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MEMORANDUM

February 7, 2003

To Our Clients and Friends

Re: Standards of Professional Conduct for Attorneys

As required under the Sarbanes-Oxley Act of 2002, the Securities and Exchange Commission (“Commission”) has issued a final rule establishing standards of professional conduct¹ for attorneys who appear and practice before the Commission on behalf of issuers. The Commission also is requesting additional comment on the issue of reporting evidence of material violations to any entity other than the issuer, including “noisy withdrawal”². The effective date of the rule is August 5, 2003.

STANDARDS OF PROFESSIONAL CONDUCT

The standards of professional conduct established by the Commission include the following:

- If an attorney, in the representation of the issuer, becomes aware of evidence of a material violation³ of securities law, breach of fiduciary duty or similar violation by the issuer, or any officer, director, employee, or agent of the issuer, the attorney shall report such evidence to the issuer’s chief legal officer (“CLO”) or to both its CLO and its chief executive officer forthwith.
- The CLO shall cause an inquiry to be made into the evidence as the CLO reasonably believes is appropriate to determine whether the material

¹ The standards supplement applicable standards of any jurisdiction where an attorney is admitted or practices and are not intended to limit the ability of any jurisdiction to impose additional obligations on an attorney that are not inconsistent with the standard. The standards, however, prevail over any conflicting or inconsistent laws of any jurisdiction in which an attorney is admitted or practices.

² “Noisy withdrawal” describes an attorney’s notification to the Commission when an attorney, after reporting evidence of a material violation up-the-ladder of the issuer’s governance structure, reasonably believes an issuer’s directors have either made no response or have not made an appropriate response.

³ The term “evidence of a material violation” means credible evidence, based upon which it would be unreasonable, under the circumstances, for a prudent and competent attorney not to conclude that it is reasonably likely that a material violation has occurred, is ongoing, or is about to occur.

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violation has occurred, is ongoing or is about to occur. If the CLO determines no material violation has occurred, is ongoing or is about to occur, the CLO shall advise the reporting attorney of the basis for such determination. As an alternative to an inquiry, the CLO may refer a report of a violation to a “qualified legal compliance committee” (“QLCC”)⁴ previously established by the issuer.

- Unless the CLO reasonably believes that no material violation has occurred, is ongoing, or is about to occur, the CLO shall take all reasonable steps to cause the issuer to adopt an appropriate response and shall so advise the reporting attorney.
- Unless the reporting attorney reasonably believes that the CLO or the chief executive officer has provided an appropriate response within a reasonable time, the reporting attorney shall report the material violation to the audit committee of the issuer’s board of directors, another committee of the issuer’s board composed solely of directors who are not employed by the issuer, or the issuer’s board.
- If an attorney reasonably believes that it would be futile to report a material violation to the issuer’s CLO and chief executive officer, the attorney may report such evidence to the audit committee of the issuer’s board of directors, another committee of the issuer’s board composed solely of directors who are not employed by the issuer, or to the issuer’s board.
- An attorney who does not reasonably believe that the issuer has made an appropriate response within a reasonable period of time to the report shall explain the reasons therefore to the CLO, the chief executive officer and the directors to whom the attorney reported the violation.
- An attorney formerly employed or retained by an issuer who has reported evidence of a material violation and reasonably believes that he/she has been discharged for doing so may notify the issuer’s board of directors or any committee thereof that the attorney believes that he/she has been discharged for such reporting.
- An attorney, in lieu of reporting a material violation to a CLO, may report such evidence to a QLCC. If the attorney reports such evidence to a QLCC, the attorney is not required to assess the issuer’s response to the reported evidence.
- An attorney may, but is not required, to disclose to the Commission, without the issuer’s consent, confidential information relating to the

⁴ A qualified legal compliance committee must have at least one member of the issuer’s audit committee and two or more members of the issuer’s board of directors who are not employed, directly or indirectly, by the issuer; must have adopted written procedures for the confidential receipt, retention, and consideration of any report of evidence of a material violation; must have been established by the issuer’s board with authority to determine whether an investigation is necessary, to initiate an investigation, to recommend appropriate responses to evidence of a material violation, including the authority to notify the Commission if the issuer fails to implement its recommended responses to the violation.

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attorney's representation to prevent the issuer from committing a material violation or to rectify the consequences of a violation by the issuer that may cause substantial injury to the financial interest or property of the issuer or investors, or from committing or suborning perjury in connection with a Commission proceeding.

SUPERVISORY AND SUBORDINATE ATTORNEYS

The rule also establishes standards applicable to attorneys who supervise other attorneys as well as to subordinate attorneys to ensure compliance with the rule.

SANCTIONS AND DISCIPLINE

Any attorney subject to the standards who violates the standards shall be subject to the civil penalties and remedies for a violation of the federal securities laws, as well as disciplinary action by the Commission. The rule does not provide any private right of action against the attorney or the issuer for violations of the rule.

EXEMPTIONS

Attorneys who conduct activities defined in the rule as "appearing and practicing" before the Commission but who do not have an attorney-client relationship with the issuer are under certain circumstances exempt from the standards.

Attorneys who are retained or directed to investigate a report of a material violation or to litigate whether a violation has occurred are subject to narrower reporting standards.

The final and proposed rules can be found at www.schwartzandballen.com/WhatsNew.htm.

If you have any questions concerning the final or proposed rules, please call Gilbert Schwartz, Robert Ballen or Tom Fox at (202) 776-0700.