

HEALTH & NUTRITION SYSTEMS INTERNATIONAL INC
Form 10KSB/A
April 30, 2003

U. S. SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549

FORM 10-KSB/A-1

- [X] Annual report pursuant to section 13 or 15(d) of the Securities Exchange Act of 1934 for the fiscal year ended December 31, 2002
- [] Transition report pursuant to section 13 or 15(d) of the Securities Exchange Act of 1934 for the transition period from _____ to _____.

Commission file number 0-29245

HEALTH & NUTRITION SYSTEMS INTERNATIONAL, INC.
(Name of small business issuer in its charter)

FLORIDA
(State or other jurisdiction
of incorporation or organization)

65-0452156
(I.R.S. Employer
Identification No.)

3750 Investment Lane, Suite 5
West Palm Beach, Florida
(Address of principal executive offices)

33404
(Zip Code)

Issuer's telephone number, including area code: (561) 863-8446

EXPLANATORY NOTE

Pursuant to Rule 12b-15 of the Securities and Exchange Act of 1934, as amended, Health & Nutrition Systems International, Inc. hereby files this Amendment No. 1 on Form 10-KSB/A to include in Part III, Items 10 and 12, and to amend Items 9, and 11, of its Annual Report on Form 10-KSB for the year ending December 31, 2002.

PART III

ITEM 9. DIRECTORS, EXECUTIVE OFFICERS, PROMOTERS AND CONTROL PERSONS;
COMPLIANCE WITH SECTION 16(A) OF THE EXCHANGE ACT

DIRECTORS AND EXECUTIVE OFFICERS

As of April 29, 2003, our directors and executive officers are:

| Name | Age | Position/Office |
|------------------|-----|--|
| Chris Tisi | 33 | Interim Chairman of the Board, Chief Executive Officer, President, Secretary |
| Steven Pomerantz | 47 | Director |

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Ted Alflen

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Director

The following is a brief biographical summary of our officers and directors.

Christopher Tisi has been our Chief Executive Officer and Interim Chairman of the Board since December 2001. Mr. Tisi has been our President and Secretary since November 2000, and was our Chief Operating Officer from December 1999 until November 2000. From March 1998 until December 1999, Mr. Tisi was our Vice President of Sales and Marketing. From 1994 to March 1998, Mr. Tisi was our Vice President of Training.

Steve Pomerantz has been one of our directors since 1994. He has been the President of TDR Safety Products, a touch free, self-serve car wash, since 2002. From November 2000 to December 2001, Mr. Pomerantz was our Chairman of the Board and Treasurer, and he held the office of Chief Executive Officer from March 1998 until December 2001. He was our President from March 1998 until November 2000. From 1995 to March 1998, Mr. Pomerantz was our Vice President of Finance and Chief Operating Officer.

Ted Alflen has been one of our directors since October 2000. In March 1991, Mr. Alflen founded TCCD International Inc. and served as President from 1991 to present. TCCD manufactures and markets crystal deodorants. TCCD recently acquired Real Natural Products and the Moistic brand of all natural lip balms. Mr. Alflen has been in sales and marketing for over 29 years.

Each director holds his office until the next annual meeting of the shareholders unless he resigns or is removed.

SECTION 16(A) BENEFICIAL OWNERSHIP REPORTING COMPLIANCE

Based solely upon a review of Forms 3 and 4 and amendments thereto furnished to us under Rule 16a-3(e) of the Securities Exchange Act of 1934 during the fiscal year ended December 31, 2002, we are not aware of any person that failed to file on a timely basis, as disclosed in the aforementioned forms, reports required by Section 16(a) of the Exchange Act during the fiscal year ended December 31, 2002.

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AUDIT COMMITTEE FINANCIAL EXPERT

The board has determined that it does not have an audit committee financial expert serving on its audit committee. We do not have an audit committee financial expert on our audit committee because no individual on our Board possesses all of the attributes of an audit committee financial expert. Currently we have two vacancies on our board and plan to fill at least one of those vacancies with a financial expert.

ITEM 10. EXECUTIVE COMPENSATION

The following table provides a summary of cash and non-cash compensation for each of the last three fiscal years ended December 31, 2002, 2001 and 2000 received by each of our chief executive officer and our other executive officers whose total annual salary and bonus exceeded \$100,000 during fiscal year 2002 (each a "Named Officer" and collectively the "Named Officers"). No other executive officers were paid salary and bonus compensation by us which exceeded \$100,000 during 2002.

