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National Economic Council

Sumerlin, D. Marcus (Marc)

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Folder Title:

Banking : Corporate Governance [Folder 4] [2]

Withdrawn/Redacted Material
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DOCUMENT NO.	FORM	SUBJECT/TITLE	PAGES	DATE	RESTRICTION(S)
001	Memorandum	Analyst Conflicts of Interest - To: Lawrence Lindsey, Marc Sumerlin - From: Pippa Malmgren	7	07/02/2002	P5;
002	Email	Vin Asked Me to These Liability TPs on Sarbanes to You - To: Kevin Warsh, et al. - From: Joshua Bolten	2	07/05/2002	P5;
003	Email	SEC Staff Comments on S. 2673 - To: Jennifer Newstead - From: Kevin Warsh	5	07/01/2002	P5;
004	Report	Corporate Governance	2	N.D.	P5;
005	List	[CEO Questions]	1	N.D.	P5;
006	Report	Corporate Governance	3	07/03/2002	P5; P6/b6;

COLLECTION TITLE:
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Banking : Corporate Governance [Folder 4] [2]
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DOCUMENT NO.	FORM	SUBJECT/TITLE	PAGES	DATE	RESTRICTION(S)
007	Speech	Remarks on Corporate Responsibility	8	07/09/2002	P5; P6/b6;
008	Outline	New Policy Options for President's Remarks	1	N.D.	P5;
009	Outline	Chairman Leahy's S.2010...	2	N.D.	P5;
010	Memorandum	Corporate Responsibility Speech - To: Joshua Bolten - From: Marc Sumerlin	3	07/02/2002	P5;
011	Outline	Obstruction of Justice	5	N.D.	P5;
012	List	Corporate Governance	1	07/02/2002	P5;
013	Report	Corporate Responsibility	4	N.D.	P5;

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014	List	Corporate Governance	1	N.D.	P5;
015	Memorandum	Corporate Responsibility Speech - To: Joshua Bolten - From: Marc Sumerlin	3	07/02/2002	P5;
016	Memorandum	Corporate Responsibility Speech - To: Joshua Bolten - From: Marc Sumerlin	2	07/02/2002	P5;

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2014-0373-F

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For Immediate Release
Office of the Press Secretary
February 2, 2002

President Outlines Pension Protection Plan in Radio Address

Radio Address of the President to the Nation

Fact Sheet
Listen to the President's Remarks

THE PRESIDENT: Good morning. In my State of the Union address, I committed our nation to three great goals: To win the war, to secure our homeland, and to defeat the recession.

In recent days, we have heard some encouraging reports on our progress and our work to defeat the recession. But many workers have lost their jobs and their retirement savings when their companies went bankrupt. Employees who have worked hard and saved all their lives should not have to risk losing everything if their company fails. So my administration is proposing important safeguards to our pension laws to protect the retirement savings of workers.

First, we want to give workers greater freedom to diversify their retirement portfolios. Many companies require their workers to hold company shares long after their workers wish to sell, even when the company's shares are dramatically dropping in value. I propose that workers be permitted to sell company-contributed shares in their retirement account and diversify after they have participated in a 401(k) for three years.

Next, we need to make sure that companies have a single standard for their executives and their employees. It is unfair for workers to be denied the ability to sell stock when executives are free to sell their stock.

Right now, though, companies can create what are called blackouts, when they switch the management of their retirement accounts from one investment firm to another. During the switch, employees don't have access to their 401(k)s and can't buy or sell. These blackouts usually happen because the company is looking for better service for its employees. But when employees can't sell, executives shouldn't be able to sell, either. So I am proposing that company executives be prohibited from selling any and all of their stock during these blackout periods.

Third, workers should be informed in advance that a blackout period is coming. Under my administration's reforms, workers must be given 30 days' notice before employers make any changes that would stop them from selling their stock.

from selling their stock.

Fourth, companies will be put on notice when employees are blacked out, company executives with power over 401(k)s will be held accountable for treating their workers' assets as carefully as they treat their own.

Fifth, workers should have the benefit of solid, independent investment advice. Right now, the law deters companies from providing employees with sound advice, such as information about the benefits of diversification. And that doesn't make sense. We need to encourage companies to provide workers good advice, not punish them for doing so.

