

Compliance Obligations for Sarbanes-Oxley Act of 2002 and Related SEC Regulations

The following table identifies various provisions of the Sarbanes-Oxley Act and Securities and Exchange Commission rules and regulations adopted under the Act. The table does not address all of the requirements of the Sarbanes-Oxley Act but rather only those that are likely to be of particular interest to U.S. public companies. The terms of the rules and regulations addressed, as well as the compliance deadlines, may differ for foreign private issuers. [Click here](#) to view a compliance table discussing applicability of these rules and regulations to foreign private issuers.

SUBJECT	COMPLIANCE DEADLINE	PRIMARY DIRECTIVES	SEC ADOPTING RELEASE NO. (RELEASE DATE)
Certifications by the Principal Executive Officer and the Principal Financial Officer (Section 906 of the Sarbanes-Oxley Act)	Effective	Section 906 of the Sarbanes-Oxley Act amends the mail fraud provisions of the U.S. criminal code to require that each periodic report filed by a public company with the SEC be accompanied by a certification of the company's principal executive officer and its principal financial officer stating that (i) the report fully complies with the requirements of the Securities Exchange Act of 1934 and (ii) the information contained in the report fairly presents, in all material respects, the financial condition and results of operations of the company.	None
	Effective	This certification is required to be furnished as Exhibit 32 to the respective form.	34-47986 (June 5, 2003)
Certifications by the Principal Executive Officer and the Principal Financial Officer (Section 302 of the Sarbanes-Oxley Act)	Effective	Under new SEC Rules 13a-14 and 15d-14 (adopted under Section 302 of the Sarbanes-Oxley Act), public companies are required to include in their Forms 10-K and 10-Q separate certifications by their principal executive officer and principal financial officer (i) stating that to his or her knowledge (A) the report does not contain an untrue statement of a material fact or a material omission and (B) the financial statements and other financial information included in the report are fairly presented, and (ii) addressing the adequacy of the company's disclosure controls and procedures. (Note that independent of the certification requirements, under new SEC Rules 13a-15 and 15d-15, public companies are required to maintain, and regularly evaluate the effectiveness of, their disclosure controls and procedures.)	34-46427 (Aug. 29, 2002)
	Effective	This certification is required to be furnished as Exhibit 31 to the respective form.	34-47986 (June 5, 2003)

SECURITIES

SUBJECT	COMPLIANCE DEADLINE	PRIMARY DIRECTIVES	SEC ADOPTING RELEASE NO. (RELEASE DATE)
Prohibition on Personal Loans to Directors and Executive Officers	Effective	New Section 13(k) of the Securities Exchange Act of 1934 (enacted by Section 402 of the Sarbanes-Oxley Act) makes it unlawful (subject to minor exceptions) for a public company, directly or indirectly, to extend or maintain credit, to arrange for the extension of credit, or to renew an extension of credit, in the form of a personal loan, to or for any director or executive officer.	None
Forfeiture by Chief Executive Officer and Chief Financial Officer of Bonuses and Profits Due to Financial Statement Restatements	Effective	Under Section 304 of the Sarbanes-Oxley Act, if a public company is required to restate its financial statements due to material noncompliance, as the result of misconduct, with any financial reporting requirement under the securities laws, the chief executive officer and the chief financial officer are required to reimburse the company for (i) any bonus or other incentive-based or equity-based compensation received during the 12-month period following the filing or public release of the financial statements that are restated and (ii) any profits from the sale of company securities over the same 12-month period.	None
Preparation of Financial Statements	Effective	Section 13(i) to the Securities Exchange Act of 1934 (enacted by Section 401 of the Sarbanes-Oxley Act) requires that each financial report filed with the SEC that contains financial statements prepared in accordance with GAAP or reconciled to GAAP shall reflect all material correcting adjustments that have been identified by a registered public accounting firm.	None
Acceleration of Form 4 Filings by Directors, Executive Officers, and 10% Beneficial Owners	Effective	The SEC's rules under Section 16 of the Securities Exchange Act of 1934 (amended in accordance with Section 403 of the Sarbanes-Oxley Act) accelerate the Form 4 reporting deadline for transactions by public company directors, executive officers, and 10% beneficial owners in the company's securities. Generally, such transactions must be reported on a Form 4 within two business days after the transaction.	34-46421 (Aug. 27, 2002)
Electronic Filing and website posting of Section 16 Reports	June 30, 2003	Pursuant to Section 403 of the Sarbanes-Oxley Act of 2002, the SEC adopted rules requiring electronic filing of Section 16 reports and website posting of Section 16 reports.	34-47809 (May 7, 2003)
Acceleration of Filing Dates for Forms 10-K and 10-Q and Website Access to Reports	Phase-in of new filing deadlines begins with fiscal years ending on or after December 15, 2003	Although not required by the Sarbanes-Oxley Act, the SEC has adopted rules accelerating the filing deadlines for Forms 10-K and 10-Q of "accelerated filers" which are being phased in over a period of years. After the phase-in is complete, (i) Form 10-Ks will be due within 60 days after the end of the fiscal year and (ii) Form 10-Qs will be due within 35 days after the end of the fiscal quarter.	34-46464 (Sept. 5, 2002)

