GODFREY & KAHN S.C.
ATTORNEYS AT LAW

780 NORTH WATER STREET
MILWAUKEE, WI 53202-3590
TEL 414-273-3500
FAX 414-273-5198
www.gklaw.com

GODFREY & KAHN, S.C.
MILWAUKEE
APPLETON
GREEN BAY
WAUKESHA

LAFOLLETTE GODFREY & KAHN
MADISON

M E M O R A N D U M

TO: Our Clients and Friends

FROM: Godfrey & Kahn, S.C.

DATE: July 31, 2002

RE: Recent Rule Proposals by the SEC and **[the New York Stock Exchange] [the Nasdaq Stock Market]**

The Securities and Exchange Commission ("SEC") and the **[New York Stock Exchange] [Nasdaq Stock Market]** have recently proposed substantial changes to their regulations. Under these proposals, the SEC would increase and accelerate disclosure requirements and the **[New York Stock Exchange] [Nasdaq Stock Market]** would strengthen corporate governance listing standards.

These proposals are among a series of changes to securities regulation that are being proposed in response to the Enron debacle. As you will see, some of these requirements are very extensive. Given the current environment, we expect many of these proposals to be adopted in a form similar to that outlined below.

I. Form 8-K: Additional Disclosure Requirements and Accelerated Filing

As discussed in a prior memorandum from us to you, the SEC has already proposed certain changes to the Form 8-K filing requirements. In the SEC's most recent set of rule proposals, the SEC has proposed additional changes which would add 11 new items to the list of items requiring the filing of a Form 8-K. The SEC also proposes to move two items that are currently required to be filed in quarterly reports to the Form 8-K. Finally, the SEC proposes to expand and/or combine certain existing Form 8-K items. The proposed rules would shorten the filing deadline for the Form 8-K in most cases to two business days after the triggering event. The current deadline is five business days or 15 calendar days after the event, depending on the information being disclosed. If adopted, these new rules would become effective 60 days later.

The following is a summary of the new and/or revised items that would require the filing of a Form 8-K.

Entry Into, Modification and Termination of Material Agreements. Disclosure would be required whenever a company enters into an agreement that is material to the company and not made in the ordinary course of business. Disclosure would also be required when such an agreement is terminated or modified. Under the proposed rules, letters of intent and other non-binding agreements would need to be disclosed, if material.

Termination or Reduction of a Business Relationship with a Significant Customer. Disclosure would be required if a company becomes aware that a customer has terminated or reduced, or will terminate or reduce, the scope of a business relationship with the company which would result in a loss of revenues totaling 10% or more of the company's revenues during the most recent fiscal year.

Completion of Material Acquisition or Disposition. Currently, a company is required to report on Form 8-K if it or any of its majority-owned subsidiaries has acquired or disposed of a significant amount of assets not in the ordinary course of business. This requirement would continue to apply, but would be modified such that disclosure would no longer be required about the nature of the business in which the acquired assets were used and whether the company acquiring the assets intends to continue such use. In addition, the proposed new item would revise the wording regarding disclosure of the source of funds to make the requirements clearer.

Creation of a Material Direct or Contingent Financial Obligation. A company would be required to disclose certain information whenever it or a third party enters into a transaction or agreement that creates a direct or contingent financial obligation that is material to the company. Obligations triggering the disclosure obligation include guarantees, co-obligor arrangements, registered sales of debt securities, private placements, bank loans or credit facilities, and obligations to purchase assets. Disclosure would be required only when the company or a third party enters into a definitive agreement that is unconditional or subject only to customary closing conditions.

Events Triggering a Material Direct or Contingent Financial Obligation. This item would require a company to disclose events triggering a direct or contingent financial obligation that is material to the company. The proposed item would define a "triggering event" as an event, including an event of default or acceleration, that has occurred and as a consequence of which, either (i) a material direct or contingent obligation of the company that is unconditional or contingent only on the passage of time has arisen or been accelerated, or (ii) a party to the agreement obtains the unconditional right to cause an obligation to arise or become accelerated. A triggering event would not occur if the parties were in negotiations concerning whether a triggering event has occurred or whether it could be cured by waiver.

Material Write-Offs and Restructuring Charges. Disclosure would be required when the board of directors or authorized officers of a company definitively commit the company to a course of action, including a plan to terminate or exit an activity, under which the company will incur a material write-off or restructuring charge under GAAP.

