



## 908: Sarbanes-Oxley: Why Should Privately Held Companies Care?

**Michael C. Bailey**  
*General Counsel*  
Bechtel Enterprises, Inc.

**Paul Kaleta**  
*Vice President, General Counsel & Secretary*  
Koch Industries, Inc.

**Richard A. Parr II**  
*Executive Vice President and General Counsel*  
Concentra Inc.

## Faculty Biographies

### Michael C. Bailey

Michael C. Bailey is general counsel, executive vice president, and managing director of Bechtel Enterprises Holdings, Inc. ("BEn"), the project development, ownership, and financing arm of Bechtel Group, Inc. (BGI) and is a senior vice president of BGI. Mr. Bailey is responsible for the legal, human resources, and external affairs departments of BEn as well as telecommunications investments and activities. In addition he is responsible for corporate legal matters and mergers and acquisitions generally for BGI. Mr. Bailey serves as a director and board committee member for numerous enterprises in which BEn holds investments.

Prior to joining Bechtel, Mr. Bailey was a partner in the Toronto, based law firm of Borden & Elliot (now Borden, Ladner & Gervais) where he had a corporate and commercial practice with an emphasis on corporate finance, reorganizations, and mergers and acquisitions. He is a regular contributor to and participant in legal education seminars and publications and is included in the *International Financial Law Review (Euromoney) Guide to the World's Leading Lawyers.*

Mr. Bailey received his law degree from the University of Toronto.

### Paul Kaleta

Paul J. Kaleta is vice president, general counsel, and secretary of Koch Industries, Inc. ("Koch") in Wichita, Kansas. Previously, he was senior vice president and chief legal officer of Koch Petroleum Group, Inc., a wholly-owned subsidiary of Koch.

Prior to joining Koch, Mr. Kaleta was vice president and general counsel of Niagara Mohawk Power Corporation. Prior to that, Mr. Kaleta was an equity partner at Swidler & Berlin, Chtd., in Washington, DC, where he focused on business litigation and corporate governance issues. Mr. Kaleta also was an associate in the Washington, DC office of Skadden, Arps, Slate, Meager & Flom for several years, and clerked for the Honorable Roszel C. Thomsen, Senior U.S. District Judge for the District of Maryland, and Judge, Special Court, Regional Rail Reorganization.

Mr. Kaleta is a member of ACCA, the ABA, and The New York Bar Association. He has written and spoken in the United States and in London on a broad range of issues, including law department management, mergers and acquisitions, internal investigations, and deregulation of the electric and natural gas industries. He is author of Chapter 7, "Optimizing the Number of Outside Counsel Through Convergence and Partnering Strategies," in *Successful Partnering of Inside and Outside Counsel.*

Mr. Kaleta received his BA from Hamilton College in Clinton, New York and his JD from Georgetown University Law Center in Washington, DC.

## Richard A. Parr II

Richard A. Parr II is executive vice president, general counsel, and secretary of Concentra Inc., a nationwide provider of healthcare cost containment services.

Prior to joining Concentra, he served as vice president and assistant general counsel of OrNda HealthCorp, in Nashville, Tennessee, a national hospital management company. Mr. Parr commenced his legal career as a Law Clerk to the Hon. William J. Holloway, Jr., Chief Judge, Tenth Circuit United States Court of Appeals, in Oklahoma City, Oklahoma.

Mr. Parr is a member of the ABA, the American Society of Corporate Secretaries, the American Health Lawyers Association, and ACCA. He served on the 1994-1995 and 1995-1996 Federation of American Health Systems Fraud and Abuse Task Force. He currently serves as a member of the board of directors and the corporate practices committee of the American Society of Corporate Secretaries.

Mr. Parr received his BA, *cum laude*, from Vanderbilt University. He received his JD from the Cornell Law School, where he served as a senior editor of the *Cornell Law Review*.

