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MEMORANDUM

TO: Our Clients and Friends

FROM: Silver, Freedman & Taff, L.L.P.

DATE: January 2008

RE: SEC's New Disclosure Rules for Smaller Reporting Companies

The Securities and Exchange Commission ("SEC") has adopted rules that will expand the number of public companies that may use the more limited disclosure and financial statement requirements previously only available to small business issuers. [Small business issuers are public companies with less than \$25 million in revenue in their last fiscal year and public float of less than \$25 million at the end of their prior second quarter-end.] Under these new disclosure rules, non-accelerated filers have the option of utilizing these new scaled-down disclosure requirements. [Non-accelerated filers are public companies that are not small business issuers and have public float of less than \$75 million at the end of its prior second-quarter end.] The SEC has implemented this change by creating a new filer status for "smaller reporting companies," which generally includes all small business issuers and non-accelerated filers. Smaller reporting companies are those public companies with less than \$75 million in public float.¹ (However, if a company has no ascertainable public float, the test for smaller reporting company status is less than \$50 million in revenue its prior fiscal year.)

In formulating this new disclosure system, the SEC is eliminating Regulation S-B and all the "SB forms" (with some transition described below). The scaled-down disclosure requirements for smaller reporting companies are now included in Regulation S-K with the full disclosure requirements for accelerated and large accelerated filers. Smaller reporting companies generally have the option of providing some or all of these

¹ Public float is calculated as of the last business day of the public company's immediately preceding second fiscal quarter. It is determined by multiplying last sales price or average bid and ask price on that date by the number of public shares owned by non-affiliates.

expanded disclosure requirements for accelerated and large accelerated filers. In addition, current small business issuers have the option of continuing to use SB forms until they file their next 10-KSB (which for year-end companies is the Form 10-KSB for the year ended December 31, 2007). Thereafter, they must utilize Forms 10-Q and 10-K.

Key differences between the full disclosure requirements for larger issuers and the scaled-down disclosure requirements for smaller reporting companies are as follows²:

- A. Financial Statements and Management’s Discussion and Analysis (“MD&A”)
 - 1. All companies must provide audited balance sheets for two fiscal years. Smaller reporting companies need only provide two years, rather than three years, of audited statements of income, cash flows and changes in stockholders’ equity.
 - 2. The MD&A for smaller reporting companies need only include an analysis of results of operations for two, rather than three, fiscal years.
 - 3. The MD&A for smaller reporting companies need not contain a contractual obligations table.
 - 4. Smaller reporting companies are not required to provide supplementary quarterly financial data.

- B. Form 10-K and Annual Report to Shareholders
 - 1. Smaller reporting companies are not required to provide the prescribed market (or interest rate) risk disclosure.
 - 2. Smaller reporting companies are not required to provide updated risk factors.
 - 3. Smaller reporting companies are not required to include five-years of selected financial data.
 - 4. Smaller reporting companies are not required to include a stock performance graph.

² Notwithstanding these differences in specifically required disclosure, all registrants’ disclosure must continue to meet standards of materiality. Therefore, it may be prudent or helpful for smaller reporting companies to include disclosure only required for larger companies in certain situations.

C. Proxy Statement

1. Smaller reporting companies need not include a Compensation Discussion and Analysis or Compensation Committee Report.
2. The Summary Compensation Table and other compensation tables need only include two, rather than three, years of compensation date.³ In addition, this table need only disclose the compensation of the chief executive officer and the next two most highly compensated officers (rather than the chief executive officer, chief financial officer and the next three most highly compensated officers), plus up to two highly compensated officers who left during the prior fiscal year.
3. Smaller reporting companies are not required to include the following compensation tables: Grants of Plan-Based Awards, Options Exercised and Stock Vested, Pension Benefits and Non-Qualified Deferred Compensation. (However, some narrative disclosure of these types of compensation may still be required, particularly if the compensation provided is material.)
4. Smaller reporting companies do not have to describe their policies and procedures for related party transactions.

In summary, the impact of the new disclosure requirements on existing public companies is as follows:

Small Business Issuers. These companies need to decide whether they want to continue to use SB forms until their next Form 10-KSB is filed. New public companies that have not filed their first Form 10-KSB would be best served by filing a Form 10-K with the scaled-down disclosure. These issuers can provide some or all of the expanded disclosure requirements for larger companies and should consider doing so if the disclosure is particularly material to the company's condition or operations.

³ Under the new Executive Compensation disclosure requirements effective in 2007, this disclosure for prior years is still being phased-in.

Non-Accelerated Filers. These companies are now smaller reporting companies. They must decide whether they want to scale back these disclosures as permitted under the new reduced requirements or to continue to provide some or all of that expanded disclosure.⁴ To the extent a company has provided a greater level of disclosure in the past, it should consider how shareholders and investors will react to reduced disclosure going forward.

Accelerated and Large Accelerated Filers. These new disclosure requirements do not impact current accelerated and large accelerated filers.

We will review these options with our SEC reporting clients as they begin to prepare their next set of year-end reports and proxy statements. Of course, feel free to contact us with any questions you may have.

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This memorandum provides a general overview and should not be used or taken as legal advice. The new SEC disclosure requirements discussed herein are complex and may have special application to you.

⁴ If a current non-accelerated filer with public float of less than \$75 million at the end of its most recent second quarter anticipates that its public float will be \$75 million or more at the end of its next second fiscal quarter (which would trigger the expanded disclosure requirements), it may want to consider using the expanded requirements to provide consistent disclosure over the next two fiscal years.