Material Impairments. Disclosure would be required when the board of directors or authorized officers of a company conclude that the company is required to record a material charge for impairment to one or more of its assets, including an impairment of securities or goodwill, under GAAP.

Rating Agency Decisions. Disclosure would be required if a company receives certain notices or other communications from any rating agency to whom the company provides information. These notices or communications include a change or withdrawal of the credit rating assigned to the company or any class of securities, a change or withdrawal of the outlook assigned to the company or any class of securities, a refusal to assign a credit rating to the company or any class of securities after the company requested the rating agency to do so, or placement of the company or any class of its securities on a "credit watch." Disclosure under this item would not be required until the rating agency notifies the company that the rating agency has made a decision to take one of the enumerated actions.

Notice of Delisting or Failure to Satisfy Listing Standards; Transfer of Listing. This proposed new item would require a company to report any notice received from the national securities exchange or national securities association that is the principal trading market for the company's stock that the company or a class of its securities no longer satisfies the listing requirements or standards of the exchange or association, or that a class of the company's securities has been delisted by the exchange or association. A company would also be required to report on Form 8-K when it has taken definitive action to terminate the listing of a class of its securities on the exchange or interdealer quotation system that is the principal trading market for those securities, including for the purpose of switching to another exchange or quotation system.

Problem with Previously Reported Financials. Disclosure would be required when a company's audit committee or authorized officers conclude that any of the company's previously issued financial statements should no longer be relied upon. Disclosure would also be required if the company is notified by its current or previously engaged independent accountant that the company should take action to prevent future reliance on a previously issued audit report related to such financial statements.

Departure of Directors or Principal Officers; Election of Directors; Appointment of Principal Officers. Currently, a Form 8-K must be filed if a director resigns as a result of a disagreement, provides a letter to the company describing the disagreement and requests that the company publicly disclose the matter. Under the new proposal, if a director resigns or declines to stand for reelection since the date of the last annual meeting of shareholders because of a disagreement known to an executive officer of the company, on any matter relating to the company's operations, policies or practices, or if a director is removed from the board of directors for cause, the company must disclose the date of the departure, any positions held by the director on any board committees, and the circumstances of the director's departure. If the director provides a letter to the company, the letter must be summarized in the Form 8-K and filed as an exhibit.

The new item would also require disclosure if a company's CEO, President, CFO, COO or any other principal executive officer serving in an equivalent position resigns, is terminated, or is reassigned. Disclosure would also be required if a director resigns, is removed for other than cause or declines to stand for reelection for some reason other than a disagreement with the company.

Finally, if a new director is elected to the board (except by a vote of security holders at an annual meeting) or a new principal executive officer is appointed by the company, the company would be required to file a Form 8-K.

Amendments to Articles of Incorporation or Bylaws. Any amendment to a company's articles or bylaws that has not been disclosed in a proxy or information statement filed with the SEC would be required to be disclosed on Form 8-K.

Material Events Regarding Employee Benefit, Retirement and Stock Ownership Plans. Any event that would have the effect of materially limiting, restricting or prohibiting participants in employee benefit, retirement or stock ownership plans from acquiring or disposing of their holdings would be required to be disclosed on Form 8-K. Periodic or other limitations based on access to material non-public information (such as black-out periods for executive officers and directors) would not be required to be disclosed.

Items Currently Required to be Reported in Quarterly Reports. The rule proposes to require companies to disclose unregistered sales of equity securities and material modifications to rights of securities holders in the Form 8-K, rather than the quarterly report on Form 10-Q as is currently required.

Current Form 8-K Requirements. The current requirements to report bankruptcy or receivership events, changes in fiscal year, changes in independent accountants, change of control events, other significant events which may be reported on a voluntary basis and Regulation FD disclosures would remain in effect.

Accelerated Filing Deadline. The proposed two business day deadline for filing a Form 8-K would apply to all of the proposed new and/or revised disclosure items, the items transferred from the Form 10-Q to the Form 8-K, and to the current Form 8-K requirements that do not change; provided that, the new deadline would not affect the filing deadlines for disclosures under Regulation FD, voluntary disclosures of other significant events, or the disclosures related to transactions with insiders as proposed previously by the SEC (and discussed in a prior memorandum from us).

II. CEO and CFO Certification of Reports and Internal Procedures

The SEC is also proposing to require the CEO and CFO of reporting companies to make a certification in each of the company's quarterly and annual reports filed with the SEC. The proposed rules would also require companies to establish, maintain and review internal procedures designed to ensure that information required to be disclosed in periodic and current reports is properly and accurately disclosed.