SECURITIES

SUBJECT	COMPLIANCE DEADLINE	PRIMARY DIRECTIVES	SEC ADOPTING RELEASE NO. (RELEASE DATE)
Acceleration of Filing Dates and Website Access to Reports (continued)	Effective	"Accelerated filers" are required to disclose in their Form 10-K the company's website address and whether the company makes its Form 10-Ks, Form 10-Qs and Form 8-Ks available free of charge on or through its website as soon as reasonably practicable after they are filed with the SEC.	34-46464 (Sept. 5, 2002) (continued)
Prohibition on Insider Trading During Pension Fund Blackout Periods	Effective	Under new SEC Regulation BTR (adopted under Section 306 of the Sarbanes-Oxley Act) directors and executive officers of a public company are prohibited from purchasing, selling, acquiring, or transferring (subject to certain exceptions) any equity security of the company during a pension plan blackout if the director or executive officer acquires or previously acquired the equity security in connection with his or her service as a director or employment as an executive officer. A pension plan blackout occurs when the ability of participants in a company pension plan to transfer equity securities of the company held for their account under the plan is suspended.	
	Effective	In the event of a pension plan blackout, a public company must provide notification to the SEC on a Form 8-K filed no later than the date on which the company notifies its directors and executive officers of the trading restriction imposed by Regulation BTR.	
Use of Non-GAAP Financial Measures and Furnishing Earnings Releases to the SEC see also Reporting Earnings -- A New Model	Effective	Section 401(b) of the Sarbanes-Oxley Act requires the SEC to adopt rules regulating the disclosure by public companies of "pro forma" financial information. New SEC Regulation G provides that the use of non-GAAP financial measures in press releases or other public disclosures must be accompanied by a presentation of, and reconciliation to, the most directly comparable GAAP financial measure.	34-47226 (Jan. 22, 2003)
	Applicable to reports for fiscal periods ending after March 28, 2003	Amendments to Regulation S-K (adopted under new Section 13(j) of the Securities Exchange Act of 1934) provide that the use of non-GAAP financial measures in an SEC filing must be accompanied by (i) a presentation of, and reconciliation to, the most directly comparable GAAP financial measure and (ii) a statement of why the company's management believes the presentation of the non-GAAP financial measure "provides useful information to investors."	

