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MEMORANDUM

TO: Clients

FROM: Waller Lansden Dortch & Davis, PLLC

DATE: April 13, 2004

RE: Form 8-K Amendments

On March 11, the Securities and Exchange Commission adopted rule amendments that will require public companies to disclose on Form 8-K more information in less time. These amendments seek to satisfy the disclosure goals of Section 409 of the Sarbanes-Oxley Act for “rapid and current disclosure” of material changes in the financial condition or operations of public companies. The SEC issued the final text of these amendments in an adopting release on March 16. We wanted to make you aware of this development and provide a summary of the new requirements.

The amendments will add ten disclosure items to Form 8-K and will expand disclosure under two existing items. The amendments also will require that most items reported on Form 8-K must be reported no later than *four business days* after the event requiring disclosure, rather than the current five business day and fifteen calendar day deadlines. These amendments to Form 8-K will go into effect on **August 23, 2004**. A copy of the adopting release can be found at the SEC’s website at www.sec.gov.

Because of the number of items added to the Form 8-K, the SEC rearranged the items reportable on Form 8-K into topical categories. The amendments organize the Form 8-K items under the following section headings and with the following new numbering system (the new items added or expanded by the amendments are highlighted in gray):

Section 1 - Registrant's Business and Operations
Item 1.01 Entry into a Material Definitive Agreement
Item 1.02 Termination of a Material Definitive Agreement
Item 1.03 Bankruptcy or Receivership

Section 2 - Financial Information
Item 2.01 Completion of Acquisition or Disposition of Assets
Item 2.02 Results of Operations and Financial Condition
Item 2.03 Creation of a Direct Financial Obligation or an Obligation under an Off-Balance Sheet Arrangement of a Registrant
Item 2.04 Triggering Events that Accelerate or Increase a Direct Financial Obligation or an Obligation under an Off-Balance Sheet Arrangement
Item 2.05 Costs Associated with Exit or Disposal Activities
Item 2.06 Material Impairments
Section 3 - Securities and Trading Markets
Item 3.01 Notice of Delisting or Failure to Satisfy a Continued Listing Rule or Standard; Transfer of Listing
Item 3.02 Unregistered Sales of Equity Securities ¹
Item 3.03 Material Modifications to Rights of Security Holders ²
Section 4 - Matters Related to Accountants and Financial Statements
Item 4.01 Changes in Registrant's Certifying Accountant
Item 4.02 Non-Reliance on Previously Issued Financial Statements or a Related Audit Report or Completed Interim Review
Section 5 - Corporate Governance and Management
Item 5.01 Changes in Control of Registrant
Item 5.02 Departure of Directors or Principal Officers; Election of Directors; Appointment of Principal Officers ³
Item 5.03 Amendments to Articles of Incorporation or Bylaws; Change in Fiscal Year ⁴
Item 5.04 Temporary Suspension of Trading Under Registrant's Employee Benefit Plans

¹ This Item is new to the Form 8-K. This information was required to be disclosed only in periodic reports prior to effectiveness of the amendments.

² This Item is new to the Form 8-K. This information was required to be disclosed only in periodic reports prior to effectiveness of the amendments.

³ This Item is an existing Form 8-K Item that is being expanded by the amendments.

⁴ This Item is an existing Form 8-K Item that is being expanded by the amendments.

Item 5.05 Amendments to the Registrant's Code of Ethics, or Waiver of a Provision of the Code of Ethics
Section 6 - [Reserved]
Section 7 - Regulation FD
Item 7.01 Regulation FD Disclosure
Section 8 - Other Events
Item 8.01 Other Events
Section 9 - Financial Statements and Exhibits
Item 9.01 Financial Statements and Exhibits

Description of New and Expanded Items

Item 1.01 Entry into a Material Definitive Agreement. New Item 1.01 requires disclosure when a company enters into or amends a material definitive agreement. The standard used to determine which agreements are “material definitive agreements” is the same standard used under Item 601(b)(10) of Regulation S-K, which is a standard that is already familiar to reporting companies. The company must disclose the date on which the agreement was entered into or amended, the identity of the parties to the agreement, a brief description of any material relationship between the company and any of the parties (other than in respect of the material definitive agreement or amendment) and a brief description of the terms and conditions of the agreement or amendment that are material to the company. Although the amendments do not require the material definitive agreement to be filed with the Form 8-K, the SEC encourages companies to do so when feasible, particularly when no confidential treatment is requested.