Certification. The proposed rules would require the CEO and CFO of a company to certify in the company's annual and quarterly reports that:

- they have read the report;
- to their knowledge, the information in the report is true in all "important" respects as of the end of the period covered by the report; and

- the report contains all of the information about the company of which they are aware that would be "important" to a reasonable investor as of the end of the period covered by the report.

For purposes of the certification, information is deemed to be important if there is a substantial likelihood that a reasonable investor would view the information as significantly altering the total mix of information in the report and the report would be misleading to a reasonable investor if the information is omitted from the report. A statement explaining this definition of "importance" would be included with the certification.

Providing a false certification could subject the CEO or CFO to SEC action as well as private causes of action.

[Include the following statement in the memo if applicable.] The certification required by this proposal is in addition to a requirement recently imposed by the SEC pursuant to an order dated June 27, 2002 requiring the CEO and CFO of certain large, publicly traded companies to file with the SEC a sworn statement, under oath, regarding the accuracy of the company's financial statements included in the company's most recent Form 10-K and any Form 10-Q filed since the most recent Form 10-K. This sworn statement must be filed, in paper form, by the due date of the first Form 10-Q or Form 10-K due on or after August 14, 2002.

Internal Procedures. The SEC also proposes to require companies to establish and maintain a set of internal procedures designed to ensure that the company is able to collect, process and disclose, within the time periods specified in the SEC rules, all of the information required to be disclosed in the company's annual, quarterly and current reports. Under the rule proposals, the company would be required to conduct a yearly evaluation of the effectiveness of these procedures, which would be supervised by management and reviewed by the CEO, the CFO and the Board of Directors. The rules would also require the CEO and CFO to certify, in the company's annual report, that they have reviewed the results of the evaluation of the company's procedures (in addition to the certification requirements discussed above).

While the SEC does not propose to require any particular procedures for conducting the yearly evaluation, the SEC recommends that companies create a committee charged with considering the materiality of information and determining disclosure obligations on a timely basis. Members suggested to serve on this committee include the principal accounting officer or controller, the general counsel, the principal risk management officer and the chief investor relations officer.

III. [New York Stock Exchange] [Nasdaq Stock Market] Proposed Revisions to Listing Standards

In addition to the proposals made by the SEC, the **[New York Stock Exchange ("NYSE")] [Nasdaq Stock Market ("Nasdaq")]** has proposed changes to strengthen its corporate governance listing standards.

[If the client's stock is traded on the NYSE, use the following section.]

The proposed rule changes would:

- Require listed companies to have a board of directors that consists of a majority of independent directors (instead of the current requirement of at least three independent directors). This is the most significant of the NYSE rule proposals;

- Redefine the term "independent" to exclude, for a period of five years, employees of the company, employees or affiliates of the present or former auditor of the company, members of an interlocking directorate, and immediate family members of these people, and require the board of directors to determine the independence of directors;

- Require independent directors to meet regularly without management and designate and publicly disclose in the annual proxy statement the name of the director who will preside at these meetings;

- Require listed companies to have a nominating/corporate governance committee composed entirely of independent directors which will be responsible for recommending director nominees and establishing a set of corporate governance principals applicable to the company;

- Require listed companies to have a compensation committee composed entirely of independent directors which will be responsible for discharging the board's responsibilities relating to compensation of the companies executives (most companies already comply with this requirement for purposes of Section 162(m) under the Internal Revenue Code and Rule 16b-3 under the Securities Exchange Act);

- Prohibit audit committee members from receiving any compensation from the company other than directors' fees, prohibit members of the audit committee who hold more than 20% of the company's securities from voting or chairing the audit committee, and require the audit committee chair to have accounting or related financial management experience;

- Increase the authority and responsibilities of the audit committee to include sole authority to hire and fire independent auditors, approve any significant non-audit relationship with the independent auditors, and review financial disclosures;

- Allow shareholders to vote on all equity compensation plans (currently, shareholders must approve plans in which directors and/or officers may participate, subject to certain exceptions);

- Require listed companies to adopt and disclose (on their websites) corporate governance guidelines which include director qualification standards, director responsibilities, director compensation and management succession;

- Require listed companies to adopt and disclose (on their websites) a code of business conduct and ethics to address conflicts of interest, corporate opportunities, confidentiality and fair dealing;

- Require foreign companies to make certain disclosures regarding corporate governance practices that differ from those followed by domestic companies;

- Require the CEO of the company to certify to the NYSE each year that he or she is not aware of any violation of the NYSE listing standards and that the company has established procedures to ensure the accuracy of the disclosed information; and

- Allow the NYSE to issue a public reprimand letter to any company that violates a listing standard.