## Sarbanes-Oxley: Why Should a Private Company Care?

*Michael C. Bailey  
Bechtel Group  
San Francisco, CA*

ACCA Conference – October 10, 2003



### **Sarbanes-Oxley: Impact on Private Companies broader than specific provisions**

- “Best Practices”
- Related “Governance” rules and regulations
  - E.g.: NYSE, SEC, States, Other jurisdictions
- Impact in other areas
  - E.g.: FAS 150, transaction structuring etc

## **Private Companies: More different than alike?**

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- Debt -- Public vs. Private
- Holdings -- Interests in public companies
- Intentions -- Public offering vs. remain private
- Ownership -- Management owned? Family owned? Outside investors?
- Directors, Committee members – expectations, roles

## **Broad themes underlying Sarbanes-Oxley**

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- Clear Information Disclosure – especially financial – by management
- Decision making independent of management in key areas
  - Traditional board matters
  - Financials
  - Conflict areas – e.g. management performance and compensation; selection and independence of “overseers”
- **Ultimately all about Culture and Leadership at the top**

## Broad Themes

Theme	Public Focus	Private?	Bechtel?
<b>Culture</b>	Mostly CEOs, CFOs "perp walk"	Management, Boards, and Stockholders	Family; "Partnership" culture; integrity over money – long view
<b>"Effective BOD"</b>	Independent oversight of management	Complex issue – who are owners? Others? Role of board?	Management (Family and non-Family) are owners. Review roles/Information at various bodies.
<b>Clarity/Integrity of Financials</b>	Loss of confidence: Auditor, audit committee, management accountability and controls	Private Companies: Less disclosure, greater reliance on trust and confidence. Important issue.	Important issue. Strong Internal processes and controls. Audit committee role and members. Finance Committee creation.
<b>Special independent oversight of key issues</b>	Audit, Governance and Compensation	Need to consider non-stockholder "stakeholders". Perceptions? Effectiveness?	Audit Committee review. Compensation Committee made BOD committee, add Governance to charter.
<b>Compensation</b>	Options: size, liquidity and relationship to quarterly results; tax	Can be applicable.	No "option" plans; management = owners. Compensation Committee.

## Bechtel Process

- Broad themes – main focus
- Specific review of provisions – applicability and “best practices” considerations; detailed overview
- As a result - considerable time and attention on “governance” issues – significant impact
  - As a result of process
  - As consequence of increased focus generally on governance and decision making

## Sarbanes-Oxley: Why Should a Private Company Care?

Paul J. Kaleta, Esq.  
Koch Industries, Inc.  
Wichita, Kansas

ACCA Conference  
San Francisco, CA  
October 10, 2003

### Sarbanes-Oxley's Impact Extends Beyond Financial Reporting, Governance, and Accounting Issues -- Even For Privately-Held Companies

- Whistleblower Provisions, Criminal Penalties for Altering Documents, and Other Modifications of Certain Criminal Penalties.
- ERISA.
- Attorney Responsibility and Conduct.

## Whistleblower Provisions

- Sarbanes-Oxley ("SOX") adds two provisions regarding "Whistleblowers."
  - The first provision applies only to publicly-traded companies and creates a new federal civil action for an employee of such a company who has been subjected to retaliation for providing information about any action reasonably believed to be a violation of the federal securities laws and regulations.

## Whistleblower Provisions

- In Section 1107, however, Congress provided that anyone who intentionally retaliates against any person, including interference with his or her employment or livelihood, for providing truthful information to a law enforcement officer relating to the commission of any federal offense is guilty of a felony punishable by fine or imprisonment for up to 10 years, or both.



## Whistleblower Provisions

- Section 1107 amended a section of the federal code previously reserved for violent forms of retaliation, such as killing or inflicting bodily injury on a witness, victim, or informant.
- Section 1107 appears to be very broad in scope (although many issues still must be resolved).