SUBJECT	COMPLIANCE DEADLINE	PRIMARY DIRECTIVES	SEC ADOPTING RELEASE NO. (RELEASE DATE)
Use of Non-GAAP Financial Measures (continued)	Effective	Although not required by the Sarbanes-Oxley Act, Form 8-K has been amended to provide that, if a public company makes a public announcement or release disclosing material non-public information regarding its results of operations or financial condition for a completed annual or quarterly fiscal period, it is required to furnish (not file) the announcement or release to the SEC as an exhibit to a Form 8-K filed within five business days thereafter.	34-47226 (Jan. 22, 2003) (continued)
Code of Ethics Disclosure Requirements	Applicable to Form 10-Ks for fiscal years ending on or after July 15, 2003	New Item 406 of Regulation S-K (adopted under Section 406 of the Sarbanes-Oxley Act) requires a public company to disclose in its Form 10-K whether or not it has a Code of Ethics for its principal executive officer, principal financial officer, and principal accounting officer or controller (a "Covered Officer"). If the company does not, it must explain why.	34-47235 (Jan. 23, 2003)
	Beginning on or after the date of the first filing of Form 10-K in which the Code of Ethics disclosure is required	Any amendment to or waiver of the Code of Ethics that applies to a Covered Officer must be disclosed by the company in a Form 8-K filed with the SEC within five business days thereafter. Alternatively, the required disclosure can be made by a posting on the company's website, if the company previously disclosed in its most recent Form 10-K that any such disclosures would be made in this manner.	
Audit Committee Financial Expert Disclosure Requirement	Applicable to Form 10-Ks for fiscal years ending on or after July 15, 2003 (December 15, 2003 for small business issuers)	New Item 401(h) of Regulation S-K (adopted under Section 407 of the Sarbanes-Oxley Act) requires a public company to disclose in its Form 10-K (or, if it elects, in its proxy statement) whether or not at least one member of its audit committee qualifies as an "audit committee financial expert" as defined by the regulation and if that expert is independent. If the company does not have at least one "audit committee financial expert," it must explain why.	34-47235 (Jan. 23, 2003)
Accountant's Retention of Records Relevant to Audits and Reviews	Applicable to audits and reviews completed on or after October 31, 2003	New Rule 2-06 of Regulation S-X (adopted under Section 802 of the Sarbanes-Oxley Act) requires an accountant that audits or reviews the financial statements of a public company to retain records relevant to the audit for a period of seven years following the completion of the audit or review. Records covered under this rule include workpapers that form the basis of the audit or review, as well as memoranda, correspondence, and communications that contain conclusions, opinions, analyses, or financial data related to the audit or review.	34-47241 (Jan. 24, 2003)

SUBJECT	COMPLIANCE DEADLINE	PRIMARY DIRECTIVES	SEC ADOPTING RELEASE NO. (RELEASE DATE)
Disclosure of Off-Balance Sheet Arrangements and Aggregate Contractual Obligations	Applicable to filings that include financial statements for fiscal years ending on or after June 15, 2003	New Section 13(j) of the Securities Exchange Act of 1934 (enacted by Section 401(a) of the Sarbanes-Oxley Act) requires the SEC to adopt regulations requiring the disclosure of all material off-balance sheet transactions. Amended Item 303 of Regulation S-K requires a public company to provide a discussion of its off-balance sheet financial arrangements in a separately captioned subsection of its "Management's Discussion and Analysis."	34-47264 (Jan. 27, 2003)
	Applicable to filings that include financial statements for fiscal years ending on or after December 15, 2003	Amended Item 303 of Regulation S-K requires a public company to include in its "Management's Discussion and Analysis" a tabular presentation of its aggregate contractual obligations. Small business issuers are not subject to this requirement. ¹	
Auditor Independence and Related Matters	May 6, 2003 for new engagements. ²	New Section 10A(i) of the Securities Exchange Act of 1934 (enacted by Section 202 of the Sarbanes-Oxley Act) requires a public company's audit committee to approve all audit and non-audit services (other than de minimis non-audit services) provided by the company's independent auditor. New Rule 2-01(c)(7) of Regulation S-X provides that an auditor will not be independent unless all audit and non-audit services (other than de minimis non-audit services) are pre-approved by the audit committee or are in accordance with policies and procedures established by the audit committee.	34-47265 (Jan. 28, 2003)
	May 6, 2003	New Section 10A(k) of the Securities Exchange Act of 1934 (enacted by Section 204 of the Sarbanes-Oxley Act) requires a public company's independent auditor to report on certain matters, including critical accounting policies and practices, to the company's audit committee. New Rule 2-07 of Regulation S-X requires this report to be furnished prior to the time the company's financial statements that are accompanied by the auditor's report are filed with the SEC.	

