

Retention of Records Relevant to Audits and Reviews

CLIENT ALERT | 03.19.2003

PRACTICE AREAS

Corporate/Securities Law

MEMORANDUM To: Our Clients and Friends **From:** Olshan Grundman Frome Rosenzweig & Wolosky LLP **Date:** March 19, 2003 **Re:** Retention of Records Relevant to Audits and Reviews

On January 24, 2003, the SEC adopted Rule 2-06 to Regulation S-X, as mandated by Section 802 of the Sarbanes-Oxley Act, which requires accountants who audit or review an issuer's financial statements to retain certain records relevant to the audit or review. The new rule goes into effect on March 3, 2003, however, compliance is required for audits and reviews completed on or after October 31, 2003.

Documents to be Retained

Pursuant to Rule 2-06, accountants must retain certain records relevant to an audit or review for a period of seven (7) years after the conclusion of an audit or review of the issuer's [1] financial statements. The records to be retained are those that were relevant to the audit or review including workpapers [2] and other documents that formed the basis of the audit or review, and memoranda, correspondence, communications, other documents and records (including electronic records) that:

- (1) are created, sent or received in connection with the audit or review, and
- (2) contain conclusions, opinions, analyses or financial data related to the audit or review.

Memoranda, correspondence, communications, other documents, and records (including electronic records) shall be retained whether they support the auditor's final conclusions regarding the audit or review, or contain information or data, relating to a significant matter, [3] that is inconsistent with the auditor's final conclusions regarding that matter or the audit or review.

These are only brief descriptions of the SEC's new rules. This memorandum provides general information only and does not constitute legal advice that may be applied to any particular situation. Please contact the Partners in our Corporate Department for further advice and assistance.

[1] "Issuer" means an issuer (as defined in section 3 of the Exchange Act), the securities of which are registered under section 12, or that is required to file reports pursuant to section 15(d), or that files or has filed a registration statement that has not yet become effective under the Securities Act of 1933 (15 U.S.C. 77a et seq.), and that it has not withdrawn.

[2] "Workpapers" means documentation of auditing or review procedures applied, evidence obtained and conclusions reached by the accountant in the audit or review engagement, as required by standards established or adopted by the SEC or by the Public Company Accounting Oversight Board.

[3] "Significant matter" means documentation of substantive matters that are important to the audit or review process or to the financial statements of the issuer or registered investment company. Significance of a matter shall be determined based on an objective analysis of the facts and circumstances. Such documents and records include, but are not limited to, those documenting a consultation on or resolution of differences in professional judgment.