SUMMARY COMPENSATION TABLE

| NAME AND PRINCIPAL POSITION | YEAR | ANNUAL COMPENSATION | | | LONG-TERM COMPENSATION AWARDS |
|--|------|---------------------|------------|------------------------------------|-----------------------------------|
| | | SALARY (\$ (1)) | BONUS (\$) | OTHER ANNUAL COMPENSATION (\$ (2)) | SECURITIES UNDERLYING OPTIONS (3) |
| Christopher Tisi President, Chief Executive Officer And Secretary (4) | 2002 | 164,983 | 7,249 | - | 50,000 |
| | 2001 | 100,703 | 7,524 | - | - |
| | 2000 | 118,169 | 18,169 | - | 102,000 |
| Steve Pomerantz Director(4) | 2002 | 62,182 | - | - | - |
| | 2001 | 114,321 | 3,762 | - | - |
| | 2000 | 100,000 | 11,642 | - | 50,000 |

- (1) Payment of \$23,443 of Steve Pomertanz's 2001 salary and \$32,578 of Chris Tisi's 2001 salary was deferred in 2001 and was paid during 2002 in twelve equal monthly installments.
- (2) The Named Officers did not receive any other annual compensation not categorized as salary or bonus except for perquisites and other personal benefits which in the aggregate did not exceed the lesser of \$50,000 or 10% of the total annual salary and bonus reported for such Named Officer.
- (3) In 2000, Mr. Pomerantz was granted options under our 1998 Stock Option Plan for the purchase of 50,000 shares of common stock. Such options were granted at the then current market value of the shares. The options granted vested immediately on the date of grant. Also in 2000, Mr. Tisi was granted options under our 1998 Stock Option Plan for the purchase of 102,000 shares of common stock. In 2002, Mr. Tisi was granted options under our 1998 Stock Option Plan for the purchase of 50,000 shares of common stock. Such options were granted at the then current market value of the shares. The options granted vested immediately on the date of grant.

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- (4) Mr. Pomerantz resigned as Chief Executive Officer, Treasurer and Chairman of the Board on December 14, 2001, and Mr. Tisi assumed the position of Chief Executive Officer, Secretary and Interim Chairman of the Board on December 14, 2001. Mr. Tisi has served as President since October 1, 2000.
- (5) Paid to Mr. Pomertanz as severance pursuant to the terms of his Severance Agreement effective as of January 1, 2002.

STOCK OPTION GRANTS

The following table contains information concerning the grant of stock options under our 1998 Stock Option Plan to the Named Officers during 2002.

OPTION GRANTS IN 2002
Individual Grants

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| Name ----- | Number of Securities Underlying Options Granted (#) (1) ----- | % of Total Options Granted to Employees in 2002 ----- | Exercise or Base Price (\$/Sh) ----- | Expiration Date (2) ----- |
|---|--|---|--|---------------------------------|
| Christopher Tisi(3) President, Chief Executive Officer, Secretary and Interim Chairman of the Board | 50,000 | 100% | \$.12 | 02/11/06 |

- (1) All options granted in 2002 are non-qualified stock options and are not intended to qualify as an incentive stock option ("ISOs") under ss.422 of the Internal Revenue Code of 1986, as amended. The options are exercisable as of the date of grant. The options were granted at fair market value on the date of the grant.
- (2) The term of the option is four (4) years from the date of grant unless terminated earlier due to termination of employment, disability or death.
- (3) Mr. Tisi became President on October 1, 2000.

We do not currently have (and have not previously had) any plan pursuant to which any stock appreciation rights ("SARs") may be granted.

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STOCK OPTION EXERCISES AND HOLDINGS

The following table sets forth information relating to options exercised during 2002 by each of the Named Officers and the number and value of options held on December 31, 2002 by each of them.

AGGREGATE OPTION EXERCISES IN FISCAL YEAR ENDED DECEMBER 31, 2002
AND FISCAL YEAR-END OPTION VALUES

| Name ----- | Shares Acquired on Exercise (#) ----- | Value Realized (\$) --- | Number of Securities Underlying Unexercised | | Exer |
|---|--|----------------------------------|--|------------------------|------|
| | | | Options at Dec. 31, 2002 (#) ----- | | |
| | | | Exercisable ----- | Unexercisable ----- | |
| Christopher Tisi(2) Secretary and President | - | - | 152,000 | - | |

- (1) Total value of unexercised options is based upon the difference between the last sales price of our common stock on the Nasdaq National Market System on December 31, 2002, which was \$.04 per share, and the exercise price of the options, multiplied by the number of option shares.