Item 1.02 Termination of a Material Definitive Agreement. New Item 1.02 requires disclosure of the termination (other than by expiration of the agreement on a stated termination date or as a result of all parties completing their obligations under such agreement) of a material definitive agreement to which the company is a party if the termination of such agreement is material to the company. The company must disclose the date of termination of the material definitive agreement, the identity of the parties to the agreement, a brief description of any material relationship between the company and any of the parties (other than in respect of the material definitive agreement), a brief description of the terms and conditions of the agreement that are material to the company, a brief description of the material circumstances surrounding the termination and any material early termination penalties incurred by the company.

Item 2.03 Creation of a Direct Financial Obligation or an Obligation under an Off-Balance Sheet Arrangement of a Registrant. New Item 2.03 requires disclosure if the company becomes obligated under a direct financial obligation that is material to the company. A direct financial obligation is defined as a long-term debt obligation, a capital lease obligation, an operating lease obligation or a short-term debt obligation that arises other than in the ordinary course of business. The company must disclose the date on which the company becomes

obligated under the direct financial obligation, a brief description of the transaction or agreement creating the obligation, the amount of the obligation (including the terms of its payment and, if applicable, a brief description of the material terms under which it may be accelerated or increased and the nature of any recourse provisions that would enable the company to recover from third parties) and a brief description of the other terms and conditions of the transaction or agreement that are material to the company.

In addition, if the company becomes directly or contingently liable for an obligation that is material to the company arising out of an off-balance sheet arrangement, then it must disclose the date on which the company becomes directly or contingently liable on the obligation, a brief description of the transaction or agreement creating the arrangement and obligation, a brief description of the nature and amount of the obligation of the company under the arrangement, the maximum potential amount of future payments (undiscounted) that the company may be required to make (if different) and a brief description of the other terms and conditions of the obligation or arrangement that are material to the company.

Item 2.04 Triggering Events that Accelerate or Increase a Direct Financial Obligation or an Obligation under an Off-Balance Sheet Arrangement. Under new Item 2.04, a company must report on Form 8-K if a triggering event causes the increase or acceleration of a direct financial obligation to occur and the consequences of the event are material to the company. In such case, the company must disclose the date of the triggering event, a brief description of the agreement or transaction under which the direct financial obligation was created and is increased or accelerated, a brief description of the triggering event, the amount of the direct financial obligation (as increased if applicable), the terms of payment or acceleration that apply and any other material obligations of the company that may arise, increase, be accelerated or become direct financial obligations as a result of the triggering event or the increase or acceleration of the direct financial obligation.

The company must also report on Form 8-K if a triggering event occurs causing a company's obligation under an off-balance sheet arrangement to increase or be accelerated, or causing a company's contingent obligation under an off-balance sheet arrangement to become a direct financial obligation of the company, and the consequences of such event are material to the company. Under this scenario, a company must disclose for obligations under off-balance sheet arrangements the same information listed above for direct financial obligations.

Item 2.05 Costs Associated with Exit or Disposal Activities. New Item 2.05 requires disclosure when the board of directors, a committee of the board of directors or an authorized officer or officers if board action is not required, commits the company to an exit or disposal plan or otherwise disposes of a long-lived asset or terminates employees under a plan of termination, under which material charges will be incurred under generally accepted accounting principles applicable to the company. In such an event, the company must disclose the date of the commitment to the course of action, a description of the course of action, an estimate of the total amount or range of amounts expected to be incurred in connection with the action (this estimate should be included for each major type of cost associated with the course of action) and the company's estimate of the amount or range of amounts of the charge that will result in future cash expenditures.

Item 2.06 Material Impairments. This new Item 2.06 requires disclosure when a company's board of directors, a committee of the board of directors or an authorized officer or officers if board action is not required, concludes that a material charge for impairment to one or more of the company's assets, including, without limitation, an impairment of securities or goodwill, is required under generally accepted accounting principles applicable to the company. The company must disclose the date of the conclusion that a material change is required, describe the impaired asset or assets and the facts and circumstances leading to the conclusion that the charge for impairment is required and disclose the company's estimate of the amount or range of amounts of the impairment charge that will result in future cash expenditures.

Item 3.01 Notice of Delisting or Failure to Satisfy a Continued Listing Rule or Standard; Transfer of Listing. Under new Item 3.01, a company is required to report its receipt of notice from the national securities exchange or national securities association (or facility thereof) that maintains the principal listing for any class of the company's common equity that the company does not satisfy a continued listing requirement of the exchange or association, the exchange has submitted an application under SEC Rule 12d2-2 to the SEC to delist such class of the company's securities or the association has taken all necessary steps under its rules to remove the security from its automated inter-dealer quotation system. The company must also disclose (i) the date that it received the notice, (ii) the rule or standard for continued listing on the national securities exchange or national securities association that the company has failed to satisfy and (iii) any action or response that, at the time of filing, the company has determined to take in response to the notice.