## Whistleblower Provisions

- These issues include:
  - privately-held as well as publicly-traded companies.
  - individuals as well as business entities.
  - “any” federal offense (*e.g.*, not just securities fraud).
  - “any” person and not just employees.
  - “truthful” information relating to a “possible” federal offense.
  - “law enforcement officials.”
  - availability of civil remedy or cause of action.

## Criminal Penalties for Altering Documents

- Criminal Liability for Document Destruction. Fine and/or imprisonment of up to 20 years for knowingly altering, destroying, concealing or falsifying any record, document, or tangible object with intent to impede, obstruct or influence the investigation or administration of any matter within the jurisdiction of any department or agency of the United States or any bankruptcy case under Title 11 of the United States Code.

## Increase of Certain Criminal Penalties

- Attempts and Conspiracies to Commit Criminal Fraud Offenses. Section 902 amends Title 18 regarding criminal fraud, including mail fraud, bank fraud, and wire fraud by adding 18 U.S.C. § 1349, which states that any person who attempts or conspires to commit such a criminal fraud, shall be subject to the same penalties as any person guilty of the actual offense.

## Increase of Certain Criminal Penalties

- Criminal Penalties for Mail and Wire Fraud. Section 903 amends 18 U.S.C. §§ 1341 and 1343 to enhance the penalties for mail and wire fraud from a maximum of 5 years imprisonment to a maximum of 20 years imprisonment.

## ERISA

- Notice of Defined Benefit Plan Blackout Periods. Plan Administrators must notify participants in writing at least 30 days in advance of any blackout period under the plan. (A blackout period is any period exceeding 3 consecutive days in which participants cannot direct their accounts.)

## ERISA

- Criminal Penalties for Violations of ERISA.  
Section 904 changes the penalty structure for certain violations of ERISA by increasing the fine for an individual from \$5,000 to \$100,000. Increases prison term from 1 to 10 years for each violation and increases the penalty for violations by an entity to start from \$100,000.

## Attorney Responsibility and Conduct

- SEC Regulations regarding attorney conduct and responsibility cover only those lawyers directly involved in SEC or public securities matters and, thus, in most instances, should not apply to lawyers for privately-held companies.
- However, the ABA Model Rules have had, and continue to have, several provisions regarding attorney conduct and responsibilities when faced with client wrongdoing, in particular Rules 1.13 and 1.6. See ABA House of Delegates Resolution (August 11, 2003)

## Attorney Responsibility and Conduct

- Most importantly, state Codes of Ethics address attorney conduct and responsibilities when faced with client wrongdoing; these responsibilities can differ (often dramatically) by state. See generally, T. Spahn, *Sarbanes-Oxley, the ABA Model Rules and State "Whistleblowing" Duties: The Untold Story* (available at "[www.mcguirewoods.com/news-resources/publications/commercial\\_litigation/article\\_6](http://www.mcguirewoods.com/news-resources/publications/commercial_litigation/article_6)")

## Attorney Responsibility and Conduct

- Several key issues:
  - "up the chain" versus outside the corporation.
  - "may" or "shall" reveal/prohibited from revealing.
  - "know" or "reasonably believe"
  - future, current and past wrongdoing
  - wrongdoing "relating to the representation" or not.
  - crime or also "substantial economic harm to third parties."
  - "noisy withdrawal" or otherwise/the bounds of the attorney-client privilege.

## Attorney Responsibility and Conduct

- Bottom line: need to know state ethics requirements. The stakes are particularly high: violate duties of loyalty and confidentiality/participate in a cover-up/lose your license/get indicted....

