

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 211, 231 and 241

[Release Nos. 33–8350; 34–48960; FR–72]

Commission Guidance Regarding Management's Discussion and Analysis of Financial Condition and Results of Operations

AGENCY: Securities and Exchange Commission.

ACTION: Interpretation.

SUMMARY: The Commission is publishing interpretive guidance regarding the disclosure commonly known as Management's Discussion and Analysis of Financial Condition and Results of Operations, or MD&A, which is required by Item 303 of Regulation S–K, Items 303(b) and (c) of Regulation S–B, Item 5 of Form 20–F and Paragraph 11 of General Instruction B of Form 40–F. This guidance is intended to elicit more meaningful disclosure in MD&A in a number of areas, including the overall presentation and focus of MD&A, with general emphasis on the discussion and analysis of known trends, demands, commitments, events and uncertainties, and specific guidance on disclosures about liquidity, capital resources and critical accounting estimates.

EFFECTIVE DATE: December 29, 2003.

FOR FURTHER INFORMATION CONTACT:

Questions about specific filings should be directed to staff members responsible for reviewing the documents the registrant files with the Commission. General questions about this release should be referred to Todd Hardiman, Karl Hiller, Nina Mojiri-Azad, Mara Ransom, or Sondra Stokes, Division of Corporation Finance, at (202) 824–5300, Securities and Exchange Commission, 450 5th Street NW., Washington, DC 20549–0401.

SUPPLEMENTARY INFORMATION:

I. Overview

A. Purpose

This release interprets requirements for Management's Discussion and Analysis of Financial Condition and Results of Operations ("MD&A").¹ It provides guidance to assist companies:

- In preparing MD&A disclosure that is easier to follow and understand; and
- In providing information that more completely satisfies our previously enunciated principal objectives of MD&A.

We believe that management's most important responsibilities include communicating with investors in a clear and straightforward manner. MD&A is a critical component of that communication. The Commission has long sought through its rules, enforcement actions and interpretive processes to elicit MD&A that not only meets technical disclosure requirements but generally is informative and transparent. We believe and expect that when companies follow the guidance in this release, the overall quality of their MD&A will improve. The Division of Corporation Finance will continue to review MD&A submitted after this guidance is released and take action as appropriate. In addition, we have instructed the Division to keep us apprised of whether this guidance has produced improved disclosure, and to suggest additional Commission action related to MD&A as appropriate.

B. Approach to MD&A

The purpose of MD&A is not complicated. It is to provide readers information "necessary to an understanding of [a company's] financial condition, changes in financial condition and results of operations."² The MD&A requirements are intended to satisfy three principal objectives:

- To provide a narrative explanation of a company's financial statements that

Although the wording of the MD&A requirement in Form 20–F was revised in 1999, the Commission's adopting release noted that we interpret that Item as calling for the same disclosure as Item 303 of Regulation S–K. See Release No. 33–7745 (Sept. 28, 1999) [64 FR 53900 at 59304]. In addition, Instruction 1 to Item 5 in Form 20–F provides that issuers should refer to the Commission's 1989 interpretive release on MD&A disclosure under Item 303 of Regulation S–K (Interpretive Release: Management's Discussion and Analysis of Financial Condition and Results of Operations; Certain Investment Company Disclosures, Release No. 33–6835 (May 18, 1989) [54 FR 22427] (the "1989 Release")) for guidance in preparing the discussion and analysis by management of the company's financial condition and results of operations required in Form 20–F. Therefore, although this release refers primarily to Item 303 of Regulation S–K, it also is intended to apply to MD&A drafted pursuant to Item 5 of Form 20–F.

In addition, the guidance in this release applies to small business issuers that are subject to the disclosure requirements of Items 303(b) and (c) of Regulation S–B. Small business issuers, like all other companies subject to SEC reporting obligations, should consider the interpretive guidance based on their own particular facts and circumstances.

² Item 303(a) of Regulation S–K [17 CFR 229.303(a)].

enables investors to see the company through the eyes of management;

- To enhance the overall financial disclosure and provide the context within which financial information should be analyzed; and
- To provide information about the quality of, and potential variability of, a company's earnings and cash flow, so that investors can ascertain the likelihood that past performance is indicative of future performance.³

MD&A should be a discussion and analysis of a company's business as seen through the eyes of those who manage that business. Management has a unique perspective on its business that only it can present. As such, MD&A should not be a recitation of financial statements in narrative form or an otherwise uninformative series of technical responses to MD&A requirements, neither of which provides this important management perspective. Through this release we encourage each company and its management to take a fresh look at MD&A with a view to enhancing its quality. We also encourage early top-level involvement by a company's management in identifying the key disclosure themes and items that should be included in a company's MD&A.

Based on our experience with many companies' current disclosures in MD&A, we believe there are a number of general ways for companies to enhance their MD&A consistent with its purpose. The recent review experiences of the staff of the Division of Corporation Finance, including its Fortune 500 review,⁴ have led us to conclude that additional guidance would be especially useful in the following areas:

- The overall presentation of MD&A;
- The focus and content of MD&A (including materiality, analysis, key performance measures and known material trends and uncertainties);
- Disclosure regarding liquidity and capital resources; and
- Disclosure regarding critical accounting estimates.

Therefore, in this release, we emphasize the following points regarding overall presentation:

- Within the universe of material information, companies should present

³ See Commission Statement About Management's Discussion and Analysis of Financial Condition and Results of Operations, Release No. 33–8056 (Jan. 22, 2002) [67 FR 3746] ("January 2002 Release").

⁴ See Summary by the Division of Corporation Finance of Significant Issues Addressed in the Review of the Periodic Reports of the Fortune 500 Companies (Feb. 27, 2003) ("Fortune 500 Summary") available at www.sec.gov/divisions/corpfin/fortune500rep.htm.

¹ The requirements are set forth in Item 303 of Regulation S–K (Management's Discussion & Analysis of Financial Condition and Results of Operations) [17 CFR 229.303], Items 303(b) and (c) of Regulation S–B (Management's Discussion & Analysis of Financial Condition and Results of Operations, and Off-balance sheet arrangements) [17 CFR 228.303(b) and (c)], Item 5 of Form 20–F (Operating and Financial Review and Prospects) [17 CFR 249.220f], and General Instruction B.(11) of Form 40–F (Off-balance sheet arrangements) [17 CFR 249.240f].