(2) Options granted under our 1998 Stock Option Plan.

No options to purchase common stock were exercised by our executive officer during the year ended December 31, 2002.

DIRECTOR AND OFFICER COMPENSATION

During 2002, we paid to each of our non-employee directors meeting fees of \$500 for attendance at each board meeting. Pursuant to the terms of the Stock Option Plan, a grant of a stock option for the purchase of common shares may be made to each non-employee director. Those options are granted at an exercise price equal to the fair market value of our common stock on the date of grant, and become 25% vested on each anniversary date of grant or, if earlier, upon a change of control as defined in the plan and expire ten years from the date of grant or earlier in the event service as a director ceases. We did not grant stock options to our non-employee directors in the last fiscal year.

EMPLOYMENT AGREEMENT AND CHANGE-IN-CONTROL ARRANGEMENTS

Effective January 1, 2002, we entered into a new employment agreement with Chris Tisi, our Chief Executive Officer, President, Secretary and Interim Chairman of the Board. The agreement provides for a base salary of \$140,000 (\$18,750 of which will be used to pay certain amounts owing to third parties in connection with the settlement of litigation) as well as bonuses which are contingent upon increases in revenue over prior periods and net income results. The agreement provides that bonuses will be determined quarterly with 33% of such bonuses to be paid quarterly and the balance to be paid at year-end depending on the maintenance of previously achieved performance levels. The agreement also provides for an annual grant of 50,000 stock options under our 1998 Stock Option Plan. The options will have a four-year term and will be vested 100% on the date of grant. The agreement also provides for the payment of an amount equal to the lesser of (i) \$275,000 or (ii) the maximum "golden parachute" payment permitted to be deducted by us under the federal tax law in the event Mr. Tisi is terminated after a change of control. An amendment to the agreement provided that \$32,578 of Mr. Tisi's salary for 2001 which was not paid to him during 2001 would be paid in 2002 in twelve equal monthly installments.

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Effective January 1, 2002, we entered into a severance agreement with Steve Pomerantz, our former Chairman of the Board, Chief Executive Officer, and Treasurer. The agreement provided for a severance payment of \$50,000 to be paid over the following year (\$18,750 of which was used to pay certain amounts owing to third parties in connection with the settlement of litigation). An amendment to the agreement provided that \$23,443 of Mr. Pomerantz's salary for 2001 which was not paid to him during 2001 would be paid in 2002 in twelve equal monthly installments.

In light of the fact that Mr. Pomerantz has in the past personally guaranteed certain obligations of the Company to third parties (the "Guaranteed Obligations"), the severance agreement provided that on the earlier to occur of (i) a Change in Control, or (ii) December 31, 2002, we would provide substitute collateral for the Guaranteed Obligations in exchange for a release from Mr. Pomerantz from any and all personal liability on the Guaranteed Obligations. The guarantee obligations were all satisfied prior to December 31, 2002.

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ITEM 11. SECURITY OWNERSHIP OF CERTAIN BENEFICIAL OWNERS AND MANAGEMENT AND RELATED STOCKHOLDER MATTERS

The table below shows, as of April 29, 2003, the number of shares of common stock beneficially owned by:

o each person whom we know beneficially owns more than 5% of the common stock, o each director and nominee for director, o each executive officer included in the Summary Compensation Table, and o all executive officers and directors as a group.

| NAME AND ADDRESS OF BENEFICIAL OWNER (1) | SHARES OF COMMON STOCK BENEFICIALLY OWNED | |
|--|---|---------|
| | NUMBER OF SHARES AND NATURE OF SHARES BENEFICIALLY OWNED (2) | PERCENT |
| Christopher Tisi | 869,088 (4) (5) | |
| Steven Pomerantz | 401,829 (4) (5) | |
| Ted Alflen | 5,500 (5) | |
| Tony D'Amato 1526 Michigan Avenue, #1 Miami Beach, FL | 255,000 | |
| All executive officers and directors as a group (3 persons) | 1,276,417 (3) (4) (6) | |

Less than 1%

- (1) The address of each executive officer and director is c/o the Company, 3750 Investment Lane, #5, West Palm Beach, FL 33404.
- (2) Unless otherwise noted, all persons named in the table have sole voting and dispositive power with respect to all shares of common stock beneficially owned by them.
- (3) Based upon 3,629,813 outstanding shares as of April 29, 2003, and, with respect to each holder of options exercisable, or notes convertible, within 60 days of March 30, 2003, the shares issuable under such instruments.

