

## **MEMORANDUM**

TO: Our Clients and Friends

FROM: Godfrey & Kahn, S.C.

DATE: September 25, 2002

RE: Sarbanes-Oxley Act: Mutual Fund Financial Statement Certifications

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On July 30, 2002, President Bush signed into law the Sarbanes-Oxley Act of 2002 (the "Act"). Bush described this legislation, popularly referred to as the Accounting Industry Reform Act, as the "most far-reaching reforms of American business practices since the time of Franklin Delano Roosevelt." Section 302 of the Act, entitled "Corporate Responsibility for Financial Reports," requires the SEC to adopt final rules under which the principal executive officer or officers and the principal financial officer or officers, or persons performing similar functions, of a company each must certify the information contained in the company's quarterly and annual reports filed or submitted under Section 13(a) or 15(d) of the Securities Exchange Act of 1934 (the "Exchange Act"). Form N-SAR is currently the form designated for registered investment companies to comply with their reporting requirements under the Exchange Act, as well as periodic reporting requirements under Section 30(a) and 30(b)(1) of the Investment Company Act of 1940 (the "Investment Company Act").

### **Certified Semi-Annual and Annual Reports**

Section 302 of the Act and new SEC Rule 30a-2 under the Investment Company Act require an investment company's principal executive and financial officers to certify to the accuracy of the investment company's semi-annual and annual reports filed with the SEC on Form N-SAR. Effective August 29, 2002, the principal executive officer(s) and principal financial officer(s) must each certify that:

- he or she has reviewed the report on Form N-SAR;
- based on his or her knowledge, the report does not contain any untrue statement of a material fact or omit to state a material fact;
- based on his or her knowledge, the financial information included in the report, and the financial statements on which the financial information is based, fairly present, in all material

respects, the financial condition, results of operations, changes in net assets and cash flows (if the financial statements are required to include a statement of cash flows). Note that the standard of “fairly presents” is meant to be broader than generally accepted accounting principles (GAAP). It is meant to encompass:

- the selection of proper accounting policies,
- the disclosure of financial information that is informative and reasonably reflects the underlying transactions and events, and
- the inclusion of other information necessary to give investors a materially accurate and complete picture of the investment company’s financial condition, results of operations, changes in net assets and cash flows.

The certification must also cover the company’s “disclosure controls and procedures” (discussed below) and the disclosure of any deficiencies or fraud with respect to internal controls. Please see Exhibit A attached hereto for a complete form of the certification which must be provided. The form of the certification cannot be modified in any way.

### Proposed Certified Shareholder Reports

The SEC believes that certification of Form N-SAR alone is not sufficient to satisfy Congressional intent to improve the quality of financial disclosure in periodic reports to investors. The reason is that for registered investment companies, the required reports to shareholders (i.e., annual and semi-annual reports), rather than Form N-SAR, are the primary vehicles for providing financial statements to investors. Therefore, the SEC has proposed that reports to shareholders also be certified by the principal financial and executive officers.

The SEC has proposed a new Form N-CSR (certified shareholder report) which would contain (i) a copy of any required shareholder report (i.e., annual or semi-annual report), (ii) information regarding the company’s disclosure controls and procedures (discussed below), and (iii) the certification required by Section 302 of the Act. The SEC is seeking comment on whether the certification should cover all of the information contained in a shareholder report, including management’s discussion of fund performance and basic information about directors. Comments on the proposal were due October 16, 2002.

### Disclosure Controls and Procedures

To aid in the certification process, new SEC rules require investment companies to create, maintain and enforce disclosure controls and procedures. “Disclosure controls and procedures” refers to controls and other procedures that are designed to ensure that information required to be disclosed in prospectuses, shareholder reports and other filings, both financial and non-financial, is recorded, processed, summarized, and reported within the SEC’s time frames. These procedures are intended to cover a broader range of information than is covered by an investment company’s internal controls related to financial reporting. For example, the procedures should be designed to ensure timely collection and evaluation of information potentially subject to disclosure under the Exchange Act’s general anti-fraud rules.

The SEC recommends that an investment company create a disclosure committee with responsibility for considering the materiality of information and determining disclosure obligations on a timely basis. Such a committee would report to senior management, including the principal financial and executive officers, who bear the responsibility for the company's disclosure controls and procedures.

In addition, new SEC rules require an investment company, under the supervision of the principal executive and financial officers, to conduct an evaluation of the effectiveness of the design and operation of the company's disclosure controls and procedures within 90 days prior to the filing date of each Exchange Act report subject to certification (i.e., prior to the filing of the Form N-SAR).

Finally, the SEC has proposed a new rule that would extend this evaluation requirement to filings under the Securities Act of 1933 and the Investment Company Act, including registration statements on Form N-1A, prospectuses and prospectus supplements, statements of additional information, annual and semi-annual reports to shareholders, and reports on proposed N-CSR.

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We hope the foregoing has been helpful and we will keep you apprised of further developments. If you have any questions, comments or concerns, please do not hesitate to contact us.

Godfrey & Kahn Investment Management Practice Group

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## Exhibit A

Effective Dates:                    Paragraphs 1-3 apply to reports filed after August 29, 2002. Paragraphs 1-6 apply to reports filed for periods ending after August 29, 2002.

### **Certifications** \*

I, **[identify the certifying individual]**, certify that:

1. I have reviewed this report on Form N-SAR of [identify registrant];
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial information included in this report, and the financial statements on which the financial information is based, fairly present in all material respects the financial condition, results of operations, changes in net assets, and cash flows (if the financial statements are required to include a statement of cash flows) of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officers and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in rule 30a-2(c) under the Investment Company Act) for the registrant and have:
  - a) designed such disclosure controls and procedures to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
  - b) evaluated the effectiveness of the registrant's disclosure controls and procedures as of a date within 90 days prior to the filing date of this report (the "Evaluation Date"); and
  - c) presented in this report our conclusions about the effectiveness of the disclosure controls and procedures based on our evaluation as of the Evaluation Date;
5. The registrant's other certifying officers and I have disclosed, based on our most recent evaluation, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):
  - a) all significant deficiencies in the design or operation of internal controls which could adversely affect the registrant's ability to record, process, summarize, and report financial data and have identified for the registrant's auditors any material weaknesses in internal controls; and
  - b) any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal controls; and
6. The registrant's other certifying officers and I have indicated in this report whether or not there were significant changes in internal controls or in other factors that could significantly affect internal controls subsequent to the date of our most recent evaluation, including any corrective actions with regard to significant deficiencies and material weaknesses.

Date: .

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[Signature]  
[Title]

- \* Provide a separate certification for each principal executive officer and principal financial officer of the registrant. The required certification must be in the exact form set forth above.