And, finally, employers should be required to provide regular information to their workers about the current value of their accounts and their right to sell and diversify. Right now, employers need to give an accounting to workers only once a year. We're going to tell them they must do so every three months. These measures will be a major benefit for American workers and for America's employers.

Our country's employers welcome the highest standards of conduct, because high standards are good for business and good for America. I thank you for listening.

END

the White House
President George W. Bush

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For Immediate Release
Office of the Press Secretary
February 1, 2002

President Bush Calls for Action to Protect American Workers' Retirement

"A good job should lead to security in retirement. I ask Congress to enact new safeguards for 401(k) and pension plans. Employees who have worked hard and saved all their lives should not have to risk losing everything if their company fails."

President George W. Bush
State of the Union Address
January 29, 2002

THIS WEEK'S PRESIDENTIAL ACTION

- In his State of the Union Address, President George W. Bush called on Congress to enact important new safeguards to protect the pensions of millions of American workers. The President called on Congress to move quickly to enact these important reforms so that people who work hard and save for their retirement can have full confidence in our retirement system.
- Today, President Bush announced that he has approved the recommendations of a Cabinet-level Task Force on Retirement Security, which has made specific recommendations for legislative action to better protect workers' pensions. The Bush Administration will be working with Congress on a bipartisan basis to ensure that these reforms become law.

BACKGROUND ON THE PRESIDENT'S ACTION TO:

- About 42 million American workers own 401(k) accounts with a total of $2.0 trillion in assets. These workers need to have full confidence in the security of their pension plans.
- Under current law, companies can force workers to hold company stock in their 401(k) plans for extended periods of time. Workers also may not receive adequate advance notice of so-called "blackout periods" – times when employers change pension plan features or administrators, during which workers cannot control their retirement savings accounts. And, too many workers lack access to investment advice and useful information on the status of their retirement savings.
- To address these problems, President Bush created a Task Force on Retirement Security -- comprised of Treasury Secretary Paul O'Neill, Labor Secretary Elaine Chao, and Commerce Secretary Don Evans – on January 10. The Task Force was charged with developing new safeguards to protect the pensions of American workers.
- President Bush today is announcing a four point pension protection proposal that will: (1) provide workers greater freedom to diversify and manage their own retirement funds; (2) ensure that senior corporate executives are held to the same restrictions as average American workers during "blackout periods" and that employers assume full fiduciary responsibility during these times; (3) give workers quarterly information about their investments and rights to diversify them; and (4) expand workers' access to investment advice.
- Giving Workers Freedom To Diversify: Employers should be encouraged to make generous contributions to workers' 401(k) plans, including the option to use company stock to make

matching contributions. However, workers must be free to choose how to invest their retirement savings. The President's proposal will ensure that workers can sell company stock and diversify into other investment options after they have participated in the 401 (k) plan for three years. While many companies already allow rapid diversification, others impose holding periods which can last for decades.

- Creating Parity Between Senior Corporate Executives and Rank-and-File Workers: President Bush believes it is unfair for workers to be denied the ability to sell company stock in their 401(k) accounts during blackout periods while corporate officers face no similar restrictions on selling stock held outside the 401(k).
- The President has directed the Task Force to develop appropriate policies that would preclude senior corporate executives from selling company stock during times when workers are unable to trade in their 401(k) plans.
- The Task Force recommendations will clarify that employers have a fiduciary responsibility for workers' investments during a blackout period. Under current law, when 401(k) plans are controlled by workers, employers are not responsible for the results of workers' investment decisions. This "safe harbor" from liability will no longer apply during a blackout period. During these times, employers will be responsible for the consequences of the workers' inability to independently control their investments if they violated their duty to act in the interests of the workers when they created the blackout period.
- Giving Workers Better Information About Their Pensions: The President proposes to increase worker notification of blackout periods and provide workers with quarterly benefits statements about their individual pension accounts.
- To ensure that blackout periods are fair, responsible and transparent, the President's proposal will ensure that workers have ample opportunity to make investment changes through a requirement that they be given a 30-day notice before any blackout period begins.
- To enable workers to make independent, informed decisions, employers will be required to give workers quarterly benefit statements that include information about their individual accounts, including the value of their assets, their rights to diversify, and the importance of maintaining a diversified portfolio. The Secretary of Labor will be given authority to tailor this requirement to the needs of small plans. Under current law employers are only required to make statements available to workers on an annual basis.
- Expanding Workers' Access to Investment Advice: The President calls on the Senate to pass the Retirement Security Advice Act – which passed the House with an overwhelming bipartisan majority. This legislation encourages employers to make investment advice available to workers and allows qualified financial advisors to offer investment advice only if they agree to act solely in the interests of the workers they advise.