## **Sarbanes-Oxley: Why Should a Private Company Care?**

**Additional Considerations for Companies  
Contemplating Public Debt or Equity in the Future**

Richard Parr  
Concentra Inc.  
Addison, Texas

ACCA 2003 Annual Meeting  
San Francisco, California  
October 10, 2003

### **Initial thoughts....**

- **Accessing the public debt or equity markets**
- **Borrowing from third-party financial institutions**
- **Institutional or other non-insider stockholders**
- **Other non-insider constituencies:**
  - Unions / employee groups, regulatory agencies,**
  - government contracts, business with regulated entities**
- **Favorable insurance renewals (e.g., D&O, E&O, PL)**
- **Differentiation from competitors**

## Initial thoughts, continued....

- **Current or proposed state legislation including Sarbanes-Oxley type provisions applicable to private companies**

See <http://aicpa.org/statelegis/index.asp>

- **Transactions on the horizon? New dimension to M&A:**
  - Acquired by public company – post-acquisition certifications**
  - Due diligence implications**
  - Going private? Sarbanes-Oxley problems will follow public company into private life**

## Publicly-Registered Debt

- **Periodic filings under the Securities Exchange Act of 1934**
    - SOX Section 302 and 906 Certifications / SEC Final Rules (Release Nos. 33-8124, 34-46427, 33-8238, 34-47986)**
    - Responsibility for maintaining internal controls and evaluating every 90 days**
    - Disclosure controls and procedures**
      - Disclosure committee – “recommended”**
- (Sample Disclosure Controls & Procedures accompany this presentation)**



## **Publicly-Registered Debt**

- **Periodic filings under the Securities Exchange Act of 1934**
  - SOX Section 404 / SEC Final Rules**  
(Release Nos. 33-8238, 34-47986)
  - Internal Controls Report**
    - Management report regarding internal controls, framework for evaluating effectiveness**
    - Attestation report by outside auditor**
    - Management evaluation of effect of changes in internal financial reporting controls**

## **Publicly-Registered Debt**

- **Periodic filings under the Securities Exchange Act of 1934**
  - SOX Section 401 / SEC Rules**
  - MD&A Disclosure**
    - Off-balance sheet arrangements and contractual obligations – final rules**  
(Release Nos. 33-8182, 34-47264)
    - Critical accounting policies – proposed rules**  
(Release Nos. 33-8098, 34-45907)

## **Publicly-Registered Debt**

➤ **Periodic filings under the Securities Exchange Act of 1934**

**SOX Section 401(b) / SEC Rules**

**Non-GAAP financial information – final rules  
(Release Nos. 33-8176, 34-47226)**

**Expanded Form 8-K “Current Report” filing  
requirements – proposed and final rules  
(Release Nos. 33-8106, 34-46084)  
(Release Nos. 33-8176, 34-47226)**

## **Publicly-Registered Debt**

➤ **Periodic filings under the Securities Exchange Act of 1934**

**SOX Section 303 / SEC Final Rules  
(Release No. 34-47890)**

**Improper influence on conduct of audits**

**SOX Section 208 / SEC Final Rules  
(Release Nos. 33-8183, 34-47265)**

**Regulations regarding outside auditor  
Prohibitions on non-audit services,  
Audit Committee pre-approval of services, etc.**

## **Publicly-Registered Debt**

- **Periodic filings under the Securities Exchange Act of 1934**
  - SOX Section 406 / SEC Final Rules**  
**(Release Nos. 33-8177, 34-47235)**
  - Codes of ethics and business conduct for principal executive officer and senior financial officers**
  - Proposed changes to NYSE and NASDAQ listing standards regarding codes of ethics / conduct**

## **Public Equity**

- **Director Independence / Audit Committee Matters**
  - SOX / SEC Final Rules**
  - Audit Committee independence**  
**(SOX Section 301)**  
**(Release Nos. 33-8220, 34-47654)**
  - Audit Committee Financial expert**  
**(SOX Section 407)**  
**(Release Nos. 33-8177, 34-47235)**
  - Audit Committee charter**  
**(Release Nos. 33-8183, 34-47265)**

## **Public Equity**

➤ **NYSE and NASDAQ Proposed Changes to Listing Standards**

**Independent Compensation Committee**

**Section 16 issues**

**IRC Section 162(m) issues**

**Independent Nominating Committee**

**Controlled company exemption – pros and cons**

**Basis must be disclosed**

**Regular meetings of non-management directors**

**Corporate Governance guidelines**

## **Public Equity**

➤ **Whistleblower Provisions**

**SOX Section 301 / SEC Final Rules**

**NYSE / NASDAQ listing standards must require  
Audit Committee to provide for anonymous submission  
of concerns regarding accounting/auditing matters  
(Release Nos. 33-8220, 34-47654)**