[If the client's stock is traded on Nasdaq, use the following section.]

While the complete text of Nasdaq's proposed rule changes is not yet publicly available, the following is a summary of the rule proposals, based on Nasdaq's public statements to date.

Equity-Based Compensation. Nasdaq proposes to require listed companies to obtain shareholder approval for all stock option and stock purchase plans in which officers and/or directors participate, except that inducement grants to new executive officers and tax-qualified, non-discriminatory plans, such as employee stock ownership plans (ESOP), would remain exempt from this shareholder approval requirement. However, inducement grants would require approval by either a compensation committee comprised solely of independent directors or a majority of the company's independent directors. Currently, shareholders must approve all plans in which officers or directors participate, subject to certain exceptions. One current exception which is proposed to be eliminated is for broadly-based plans (i.e., those plans in which at least a majority of the participants are not officers or directors). The proposed changes to the shareholder approval requirement would not impact existing plans.

Independent Directors. Nasdaq also proposes to amend the definition of "independent director" so as to preclude independent directors and their immediate families from receiving payments from the company, other than for board service, totaling more than $60,000 during the current or previous fiscal year. In addition, a director will not be considered independent if the company makes payments to a charity where the director is an executive officer and such payments exceed the greater of $200,000 or 5% of the company's or charity's gross revenues in the current or any of the past three years. The current definition prohibits an independent director from receiving over $60,000 of compensation from the company or its affiliates (not including compensation for board service) in the previous fiscal year.

Related Party Transactions. Another rule proposal would require the audit committee of listed companies to review, and approve, all related party transactions. Currently, the audit committee is required to review all related party transactions, but not approve them, for potential conflicts of interest.

Explicit Prohibition on Misrepresenting Information to Nasdaq. Another rule proposal would clarify Nasdaq rules to explicitly state that a company may be delisted for making an intentional misrepresentation to Nasdaq, intentionally omitting necessary material information in a communication with Nasdaq, or otherwise failing to provide requested information to Nasdaq.

Public Announcement of Audit Opinions with Going Concern Qualifications. Currently, if an auditor concludes that substantial doubt exists about a company's ability to continue as a going concern for a reasonable period of time, this fact is included in the auditor's report disclosed in the company's annual report. Nasdaq would require its listed companies that receive an audit opinion with a going concern qualification to disclose this fact with a public announcement through the news media.

Disclosure Methods for Material Information. Nasdaq currently requires companies to promptly disclose to the public material information that would reasonably be expected to affect the value of their securities or influence investment decisions. The information must be disclosed to the news media which includes Bloomberg, Dow Jones, Reuters, Business Wire or PR Newswire. Nasdaq proposes to allow disclosure to be made in any way consistent with Regulation FD, including through conference calls, press conferences and webcasts.

Second Round Proposals. **[prior to sending to client, check Nasdaq website to see if rules have been released]** Nasdaq announced on June 5, 2002 that in late June, it intended to submit additional rule proposals which would:

- require a majority of independent directors on corporate boards;
- require compensation committees composed solely of independent directors;
- require a cooling-off period during which former auditors would be precluded from serving on corporate audit committees;
- expand the scope of audit committee authority;
- strengthen continuing education for directors;
- increase the use of corporate codes of conduct and compliance methods to support them; and
- require that non-U.S. companies disclose if they have received waivers of corporate governance standards through a new SEC disclosure requirement.

We will update you when Nasdaq submits rule proposals on these issues.

* * *

We will continue to monitor the SEC and **[NYSE][Nasdaq]** rule proposals and keep you apprised of new developments.

We hope this has been helpful. If you have any questions, please do not hesitate to contact us.

Godfrey & Kahn Securities Team

Christopher B. Noyes, cbnoyes@gklaw.com
Larry D. Lieberman, llieber@gklaw.com
Pamela M. Krill, pmkrill@gklaw.com
Dennis F. Connolly, dconnoll@gklaw.com
Ellen R. Drought, edrought@gklaw.com
Michelle M. Nelson, mnelson@gklaw.com
Jake C. Blavat, jblavat@gklaw.com
Charles J. Wauters, cwauters@gklaw.com

MN151032_3.DOC