordance with authorizations of management and directors of the registrant; and
- Provide reasonable assurance regarding prevention or timely detection of unauthorized acquisition, use or disposition of the registrant’s assets that could have a material effect on the financial statements.

Pursuant to those rules, public reporting companies are required to report in their Forms 10-K or 10-KSB:

- A statement of management's responsibility for establishing and maintaining adequate internal control over financial reporting for the company;
- A statement identifying the framework used by management to evaluate the effectiveness of this internal control;
- Management's assessment of the effectiveness of this internal control as of the end of the company's most recent fiscal year; and
- A statement that its auditor has issued an attestation report on management's assessment.

Under the new rules, management must disclose any material weakness and will be unable to conclude that the company's internal control over financial reporting is effective if there are one or more material weaknesses in such control. Furthermore, the framework on which management's evaluation is based will have to be a suitable, recognized control framework that is established by a body or group that has followed due-process procedures, including the broad distribution of the framework for public comment.

## Learning from federal banking regulators

All companies, not just financial institutions, can learn from the guidance offered by federal banking regulators. In a joint policy statement issued on March 17, 2003, regulators provide guidelines for internal controls.

**Responsibility for Internal Controls.** The federal banking regulators have pinpointed responsibility for internal controls to boards as well as management since 1997. This continues in the March 2003 policy statement which states that:

The board of directors and senior management are responsible for having an effective system of internal control and an effective internal audit function in place at their institution. They are also responsible for ensuring that the importance of internal control is understood and respected throughout the institution. This overall responsibility cannot be delegated to anyone else. They may, however, delegate the design, implementation and monitoring of specific internal controls to lower-level management.

**Definition of Internal Controls.** Although no uniform definition exists, the March 2003 policy statement indirectly defines internal controls by specifying their objectives as:

A process designed to provide reasonable assurance that the institution will achieve the following internal control objectives: efficient and effective operations, including safeguarding of assets; reliable financial reporting; and, compliance with applicable

laws and regulations. Internal control consists of five components that are a part of the management process: control environment, risk assessment, control activities, information and communication, and monitoring activities.

**Up-the-Ladder Self-Assessments not Sufficient.** The March 2003 policy recognizes that many financial institutions have implemented their evaluation of internal controls by up-the-ladder self-assessments wherein business line managers and their staff evaluate the performance of internal controls and report their assessments up-the-ladder to the CEO and CFO. Although these assessments help to underscore management's responsibility for internal control, the federal banking regulators warn that these self-assessments are not impartial and also may not be timely in identifying control weaknesses until they have become costly problems.

**Importance of Non-Business Line Testing and Evaluations.** The federal banking regulators believe that their regulated institutions should have their internal controls tested and evaluated by units without business-line responsibilities, such as internal audit groups in accordance with professional standards, such as the Institute of Internal Auditors' (IIA) Standards for the Professional Practice of Internal Auditing. The regulators also state that the internal audit function should be headed by an internal audit manager who understands the function and has no responsibility for operating the system of internal control.

**Direct Reporting to the Audit Committee.** Federal banking regulators state that ideally the internal audit manager should report directly and solely to the audit committee regarding both audit issues and administrative matters, e.g., resources, budget, appraisals, and compensation. This would change the reporting functions for many companies whose internal audit manager has a dual reporting arrangement: functionally accountable to the audit committee on issues discovered by the internal audit function, while reporting to another senior manager on administrative matters. Nevertheless, regulators admonish those desiring to maintain a dual reporting arrangement where the CFO, controller, or other similar officer is responsible for overseeing the internal audit activities even in a dual role. For institutions that believe in a dual reporting role, the banking regulators recommend that the internal audit manager report administratively to the CEO, rather than the CFO.

**Reporting of Deficiencies.** The March 2003 policy statement states that the internal auditor should immediately report any internal control deficiencies to the appropriate level of management as soon as they are identified and

Management must disclose any material weakness and will be unable to conclude that the company's internal control over financial reporting is effective if there are any material weaknesses present.

promptly report any significant matters directly to the board of directors or its audit committee.

**Internal Auditing Outsourcing.** Internal audit outsourcing can take many forms from helping the internal audit staff complete reconciliations, to providing technical expertise, to performing virtually all the procedures or tests of the internal controls. Under any of these arrangements, the federal banking regulators admonish that board and senior management must maintain ownership of the internal audit function and provide active oversight of outsourced activities. In order to distinguish its duties from those of the outsourcing vendor, the banking regulators advise that the institution have a written engagement letter including provisions that:

- Define the expectations and responsibilities of both parties;
- Set the scope, frequency, and fees for the work to be performed by the vendor;
- Set the responsibilities for providing and receiving information, such as the type and frequency of reporting to senior management and directors about the status of contract work;
- Establish the process for changing the service contract terms, especially for expansion of audit work if significant issues are found, and stipulations for contract default and termination;
- State that internal audit reports are the property of the institution, that the institution will be provided with any copies of related work papers it deems necessary, and that authorized employees will have reasonable and timely access to the work papers;
- Specify the locations of internal audit reports and related work papers;
- Specify the period of time (for example, seven years) that vendors must maintain the work papers;

- State that outsourced internal audit services provided by the vendor are subject to regulatory review and that examiners will be granted full and timely access to the internal audit reports and related work papers prepared by the outsourcing vendor;
- Prescribe a process (arbitration, mediation, or other means) for resolving disputes and for determining who bears the cost of consequential damages arising from errors, omissions, and negligence; and
- State that the outsourcing vendor will not perform management functions, make management decisions, or act or appear to act in a capacity equivalent to that of a member of management or an employee and, if applicable, will comply with AICPA, the SEC, Public Company Accounting Oversight Board, or regulatory independence guidance.

## Conclusion

Federal banking regulators have had as much experience with internal controls and the internal audit function as any other regulatory group. It is likely that Congress and the SEC will continue to follow these regulators' lead with respect to internal controls and the internal audit function. Likewise, companies other than financial institutions can also learn from the guidance of these regulators.

<sup>1</sup> The Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, the Office of the Comptroller of the Currency, and the Office of Thrift Supervision.

<sup>2</sup> See §302 of Sarbanes-Oxley.

<sup>3</sup> See SEC Release 33-8124 (August 28, 2002).

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