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- (4) In 2000, Tony D'Amato ("D'Amato") executed and delivered to Chris Tisi ("Tisi") and the Company a Shareholders' Agreement pursuant to which D'Amato granted to Tisi an irrevocable proxy (the "Irrevocable Proxy") authorizing Tisi to vote shares of the Company beneficially owned by D'Amato as of that date and any shares of the Company acquired by D'Amato thereafter. The Irrevocable Proxy had a two-year term. On January 31, 2001, Tisi relinquished his right to vote pursuant to the Irrevocable Proxy with respect to 125,000 shares beneficially owned by D'Amato as of that date. As disclosed in the 13D dated April 24, 2002 filed by Steve Pomerantz ("Pomerantz"), Tisi and D'Amato, on April 29, 2002, D'Amato executed and delivered to Tisi a First Amendment to the Shareholders' Agreement (the "First Amendment") pursuant to which D'Amato extended the term of the Shareholders' Agreement and the Irrevocable Proxy for an additional two-year period. In addition, Tisi and Pomerantz have entered into an oral understanding that each will vote the shares of common stock beneficially owned by him (or, in the case of Tisi, as to which he has voting power) together as a group, but only for the following purposes: (i) in favor of the same person or persons to be nominated and elected to serve on the board of directors to fill any vacancies on the board, if and as such vacancies may arise from time to time (whether such vacancy occurs by removal, resignation or an increase in the size of the board of directors) at any time prior to our 2003 annual meeting of stockholders, or any adjournment thereof, and (ii) in favor of the same person or persons to be nominated and elected as the slate of nominees, and elected, to the board of directors to be voted upon by the shareholders at our 2003 annual meeting of shareholders, or any adjournment thereof. Accordingly, Tisi has sole voting power of 819,088 shares and sole dispositive power of 416,788 shares, and D'Amato has sole voting power of 125,000 shares and sole dispositive power of 308,502 shares.
- (5) Share ownership of the following persons includes shares subject to immediately exercisable options or options exercisable within 60 days of April 29, 2003, as follows: for Mr. Pomerantz - 50,000 shares, for Mr. Alflen - 2,500 shares, and for Mr. Tisi - 202,000 shares.
- (6) Includes an aggregate of 254,500 shares subject to immediately exercisable options or options exercisable within 60 days of April 29, 2003 held by executive officers and directors as a group.

EQUITY COMPENSATION PLAN INFORMATION

| PLAN CATEGORY | NUMBER OF SECURITIES TO BE ISSUED UPON EXERCISE OF OUTSTANDING OPTIONS, WARRANTS AND RIGHTS (A) | WEIGHTED-AVERAGE EXERCISE PRICE OF OUTSTANDING OPTIONS, WARRANTS AND RIGHTS | NUMBER OF REMAINING FUTURE EQUITY C (EXCLUDING REFLECTED) |
|--|---|---|---|
| Equity compensation plans approved by security holders | 506,500 | \$.14 | |
| Equity compensation plans not approved by security holders (1) | | | |
| TOTAL | 506,500 | \$.14 | |

(1) We do not maintain equity compensation plans that have not been approved by our stockholders.

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ITEM 12. CERTAIN RELATIONSHIPS AND RELATED TRANSACTIONS

For the years ended December 31, 2001 and December 31, 2000, we sold \$63,881 and \$163,969 respectively of products to KMS-Thin Tab, an entity we believe is controlled by J.C. Herbert Bryant III, a beneficial owner of greater than five percent of our stock. These sales were on terms no more favorable than those given to unaffiliated third parties in arms-length transactions.