**SOX Section 806 / SEC Final Rules**

**Whistleblower protections  
(Release Nos. 33-8220, 34-47654)**

## **Public Equity**

### **➤ Prohibition on loans to directors and executive officers**

#### **SOX Section 402**

**Split-dollar life insurance**

**Cashless option exercises**

**Personal expenses**

## **Public Equity**

### **➤ Section 16 reporting of Insider Trades**

**SOX Section 403 / SEC Final Rules  
(Release Nos. 33-8230, 34-46421)**

**Two-business day reporting**

**Electronic filing of Section 16 reports**

## **Public Equity**

- **Disclosure regarding Nominating Committee functions and communications between Board and Stockholders**
  - SEC Proposed Rules  
(Release No. 34-48301)**
  - Disclosure of information regarding process for nominating directors**
  - Disclosure regarding process and procedure for communications with stockholders**
  - SEC plans proposals regarding enhancing stockholder access to the proxy process for nominating directors**

## **Public Equity**

- **Related Matters**
  - SOX Section 306(a) / SEC Final Rules  
(Release No. 34-47225)**
  - Retirement fund blackout periods**
  - SOX Section 307 / SEC Proposed and Final Rules  
(Final - Release Nos. 33-8185, 34-47276)  
(Proposed - Release Nos. 33-8186, 34-47282)**
  - Rules of professional conduct for attorneys**

## **Other Considerations....**

- **Governance ratings**  
**ISS, Governance Metrics International, others**
- **Institutional investor groups**  
**Council of Institutional Investors, CalPERS, TIAA-CREF, etc.**
- **Next regulatory / “best practices” initiatives**

## **Final thoughts....**

- **Form and Substance**
- **Tone at the top determines success**
- **Positive message**
- **Clear communication of expectations**
- **One size does not fit all**
- **A “sea change” – not comply once and forget**

## XYZ CORPORATION

**[SAMPLE PRIVATE COMPANY]  
DISCLOSURE CONTROLS AND PROCEDURES****October, 2003**

This document outlines the principal elements of XYZ Corporation's (the "Company") Disclosure Controls and Procedures, and is organized into four sections. The first section describes the purpose of the Company's Disclosure Controls and Procedures, including a description of the requirements compelling formal development and implementation of these controls and procedures. The second section contains an outline of the processes utilized by the Company to ensure that information that it may need to disclose is provided to the principal executive and financial officers of the Company in a timely manner. The third section sets forth the controls and procedures for the review and recording of financial information. The final section describes the process for the evaluation and monitoring of the Company's Disclosure Controls and Procedures.

A key element of the Disclosure Controls and Procedures is the requirement that the Company periodically evaluate and monitor their effectiveness. The Disclosure Controls and Procedures are a work in progress, and the Company intends to refine, supplement, and enhance them over time.

The Company's overall effort to ensure necessary and appropriate disclosure in its periodic reports, including development and implementation of these Disclosure Controls and Procedures, is overseen by the Company's Chief Financial Officer and General Counsel, subject to the direction of the Chief Executive Officer.

**A. PURPOSE**

The purpose of these Disclosure Controls and Procedures is to ensure that the Company record, process, summarize, and report in its public disclosures, including Securities and Exchange Commission ("SEC") reports, all information: (a) required to be disclosed, (b) within the time periods specified, and (c) pursuant to processes that enable the Company's principal executive and financial officers to make timely decisions regarding disclosure.

The Company is required to disclose any information that would be expected to affect the investment decision of a reasonable investor or to alter the market price of the Company's securities. The determination that information is required to be disclosed is a complex legal and business judgment, dependent on the potential financial, operational, and overall impact of the information on the Company.