In addition, under new Item 3.01(b), if the company has notified the national securities exchange or national securities association that maintains the principal listing for any class of the company's common equity that the company is aware of any material noncompliance with a rule or standard for continued listing on the exchange or association, the company must disclose (i) the date that the company provided such notice to the exchange or association, (ii) a rule or standard for continued listing on the exchange or association that the company has failed to satisfy and (iii) any action or response that, at the time of filing, the company has determined to take regarding its noncompliance.

Under Item 3.01(c), if a company receives a public reprimand letter or similar communication indicating that the company has violated a rule or standard of the exchange or association, the company must state the date and summarize the contents of the letter or communication. Item 3.01(d) requires that if a company causes the listing of a class of its common equity to be withdrawn from a national securities exchange, or terminated from the automated inter-dealer quotation system of a registered national securities association, where such exchange or association maintains the principal listing for such class of securities, the company must describe the action taken and state the date of the action. This would include any action taken by a company to transfer such a listing or quotation of its securities to another securities exchange or quotation system.

Item 3.02 Unregistered Sales of Equity Securities. Item 3.02 requires a company to disclose information regarding the company's sale of equity securities in a transaction that is not registered under the Securities Act of 1933. This disclosure is currently required in periodic reports (Form 10-K and Form 10-Q) and is being transferred, in part, from those reports to the

Form 8-K. A Form 8-K does not need to be filed if the equity securities sold in the aggregate since the company's last report filed under Item 3.02 or last periodic report, whichever is more recent, constitute less than 1% of the company's outstanding securities of that class. Issuances not reported on Form 8-K, however, will continue to be required to be reported in periodic reports.

Item 3.03 Material Modifications to Rights of Security Holders. Item 3.03 requires a company to disclose material modifications to the rights of the holders of any class of the company's registered securities and to briefly describe the general effect of such modifications on such rights. The substance of this disclosure is the same as that previously required by Items 2(a) and (b) of Form 10-Q. Once the new amendments take effect, this will no longer be a Form 10-Q disclosure item.

Item 4.02 Non-Reliance on Previously Issued Financial Statements or a Related Audit Report or Completed Interim Review. Under new Item 4.02, a company is required to file a Form 8-K if and when its board of directors, a committee of the board of directors or an authorized officer or officers if board action is not required, concludes that any of the company's previously issued financial statements covering one or more years or interim periods no longer should be relied upon because of an error in such financial statements. In such event, the company must disclose (i) the date of the conclusion regarding the non-reliance, (ii) an identification of the financial statements and years or periods covered that should no longer be relied upon, (iii) a brief description of the facts underlying the conclusion to the extent known to the company at the time of filing and (iv) a statement of whether the audit committee discussed with the company's independent accountants the subject matter giving rise to the conclusion.

Similarly, if the company is advised by, or receives notice from, its independent accountants that disclosure should be made or action should be taken to prevent future reliance on a previously issued audit report or completed interim review related to previously issued financial statements, the company must disclose (i) the date on which the company was so advised or notified, (ii) identification of the financial statements that should no longer be relied upon, (iii) a brief description of the information provided by the accountants and (iv) a statement of whether the audit committee discussed with the independent accountants the subject matter giving rise to the notice. In addition, if a company receives such a notice, it must also provide the accountants with a copy of the disclosures it is making under this Item 4.02 no later than the same day it files these disclosures with the SEC.

Item 5.02 Departure of Directors or Principal Officers; Election of Directors; Appointment of Principal Officers. Item 5.02 is an existing Item under Form 8-K that has been expanded by the new amendments. Former Item 6 of Form 8-K required disclosure only if a director departed as a result of a disagreement, provided a letter to the company describing the disagreement and requested that the company publicly disclose the matter.

Director Departure. Under the revised item, if a director has resigned or refuses to stand for re-election to the board of directors since the date of the last annual meeting of shareholders because of a disagreement with the company, known to an executive officer of the company, on any matter relating to the company's operations, policies or practices, or if a director has been removed for cause from the board of directors, the company must report under Item 5.02 on

Form 8-K. The company must disclose (i) the date of the director's resignation, refusal to stand for re-election or removal (the "Departing Event"), (ii) any positions held by the director on any committee of the board of directors at the time of the Departing Event and (iii) a brief description of the circumstances representing the disagreement that management believes caused, in whole or in part, the Departing Event.