On January 12, 2002, we repaid a \$100,000 loan from SunTrust Bank which was collateralized by a certificate of deposit in the principal amount of \$100,000 pledged by Steve Pomerantz, our former Chief Executive Officer and Chairman of the Board. Accordingly, on that date, the collateral was released. On January 15, 2002, we obtained another short-term loan from SunTrust Bank in the amount of \$23,400. This loan is collateralized by a certificate of deposit in the amount of \$23,400 owned by Steve Pomerantz. The loan is due on July 15, 2002 and is payable in monthly installments of \$4,167.

On March 15, 2002, the Company terminated their factoring agreement with Alliance Financial Capital, Inc. and entered into a factoring agreement with LSQ Funding Group, L.C. (LSQ). The agreement provided that LSQ would purchase certain receivables and advance 85% of the face amount of such receivables. The term of this agreement was for one year. The maximum amount of receivables the Company could factor under the agreement was \$750,000. In connection with the factoring agreement, the Company granted LSQ a blanket lien on Company assets and the President/Chief Executive Officer was required to deliver a personal guarantee. The LSQ contract expired in March 2003 and the Company did not renew it.

The Company was involved in the litigation with J.C. Herbert Bryant, III ("Bryant") and KMS-Thin Tab 100, Inc. ("KMS,") which was settled in September 2002. The settlement agreement generally provided for Bryant and KMS to transfer the registration and ownership of the domain names Thintab.com, Thintab.CC, and Carbcutter.cc to HNS and to take other action to eliminate confusion over the ownership of the Thin Tab@ name. Additionally, each of the adverse parties generally released the others. As part of the settlement, HNS entered into a distribution agreement with Bryant, beginning on September 26, 2002 and ending on September 25, 2007, permitting Bryant to purchase certain of its products from HNS and to exclusively distribute those products in Florida from Orlando south. HNS also has agreed not to sell its products directly to certain KMS customers. HNS booked a legal settlement expense of \$58,836 associated with this settlement.

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ITEM 13. EXHIBITS AND REPORTS ON FORM 8-K

(a) Documents filed as part of this Form 10-KSB

99.1 Certification Pursuant to 18 U.S.C. Section 1350, as Adopted

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Pursuant to Section 906 of the Sarbanes-Oxley Act of 1002.

99.2 Certification Pursuant to 18 U.S.C. Section 1350, as Adopted Pursuant to Section 906 of the Sarbanes-Oxley Act of 1002.

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SIGNATURES

In accordance with Section 13 or 15(d) of the Exchange Act, the registrant caused this report to be signed on its behalf by the undersigned, thereunto duly authorized.

Date: April 29, 2003

Health & Nutrition Systems International, Inc.
(Registrant)

By: /s/ Christopher Tisi

Christopher Tisi
Interim Chairman of the Board,
Chief Executive Officer and President
(Principal Executive Officer)

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CERTIFICATIONS

I, Christopher Tisi, certify that:

1. I have reviewed this annual report on Form 10-KSB/A-1 of Health & Nutrition Systems International, Inc.;

2. Based on my knowledge, this annual 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 annual report;

3. Based on my knowledge, the financial statements, and other financial information included in this annual report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this annual report;

4. The registrant's other certifying officers and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-14 and 15d-14) 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 annual 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

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annual report (the "Evaluation Date"); and

c) presented in this annual 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 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 annual report whether 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 April 29, 2003

/s/ Christopher Tisi

Christopher Tisi, Chief Executive Officer

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CERTIFICATIONS

I, Al Dugan, certify that:

1. I have reviewed this annual report on Form 10-KSB/A-1 of Health & Nutrition Systems International, Inc.;

2. Based on my knowledge, this annual 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 annual report;

3. Based on my knowledge, the financial statements, and other financial information included in this annual report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this annual report;

4. The registrant's other certifying officers and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-14 and 15d-14) 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 annual report is being prepared;

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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 annual report (the "Evaluation Date"); and

c) presented in this annual 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 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 annual report whether 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 April 29, 2003

/s/ Al Dugan

Al Dugan, Controller and Chief Accounting Officer

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Index to Exhibits

| Exhibit Number | Description of Exhibits |
|----------------|--|
| ----- | ----- |
| 99.1 | Certification Pursuant to 18 U.S.C. Section 1350, as Adopted Pursuant to Section 906 of the Sarbanes-Oxley Act of 2002 |
| 99.2 | Certification Pursuant to 18 U.S.C. Section 1350, as Adopted Pursuant to Section 906 of the Sarbanes-Oxley Act of 2002 |

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