These Disclosure Controls and Procedures have been designed specifically to comply with the provisions of Sections 302 and 906 of the Sarbanes-Oxley Act of 2002 (the "Act"), and the corresponding SEC rules implementing Section 302 of the Act.

Pursuant to Section 302 of the Act, each of the principal executive officer(s) and the principal financial officer(s) must certify in each annual or quarterly report filed with the SEC that:



## XYZ CORPORATION

1. He or she has reviewed the report;
2. 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 necessary in order 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 the report;
3. Based on his or her knowledge, the financial statements, and other financial information included in the report, fairly present in all material respects the financial condition, results of operations and cash flows of the issuer as of, and for, the periods presented in the report;
4. He or she and the other certifying officers:
  - (a) are responsible for establishing and maintaining "disclosure controls and procedures" for the issuer;
  - (b) have designed such disclosure controls and procedures to ensure that material information is made known to them, particularly during the period in which the periodic report is being prepared;
  - (c) have evaluated the effectiveness of the issuer's disclosure controls and procedures as of a date within 90 days prior to the filing date of the report; and
  - (d) have presented in the report their conclusions about the effectiveness of the disclosure controls and procedures based on the required evaluation as of that date;
5. He or she and the other certifying officers have disclosed to the issuer's auditors and to the audit committee of the board of directors (or persons fulfilling the equivalent function):
  - (a) all significant deficiencies in the design or operation of internal controls which could adversely affect the issuer's ability to record, process, summarize and report financial data and have identified for the issuer'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 issuer's internal controls; and
6. He or she and the other certifying officers have indicated in the 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 their evaluation, including any corrective actions with regard to significant deficiencies and material weaknesses.

## XYZ CORPORATION

Pursuant to Section 906 of the Act, the chief executive officer and chief financial officer of the Company must certify in each periodic report containing financial statements with a statement that the periodic report fully complies with the requirements of Section 13(a) or 15(d) of the Securities and Exchange Act of 1934, and that information contained in the periodic report fairly presents, in all material respects, the financial condition and results of operations of the Company.

### B. DISCLOSURE CONTROLS

#### 1. Disclosure Guidelines

- (a) **Status.** To be completed by \_\_\_\_\_, 200\_\_\_\_.
- (b) **General.** The Disclosure Guidelines set forth the key elements of the disclosure procedures applicable to all Company personnel. The Disclosure Guidelines are designed to notify all Company personnel of their disclosure obligations and their role in the disclosure process, and to provide a method for personnel to notify the Company of any matters potentially requiring disclosure. The Disclosure Guidelines are posted on the Company's website and in each Company office. The Disclosure Guidelines include the following:
- (1) Company's Code of Business Conduct, which includes a description of the disclosure obligations applicable to all personnel, the types of items requiring disclosure, and the reporting process available for reporting any matters potentially requiring disclosure;
  - (2) Disclosure Timeline, which identifies the responsibilities and deadlines for reviewing periodic report materials (see B.2. below);
  - (3) Disclosure Committee, which includes a description of the committee members and their contact information, as well as the role and responsibilities of the committee (see B.3. below);
  - (4) Description of the review and reporting process by business unit leaders and financial management personnel for preparation of sub-certifications (see B.5. below).
- (c) **Annual Review.** Disclosure Guidelines to be reviewed annually, and updated as and when necessary

#### 2. Disclosure Timeline

- (a) **Status.** To be completed by \_\_\_\_\_, 200\_\_\_\_.
- (b) **General.** Disclosure Timeline includes assignment of responsibilities and deadlines for reviewing drafts of periodic reports for the Disclosure Committee,

## XYZ CORPORATION

Audit and Compliance Committee, Board of Directors, Chief Financial Officer, Chief Executive Officer, outside counsel, and outside auditor

- (c) **Monthly.** Incorporate Disclosure Timeline deadlines into Company's Corporate Calendar
- (d) **Quarterly Review.** Review, and revise as necessary, Disclosure Timeline to improve quality and timeliness of reporting.