¹ As originally proposed, this rule would have required, in addition to a tabular presentation of aggregate contractual obligations, a textual disclosure of aggregate contingent liabilities and commitments. The SEC did not include this disclosure in the final rule, however, noting that a number of new accounting and disclosure requirements may obviate its need. The SEC explained that it would "continue to assess the costs and benefits of an MD&A disclosure requirement for aggregate contingent liabilities and commitments in connection with [the SEC's] ongoing review of MD&A."

² Any service that has been entered into prior to May 6, 2003 is permitted, regardless of whether it was pre-approved by the audit committee, as long as such service is completed by May 6, 2004.

SECURITIES

SUBJECT	COMPLIANCE DEADLINE	PRIMARY DIRECTIVES	SEC ADOPTING RELEASE NO. (RELEASE DATE)
<p>Auditor Independence and Related Matters (continued)</p>	<p>May 6, 2004</p>	<p>New Section 10A(g) of the Securities Exchange Act of 1934 (enacted by Section 201(a) of the Sarbanes-Oxley Act) prohibits a registered public accounting firm from providing nine categories of non-audit services to an audit client. Rule 2-01 of Regulation S-X, as amended, provides that such non-audit services also will impair the auditor's report independence. The SEC acknowledged that audit clients may require some additional time for compliance with the new rules.</p>	<p>34-47265 (Jan. 28, 2003) (continued)</p>
		<p>Until May 6, 2004, the provision of any of the nine prohibited non-audit services will not impair an accountant's independence as long as the accountant is providing the non-audit services under a contract in existence on May 6, 2003.</p>	
		<p>New Section 10A(j) of the Exchange Act (enacted by Section 203 of the Sarbanes-Oxley Act) subjects audit engagement team partners to the following rotation and cooling off periods: lead and concurring partners -- five-year rotation and five-year cooling off; all other audit partners who are key decision-makers -- seven-year rotation and a two-year cooling off.</p>	
	<p>Applicable to filings for fiscal years ending after December 15, 2003</p>	<p>New Section 10A(l) of the Securities Exchange Act of 1934 (enacted by Section 206 of the Sarbanes-Oxley Act) prohibits an accounting firm from auditing an issuer's financial statements if certain members of management of that issuer had been members of the accounting firm's audit engagement team within the one-year period preceding the commencement of audit procedures. New Rule 2-01(c)(8) of Regulation S-X provides that an accountant is not independent if, at any point during the audit and professional engagement period, any audit partner who is a key decision-maker on the audit engagement team earns or receives compensation based on the performance or procuring of engagements with the audit client to provide services other than audit, review or attest services.</p>	
		<p>Amended Item 9 of Schedule 14A requires a public company to disclose in its proxy statement: (i) the total fees paid by the company to its auditor in each of the preceding two fiscal years, divided among the following categories: (A) audit fees, (B) audit-related fees, (C) tax fees and (D) all other fees; and (ii) the audit committee's policies and procedures for the pre-approval of audit and non-audit services.</p>	

