

In addition, issuers should consider the need to disclose the fair value of net claims against counterparties that are reported as assets at the most recent balance sheet date, based on the credit quality of the contract counterparty (e.g., investment grade; noninvestment grade; and no external ratings).

Registrants should also consider their disclosure obligations regarding risk management in connection with the trading activities discussed above. Registrants should consider whether they should provide fuller disclosure regarding the management of risks related to, for example, changes in credit quality or market fluctuations of underlying, linked or indexed assets or liabilities, especially where such assets are illiquid or susceptible to material uncertainties in valuation.

C. Disclosures About Effects of Transactions With Related and Certain Other Parties

Statement of Financial Accounting Standards No. 57 (FAS 57), *Related Party Disclosures*, sets forth the requirements under GAAP concerning transactions with related parties.²¹ As noted in that standard, “[t]ransactions involving related parties cannot be presumed to be carried out on an arm’s length basis, as the requisite conditions of competitive, free-market dealings may not exist.”²² Accordingly, where related party transactions are material, MD&A should include discussion of those transactions to the extent necessary for an understanding of the company’s current and prospective financial position and operating results. In addition, Item 404 of Regulation S–K and Item 404 of Regulation S–B require disclosure of certain relationships and transactions with related parties.²³

²¹ Statement of Financial Accounting Standard No. 57, *Related Party Disclosures* (March 1982). See also 17 CFR 210.4–08(k)(1), which states, “Related party transactions should be identified and the amounts stated on the face of the balance sheet, income statement, or statement of cash flows.”

²² *Id.*, paragraph 3.

²³ 17 CFR 229.404 and 17 CFR 228.404, which require, with certain exceptions, disclosure of transactions or series of transactions in which the company was, or is to be, a party, the amount involved exceeds \$60,000, and a director, executive officer, nominee for election as director, security holder of more than five percent of any class of the company’s voting securities, or any member of the immediate family of any of such persons, had or will have a direct or indirect material interest. Required disclosures include the name of the person and the person’s relationship with the registrant, the nature of the person’s interest, the amount of the transaction(s), and, where practicable, the amount of the person’s interest in the transaction(s). In addition, section 10A of the Securities Exchange Act of 1934, 15 U.S.C. 78j–1, requires that each audit of financial statements

Registrants should consider whether investors would better understand financial statements in many circumstances if MD&A included descriptions of all material transactions involving related persons or entities, with clear discussion of arrangements that may involve transaction terms or other aspects that differ from those which would likely be negotiated with clearly independent parties.²⁴ Registrants should consider describing the elements of the transactions that are necessary for an understanding of the transactions’ business purpose and economic substance, their effects on the financial statements, and the special risks or contingencies arising from these transactions. Discussion of the following may be necessary:

- The business purpose of the arrangement;
- Identification of the related parties transacting business with the registrant;
- How transaction prices were determined by the parties;
- If disclosures represent that transactions have been evaluated for fairness, a description of how the evaluation was made; and
- Any ongoing contractual or other commitments as a result of the arrangement.

Registrants should also consider the need for disclosure about parties that fall outside the definition of “related parties,” but with whom the registrant or its related parties have a relationship that enables the parties to negotiate terms of material transactions that may not be available from other, more clearly independent, parties on an arm’s-length basis. For example, an entity may be established and operated by individuals that were former senior management of, or have some other current or former relationship with, a registrant. The purpose of the entity may be to own assets used by the registrant or provide financing or services to the registrant. Although former management or persons with other relationships may not meet the definition of a related party

pursuant to that Act include procedures designed to identify related party transactions that are material to the financial statements or that require disclosure. Statement on Auditing Standards No. 45, *Related Parties*, published by the Auditing Standards Board and effective for periods ended after September 30, 1983, provides guidance on auditing related party transactions.

²⁴ Audit committees may wish to include a review of such relationships and transactions in their discussions with management and auditors, including a review of their terms and internal corporate and Board actions involving the transactions, prior to their recommendation that the financial statements be included in the company’s Form 10–K. See generally, Regulation S–K Item 306, 17 CFR 229.306, and Regulation S–B Item 306, 17 CFR 228.306.

pursuant to FAS 57, the former management positions may result in negotiation of terms that are more or less favorable than those available on an arm’s-length basis from clearly independent third parties that are material to the registrant’s financial position or results of operations. In some cases, investors may be unable to understand the registrant’s reported results of operations without a clear explanation of these arrangements and relationships.

Dated: January 22, 2002.

By the Commission.

Margaret H. McFarland,
Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

Tel-One, Inc., File No. 500–1; Order of Suspension of Trading

January 23, 2002.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Tel-One, Inc. (“Tel-One”), because of questions regarding the accuracy of assertions by Tel-One, and by others, in documents sent to and statements made to market makers of the stock of Tel-One, other broker-dealers, and investors concerning, among other things: (1) The company’s claims about its prospects in the video conferencing industry; (2) the future price of Tel-One’s stock; and (3) the involvement of persons in control of the operations and management of the company in efforts to tout, and inflate artificially the price of, Tel-One’s stock.

The Commission is of the opinion that the public interest and the protection of investors require a suspension of trading in the securities of the above-listed company.

Therefore, it is ordered, pursuant to section 12(k) of the Securities Exchange Act of 1934, that trading in the above-listed company is suspended for the period from 9:30 a.m. EST, January 23, 2002, through 11:59 p.m. EST, on February 5, 2002.

By the Commission.

Jill M. Peterson,
Assistant Secretary.

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