**3. Disclosure Committee****(a) Status.**

- (1) Committee formed \_\_\_\_\_, 200\_\_\_\_.
- (2) Committee charter adopted \_\_\_\_\_, 200\_\_\_\_.

**(b) General.**

- (1) Members:
  - A. \_\_\_\_\_, [General Counsel] (Chairperson)
  - B. \_\_\_\_\_, [President and Chief Operating Officer]
  - C. \_\_\_\_\_, [Senior Vice President – Sales]
  - D. \_\_\_\_\_, [Director of Financial Planning and Analysis]
- (2) Committee reports to the CEO and CFO, with routine, periodic access to the Audit and Compliance Committee.
- (3) Committee serves as an independent evaluator of adequacy of corporate disclosures in periodic filings, and provides guidance to the drafter of the Company's MD&A

**(c) Monthly.**

- (1) Committee meets monthly or more frequently, as needed.
- (2) Committee reviews internal MD&A prepared by divisional operations and financial management.
- (3) Committee reviews disclosure in reports by competitors and analyst reports on the Company.
- (4) Committee reviews disclosure documentation from the legal, risk management, and regulatory affairs departments.

## XYZ CORPORATION

4. **Internal Auditor**

- (a) **Status.** \_\_\_\_\_.
- (b) **General.** Internal Auditor will, as necessary and upon request, review and test the Company's Disclosure Controls and Procedures and perform functions assigned by the Audit and Compliance Committee and the Disclosure Committee

5. **Internal Sub-Certifications**

- (a) **Status.** Sub-certification process commenced \_\_\_\_\_, 200 \_\_\_\_.
- (b) **General.** Written sub-certification [modeled after Section 302 requirements], limited to the respective business unit for each individual, provided by:
- (1) Divisional operations and financial management,
  - (2) Corporate financial, tax, operations, and legal management, and
  - (3) Compliance Officer (see B.6. below).
- (c) **Quarterly.**
- (1) Identify for sub-certifiers the type of information required for review approximately three weeks in advance of filing periodic report.
  - (2) Obtain sub-certifications approximately two weeks in advance of filing periodic report.

6. **Integrity Program and Code of Business Conduct**

- (a) **Status.**
- (1) Prepare/update Integrity Program handbook and training materials – to be completed by \_\_\_\_\_, 200 \_\_\_\_.
  - (2) Sub-certification process for Compliance Officer commenced \_\_\_\_\_, 200 \_\_\_\_.
  - (3) Annual risk assessment to be completed by \_\_\_\_\_, 200 \_\_\_\_.
  - (4) Annual workforce training and monthly training during new hire orientation to commence \_\_\_\_\_, 200 \_\_\_\_.
- (b) **General.** Update Integrity Program handbook and training materials to include Code of Business Conduct and disclosure and reporting procedures

## XYZ CORPORATION

- (c) **Monthly.** Train new personnel on Integrity Program during new hire orientation.
  - (d) **Quarterly.** Compliance Officer provides written sub-certification described in Section B.5(b) regarding Integrity Program matters .
  - (e) **Annually.**
    - (1) Conduct a risk assessment of Integrity Program matters and prepare report for the Audit and Compliance Committee.
    - (2) Conduct annual training of workforce on updated Integrity Program.
7. **Compliance Questionnaire and Certification**
- (a) **Status.** Distribute first week of January for return by end of January.
  - (b) **General.** Questionnaire and certification regarding compliance with the Code of Business Conduct completed by all officers, financial, legal, human resources, risk management, regulatory, tax and purchasing personnel, and certain sales and operational supervisory personnel
  - (c) **Annually.** Review form of certification annually. Obtain completed questionnaire and certification annually.
8. **Financial Risk Assessment**
- (a) **Status.** To be completed by \_\_\_\_\_, 200\_\_\_\_.
  - (b) **General.** Financial risk assessment conducted and documented by Finance Department and Internal Auditor.
  - (c) **Annually.** Conduct financial risk assessment by January 31 of each year
9. **Exit Interviews**
- (a) **Status.** Commence exit interview process by \_\_\_\_\_, 200\_\_\_\_.
  - (b) **General.** Compliance Officer oversees performance of an exit interview upon departure from the Company for all individuals in positions to receive the Compliance Questionnaire discussed in Section B.7. above.
  - (c) **Monthly.** Legal or Compliance Officer to report any potential disclosure matters from exit interviews to the Disclosure Committee and Audit and Compliance Committee.

