

ROPES & GRAY CLIENT ALERT

October 21, 2002

California Corporate Disclosure Act

The California Corporate Disclosure Act, which goes into effect on January 1, 2003, will require *“publicly traded companies” incorporated in or qualified to do business in California* to disclose certain historical information and information about their auditors, directors, and executive officers. The information disclosed in the required reports will be made available to the public on the internet.

General

Companies incorporated or qualified to do business in California are currently required to file every two years a statement listing their directors and executive officers, principal address, type of business, and agent for service of process. Upon effectiveness of the Act:

- statements must be filed annually, and
- “publicly traded companies” will be required to include additional disclosure.

The term “publicly traded company” is broadly defined and includes companies listed on the New York and American Stock Exchanges and the Nasdaq Stock Market, as well as foreign companies and companies whose securities are traded in the “pink-sheets”.

Required Disclosure

The Act requires publicly traded companies incorporated or qualified to do business in California to file annual statements disclosing the following:

- Auditor and Most Recent Audit. The name of the company’s independent auditor and a description of any other services performed for the company during the previous 24 months by the independent auditor or its affiliates. The company must also include a copy of the last report prepared by the independent auditor for the company. The Act does not specify what the term “other services” encompasses, although the distinctions between audit and non-audit services presented in the Sarbanes-Oxley Act may be instructive.

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- Directors' and Executive Officers' Compensation. The annual compensation paid to each member of the board of directors and to each "executive officer," including the number of shares or options that were not available to other employees of the company. For purposes of the Act, executive officers are defined as the five most highly compensated officers of the company, **excluding** officers that are also directors. Because the CEO is frequently on the board, the Act will, in most cases, effectively require disclosure for at least one additional officer beyond what is required under the federal securities laws. Also, since the definition under the Act depends solely on compensation, without regard to function (unlike the federal securities laws' definition of executive officers), individuals other than those typically considered as executive officers may have to be included.
- Loans to Directors. A description of any loans made to a director at a preferential loan rate during the previous 24 months, including the amount and the term of any such loan.
- Bankruptcy. A statement indicating whether any bankruptcy has been filed by the company, any director, or any executive officer within the previous 10 years. The Act is not clear whether disclosure as to directors and executive officers relates only to personal bankruptcies or bankruptcies of companies in which they served as executive officers, as the federal securities laws require. The federal securities laws require similar disclosure with respect to directors and executive officers within a period of up to 5 years.
- Fraud Convictions. A statement indicating whether any director or any executive officer was convicted of fraud during the previous 10 years. The federal securities laws require disclosure of criminal proceedings involving a director or executive officer within a period of 5 years.
- Securities Laws Violations. A statement indicating whether the company violated any federal security laws or any security or banking provision of California law during the previous 10 years for which the company was found liable in an action before a federal or state court or regulatory agency or a self-regulatory organization resulting in a judgment over \$10,000.

Non-US Companies

Foreign companies which are only required to disclose aggregate compensation in their annual reports on Form 20-F or Form 40-F, will be required to disclose officer compensation on an individual basis.

Timing of Filings

The annual filing must be made during a six-month window ending in the month in which the company originally filed its (a) original articles if a domestic company or (b) received its initial certificate of qualification if a foreign company.

Fees and Restitution Fund

In addition to any other fees that may be required, each company must pay a \$5 disclosure fee when filing the annual statement. Half of the fee will be used to develop an on-line database to facilitate public access to the information, the other half will be deposited into a fund for victims of corporate fraud.

Contact Information

If you have any questions or would like to learn more about the Act, please contact the lawyer who normally represents you, or any of the lawyers listed below involved in the preparation of this Client Alert.

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