In addition, if the director furnishes the company with any written correspondence concerning the circumstances surrounding the Departing Event, the company must file a copy of the correspondence as an exhibit to the Form 8-K regardless of whether the director requests that the company take such action. The company must provide the director with a copy of the disclosure no later than the day that the company files the disclosures with the SEC. The company must also provide the director with the opportunity to furnish a letter addressed to the company as promptly as possible stating whether he or she agrees with the company's disclosures in response to this item and, if not, the respects in which he or she does not agree. Finally, the company must file any letter it receives from the director with the SEC as an exhibit by amendment to the previously filed Form 8-K within two business days after receipt by the company.

If a director retires, resigns, is removed or declines to stand for re-election in circumstances other than those described above, the event and the date of occurrence must be disclosed.

Officer Departure. Item 5.02 requires disclosure when a the company's principal executive officer, president, principal financial officer, principal accounting officer, principal operating officer or person performing similar functions retires, resigns, is removed or declines to stand for re-election.

Officer Appointment. Item 5.02 requires disclosure if the company appoints a new principal executive officer, president, principal financial officer, principal accounting officer, principal operating officer or person performing similar functions. The company must disclose (i) the officer's name, (ii) position, (iii) the date of the appointment, (iv) information regarding the background of the officer and certain related transactions with the company and (v) a brief description of the material terms of any employment agreement between the company and the officer.

Director Appointment. Item 5.02 requires disclosure when a new director is elected to the board, other than by a vote of security holders at an annual meeting or a special meeting convened for such purpose. The company must disclose (i) the new director's name, (ii) the election date, (iii) a brief description of any arrangement or understanding pursuant to which the new director was selected as a director, (iv) any committees to which the new director has been, or is expected to be, named and (v) information regarding certain related transactions between the new director and the company.

Item 5.03 Amendments to Articles of Incorporation or Bylaws; Changes in Fiscal Year. The new amendments expand the existing Form 8-K requirement regarding changes in fiscal year to include disclosure of amendments to a company's articles of incorporation or its bylaws. Item 5.03 requires a company with a class of equity securities registered under Section 12 of the

Exchange Act to disclose any amendments to its articles of incorporation or bylaws if the company did not propose the amendment in a previously filed proxy statement or information statement. The company must also disclose the effective date of the amendment, a description of the provision adopted or changed by the amendment and, if applicable, the previous provision.

If the company determines to change its fiscal year from that used in its most recent filing with the SEC by means other than a submission to a vote of security holders through the solicitation of proxies or otherwise, or by an amendment to its articles of incorporation or bylaws, the company must state the date of the determination, the date of the new fiscal year end and the form on which the report covering the transaction period will be filed.

Safe Harbor

The amendments create a limited safe harbor from claims under Exchange Act Section 10(b) and Rule 10b-5 for failure to timely file a Form 8-K regarding the following items:

- Item 1.01 Entry into a Material Definitive Agreement
- Item 1.02 Termination of a Material Definitive Agreement
- Item 2.03 Creation of a Direct Financial Obligation or an Obligation under an Off-Balance Sheet Arrangement of a Registrant
- Item 2.04 Triggering Events that Accelerate or Increase a Direct Financial Obligation under an Off-Balance Sheet Arrangement
- Item 2.05 Costs Associated with Exit or Disposal Activities
- Item 2.06 Material Impairments
- Item 4.02(a) Non-Reliance on Previously Issued Financial Statements or a Related Audit Report or Completed Interim Review (in the case where a company makes the determination and does not receive a notice described in Item 4.02(b) from its accountant)

The safe harbor for these items only applies to a failure to file a report on Form 8-K. It does not apply to material misstatements or omissions in a Form 8-K, which continue to be subject to Section 10(b) and Rule 10b-5 liability. In addition, the safe harbor will not apply to, or impact, any other duty to disclose that a company may have and extends only until the due date of the company's periodic report for the relevant period.

Forms S-2 and S-3

The SEC is revising the Forms S-2 and S-3 eligibility requirements to provide that companies that fail to file timely reports required by the Items covered by the safe harbor will not lose their eligibility to use Form S-2 or S-3 registration statements. However, a company must be current in its Form 8-K filings with respect to the Items covered by the safe harbor at the actual time of a Form S-2 or S-3 filing.

Rule 144

The amendments also amend Securities Act Rule 144 to clarify that a company need not have filed all required Form 8-K reports during the 12 months preceding a sale of securities pursuant to Rule 144 to satisfy the rule's "current public information" condition. As required by Rule 144(h), however, a security holder will continue to be required to represent that he or she does not have inside information.

If you have any questions about the new Form 8-K requirements, please contact Marlee Mitchell at (615) 850-8943, Chase Cole at (615) 850-8476, or Ken Marlow at (615) 850-8111.