## XYZ CORPORATION

## C. FINANCIAL REPORTING PROCEDURES

1. Internal Review

- (a) **Status.** Internal review process commenced \_\_\_\_\_, 200\_\_\_\_.
- (b) **General.** CFO conducts a balance sheet and financial review with executive operating and financial managers for each operating division and with corporate accounting staff.
- (c) **Quarterly.** CFO to conduct and document balance sheet and financial reviews.

2. Audit and Compliance Committee Review

- (a) **Status.**
  - (1) Meeting and formalized review process commenced \_\_\_\_\_, 200\_\_\_\_.
  - (2) Updated charter completed \_\_\_\_\_, 200\_\_\_\_.
- (b) **General.** Audit and Compliance Committee provides periodic reports to the Board of Directors, and operates pursuant to a charter defining its role and responsibilities.
- (c) **Quarterly – Earnings Releases.** Audit and Compliance Committee to meet quarterly in advance of earnings releases, or more frequently as needed, to review:
  - (1) Accounting considerations and financial results;
  - (2) Drafts of periodic reports;
  - (3) Drafts of financial press releases; and
  - (4) Hotline/Integrity Program reports regarding potential disclosure items.
- (d) **Quarterly – Board Meetings.** Audit and Compliance Committee to meet on the dates of regular Board meetings.

3. Independent Auditor Review

- (a) **Status.** Formalized review and documentation process commenced \_\_\_\_\_, 200\_\_\_\_.

## XYZ CORPORATION

- (b) **General.** Company's independent auditor to review and comment upon Company's financial statements and draft periodic reports.
- (c) **Quarterly.** Company's independent auditor to produce written report on financial statements and draft periodic reports in advance of periodic filings.

**D. EVALUATION AND MONITORING OF EFFECTIVENESS OF DISCLOSURE CONTROLS AND PROCEDURES**

**1. Internal Evaluation and Monitoring**

- (a) **Status.**
  - (1) Quarterly process commenced \_\_\_\_\_, 200\_\_\_\_.
  - (2) Real-time review process commenced \_\_\_\_\_, 200\_\_\_\_.
- (b) **Real-Time Review.** Disclosure Committee to review matters identified through this process as they arise, and to notify the CEO and CFO promptly of any matters that indicate the Disclosure Controls and Procedures should be modified.
- (c) **Quarterly Process.** General Counsel to meet with CEO, CFO, internal auditor, and outside auditors to review Company's Disclosure Controls and Procedures, and prepare report to the Audit and Compliance Committee and the Company's outside auditors disclosing any significant deficiencies in the design or operation of internal controls which could adversely affect the Company's ability to record, process, summarize, and report financial data, identifying any material weaknesses in internal controls, and describing any fraud, whether or not material, that involves management or other employees who have a significant role in the Company's internal controls.

In addition, Internal Auditor to prepare initial draft of quarterly report on effectiveness of Disclosure Controls and Procedures for prior quarter, including review of quarterly documentation of Disclosure Controls and Procedures, method and timing of information requiring review for disclosure, corporate culture for disclosure, and hindsight review of effectiveness. Disclosure Committee, Audit and Compliance Committee, and outside auditors to review and revise report and present it to CEO and CFO.

- (d) **Periodically.** Disclosure Controls and Procedures to be revised periodically in response to matters identified as part of quarterly and/or real-time evaluation process.