

1980—We adopted the present form of the disclosure requirements for MD&A.⁹

1981—We published the staff's interpretive guidance for MD&A after its review of disclosures that were prepared in accordance with the then-recently adopted disclosure requirements.¹⁰

1987—We sought public comment on the adequacy of MD&A and on proposed revisions submitted by members of the professional accounting community.¹¹

1989—We published an interpretive release that addressed a number of disclosure matters that should be considered by companies in preparing MD&A.¹² The 1989 Release provided guidance in various areas, including required prospective information, analysis of long- and short-term liquidity and capital resources, material changes in financial statement line items, required interim period disclosure, segment analysis, participation in high-yield financings, highly leveraged transactions or non-investment grade loans and investments, the effects of federal financial assistance upon the operations of financial institutions and the disclosure of preliminary merger negotiations.

December 2001—As part of its process of reviewing financial and non-financial disclosures made by public companies, the Division of Corporation Finance announced that it would preliminarily review the annual reports filed in 2002 by the Fortune 500 companies, and undertake further review as appropriate, consistent with its selective review program. The focus of the project was to identify “disclosure that appeared to be critical to an understanding of each company's financial position and results, but which, at least on its face, seemed to conflict significantly with generally accepted accounting principles [GAAP] or SEC rules, or to be materially deficient in explanation or clarity.”¹³ As a result of this review, comment letters, many of which commented on companies' MD&A, were sent to more than 350 of the Fortune 500 companies. Earlier this year, the

Division published a summary of the most frequent general areas of comment resulting from this review.¹⁴

December 2001—The Commission issued cautionary advice to companies regarding the need for greater investor awareness of the sensitivity of financial statements to the methods, assumptions, and estimates underlying their preparation. This cautionary advice encouraged public companies to include in their MD&A full explanations of their “critical accounting policies,” the judgments and uncertainties affecting the application of those policies, and the likelihood that materially different amounts would be reported under different conditions or using different assumptions.¹⁵

January 2002—After receiving a petition requesting additional MD&A interpretive guidance,¹⁶ we issued a statement “to suggest steps that issuers should consider in meeting their current disclosure obligations with respect to the topics described.”¹⁷ The statement provided explicit interpretive guidance on certain MD&A topics considered material to an understanding of companies' operations. The topics addressed by the release were liquidity and capital resources (including off-balance sheet arrangements), trading activities involving non-exchange traded contracts accounted for at fair value, and relationships and transactions with persons or entities that derive benefits from their non-independent relationships with the company or the company's related parties.¹⁸

May 2002—We proposed additional MD&A disclosure requirements, which remain under consideration, regarding the application of companies' critical accounting estimates.¹⁹

January 2003—We adopted additional disclosure requirements regarding off-balance sheet arrangements and aggregate contractual obligations.²⁰ The

new rules require the disclosure of off-balance sheet arrangements in a designated section of MD&A and an overview of certain known contractual obligations in a tabular format.²¹

We also have brought numerous enforcement actions based on alleged violations of MD&A requirements and will continue to bring such actions under appropriate circumstances.²²

Based on recent experiences, we have determined that additional interpretive guidance regarding the requirements of MD&A will be useful to companies in enhancing overall disclosure under MD&A requirements.

III. Overall Approach to MD&A

A. The Presentation of MD&A

Since the introduction of our MD&A requirements, many companies have become larger, more global and more complex. At the same time, the combination of our rules and investors' demands have led to an increase in the number of subjects and matters addressed in MD&A. For these and other reasons, many companies' MD&A have become necessarily lengthy and complex. Unfortunately, the

Arrangements and Aggregate Contractual Obligations, Release No. 33–8182 (Jan. 28, 2003) [68 FR 5982] (“2003 Off-Balance Sheet Release”).

The overall guidance in this Interpretive Release is applicable to all MD&A discussions, including those related to off-balance sheet arrangements. As such, it should be applied to General Instruction B.(11) of Form 40–F and Item 303(c) of Regulation S–B, in addition to the other sections set out in note 1, above. We are not addressing specifically disclosures of off-balance sheet arrangements in this release, however, because we have little experience with companies' application of the new rules, which are effective for companies' registration statements, annual reports and proxy or information statements that are required to include financial statements for their fiscal years ending on or after June 15, 2003. Companies (other than small business issuers) must include the table of contractual obligations in registration statements, annual reports, and proxy or information statements that are required to include financial statements for the fiscal years ending on or after December 15, 2003. In addition, Section 401(c) of the Sarbanes-Oxley Act requires us to complete a study and report to the President and Congress next year on these types of disclosures.

²¹ The tabular disclosure is not required for small business issuers by Item 303 of Regulation S–B.

²² See, e.g., *In the Matter of Edison Schools, Inc.*, Release No. 34–45925 (May 14, 2002); *In the Matter of Sony Corporation and Sumio Sano*, Release No. 34–40305 (Aug. 5, 1998); *In the Matter of Bank of Boston Corp.*, Initial Decision Release No. 81 (Dec. 22, 1995); *In the Matter of Gibson Greetings, Inc.*, *Ward A. Cavanaugh, and James H. Johnsen*, Release No. 34–36357 (Oct. 11, 1995); *In the Matter of America West Airlines, Inc.*, Release No. 34–34047 (May 12, 1994); *In the Matter of Salant Corporation and Martin F. Tynan*, Release No. 34–34046 (May 12, 1994); *In the Matter of Shared Medical Systems Corporation*, Release No. 34–33632 (Feb. 17, 1994); *In the Matter of Caterpillar Inc.*, Release No. 34–30532 (Mar. 31, 1992); *In the Matter of American Express Company*, Release No. 34–23332 (June 17, 1986).

⁹ Final Rule: Amendments to Annual Report Form, Related Forms, Rules, Regulations, and Guides; Integration of Securities Acts Disclosure Systems, Release No. 33–6231 (Sept. 2, 1980) [45 FR 63630].

¹⁰ Management's Discussion and Analysis of Financial Condition and Results of Operations, Release No. 33–6349 (Sept. 28, 1981) 23 SEC Docket 962 [Release not published in the *Federal Register*].

¹¹ Concept Release on Management's Discussion and Analysis of Financial Condition and Operations, Release No. 33–6711 (April 24, 1987) [52 FR 13715].

¹² 1989 Release.

¹³ Fortune 500 Summary.

¹⁴ *Id.*

¹⁵ Cautionary Advice Regarding Disclosure About Critical Accounting Policies, Release No. 33–8040 (Dec. 12, 2001) [66 FR 65013] (“December 2001 Release”).

¹⁶ On December 31, 2001 the Commission received a petition from Arthur Andersen LLP, Deloitte and Touche, LLP, Ernst & Young LLP, KPMG LLP and PricewaterhouseCoopers LLP. The American Institute of Certified Public Accountants endorsed the petition. A copy of the petition is available at www.sec.gov/rules/petitions/petndiscl_12312001.htm.

¹⁷ See January 2002 Release.

¹⁸ *Id.*

¹⁹ Proposed Rule: Disclosure in Management's Discussion and Analysis About the Application of Critical Accounting Policies, Release No. 33–8098 (May 10, 2002) [67 FR 35620] (“2002 Critical Accounting Policies Proposal”).

²⁰ Final Rule: Disclosure in Management's Discussion and Analysis About Off-Balance Sheet