SECURITIES

SUBJECT	COMPLIANCE DEADLINE	PRIMARY DIRECTIVES	SEC ADOPTING RELEASE NO. (RELEASE DATE)
Implementation of Standards of Professional Conduct for Attorneys	<p>August 5, 2003</p>	<p>New Part 205 to Title 17 of the Code of Federal Regulations (adopted under Section 307 of the Sarbanes-Oxley Act) prescribes minimum standards of professional conduct for attorneys who appear or practice before the SEC on behalf of public companies.</p> <p>NOTE: The SEC's proposal contained provisions regarding attorney withdrawal and notice to the SEC. The SEC has not adopted, and has instead extended the comment period on, these provisions until April 7, 2003. See Release No. 34-47282 (Jan. 29, 2003).</p>	<p>34-47276 (Jan. 29, 2003)</p>
Standards Relating to Listed Company Audit Committees	<p>SEC rules effective April 25, 2003, require final SRO listing rules implementing the new requirements by December 1, 2003.</p> <p>Applicable to reports covering periods ending on or after (or proxy statements for actions occurring on or after) the applicable compliance date for the listing standards</p>	<p>New Section 10A(m) of the Exchange Act of 1934 (as added by Section 301 of the Sarbanes-Oxley Act) directs the SROs to prohibit the listing of any security that is not in compliance with certain audit committee requirements. Subject to certain exemptions for foreign private issuers, the SEC's implementing rules prohibit SROs from listing any security of an issuer not in compliance with standards relating to audit committee (i) independence (audit committees must be comprised solely of independent members, as defined by the SEC and the Securities Exchange Act of 1934), (ii) authority (audit committees must be directly responsible for the appointment, compensation, retention and oversight of registered public accounting firms engaged to perform audit-related functions for the issuer and have the authority to hire independent outside advisors), (iii) procedures for handling complaints (audit committees must establish procedures for the receipt, retention and treatment of complaints received by the issuer regarding accounting, internal accounting controls or auditing matters), and (iv) funding (audit committees must be provided with appropriate funding to compensate registered public accounting firms and other advisors). Under the rules, the SROs must direct a listed issuer to notify the SRO once an executive officer of the listed issuer learns of any material noncompliance by the listed issuer with the proposed requirements.</p> <p>The rules also make several updates to the SEC's disclosure requirements regarding audit committees, including updates to the audit committee financial expert disclosure requirements for foreign private issuers.</p>	<p>34-47654 (April 9, 2003)</p>

SECURITIES

SUBJECT	COMPLIANCE DEADLINE	PRIMARY DIRECTIVES	SEC ADOPTING RELEASE NO. (RELEASE DATE)
Improper Influence on Conduct of Audits	June 27, 2003	This rule expands Securities Exchange Act Rule 13b2-2 to prohibit officers and directors of an issuer, and those acting under their direction, from coercing, manipulating, misleading, or fraudulently influencing the auditor of the issuer's financial statements when the officer or director, or person under their direction, knew or should have known that the action, if successful, could result in rendering the issuer's financial statements materially misleading.	34-47890 (May 20, 2003)
Management Assessment of Internal Controls	Accelerated filers must comply beginning with first fiscal year ending after June 15, 2004. Others must comply beginning with first fiscal year ending after April 15, 2005.	Under Section 404 of the Sarbanes-Oxley Act, the SEC adopted new Item 308 of Regulations S-K and S-B, and amendments to Form 20-F and Form 40-F, to require a public company to include an internal control report with its annual report. The report must contain a statement of management's responsibility for internal control over financial reporting and an assessment of the effectiveness of such internal control. Regulation S-X was also amended to reference the attestation report that will be prepared by registered public accounting firms and to require companies to file the attestations in their annual reports. The SEC also adopted rules requiring quarterly management evaluations of material changes in internal control over financial reporting.	34-47986 (June 5, 2003)

If you would like to learn more about the Securities Practice Group at Covington & Burling, please call any of the following:

Washington	David B.H. Martin	202.662.5128
	D. Michael Lefever	202.662.5276
New York	Bruce C. Bennett	212.841.1060
San Francisco	Andi Vachss	415.591.7069
London	Kelly Vance	44.20.7067.2040

© 2003 COVINGTON & BURLING

This information is not intended as legal advice, which may often turn on specific facts. Readers should seek specific legal advice before acting with regard to the subjects mentioned herein.