For more information on the President's initiatives, visit **www.whitehouse.gov**

Return to this article at:
http://www.whitehouse.gov/news/releases/2002/02/20020201-7.html

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The President's Ten-Point Plan to Improve Corporate Responsibility and Protect America's Shareholders

March 7, 2002

The President's Ten-Point Plan to Improve Corporate Responsibility and Protect America's Shareholders

"Through stricter accounting standards and tougher disclosure requirements, corporate America must be made more accountable to employees and shareholders and held to the highest standards of conduct."

President George W. Bush
State of the Union Address,
January 29, 2002

PRESIDENTIAL ACTION

Today, President Bush outlined a ten-point plan that will improve corporate responsibility and help protect America's shareholders. These proposals are guided by the following core principles:

1) providing better information to investors
2) making corporate officers more accountable; and
3) developing a stronger, more independent audit system.

PRESIDENT'S TEN-POINT PLAN

1. Each investor should have quarterly access to the information needed to judge a firm's financial performance, condition, and risks.
2. Each investor should have prompt access to critical information.
3. CEOs should personally vouch for the veracity, timeliness, and fairness of their companies' public disclosures, including their financial statements.
4. CEOs or other officers should not be allowed to profit from erroneous financial statements.
5. CEOs or other officers who clearly abuse their power should lose their right to serve in any corporate leadership positions.
6. Corporate leaders should be required to tell the public promptly whenever they buy or sell company stock for personal gain.
7. Investors should have complete confidence in the independence and integrity of companies' auditors.
8. An independent regulatory board should ensure that the accounting profession is held to the highest ethical standards.
9. The authors of accounting standards must be responsive to the needs of investors.
10. Firms' accounting systems should be compared with best practices, not simply against minimum standards.

The Duty of Corporate Leaders

The strength of a country depends on the values of its citizens. Honesty, hard work, and compassion are needed to build a society rich in both goods and in goodness. Because our country values freedom so highly, we are especially dependent on the responsibility of our citizens. And our leaders, whether in business, charity, or public service, must reflect the best America has to offer – in both ability and integrity.

Publicly-traded corporations, in particular, need leaders of strong character. Public corporations are an essential part of the American economic system because they allow ordinary Americans to directly own part of the many firms that build our economy, without having to follow the daily operations of the firms. This system allows a single worker to own pieces of hundreds of different companies – creating a diverse and secure investment portfolio. A teacher in Boise can own part of a hospital in Dallas, a share of a manufacturer in Miami, and a piece of a software firm in San Francisco – without ever visiting the companies. America will always be a sound long-term investment, and every American should be able to participate in its success.

This broad-based ownership, however, imposes a special obligation on the officers and directors of a public corporation. Not only must they perform their duties in good faith to the best of their abilities, they must also disclose relevant facts to their shareholders – the real owners of the firm. Without accurate and timely information, investors cannot make informed investment decisions. Therefore, the President believes we must improve corporate disclosure, make corporate officers more accountable, and develop a stronger, more independent audit system – all without inviting endless litigation.

Most of these goals can be accomplished by the Securities and Exchange Commission within its existing authority. The President will work with the Congress to provide any additional legislative authority that the SEC determines that it needs. If these proposals are implemented, and if the leaders of public companies hold themselves to the highest standards of conduct, U.S. companies will reflect our most important values.

BETTER INFORMATION FOR INVESTORS

Investors base critical investment decisions on the financial information that the company provides. Each investor must have the opportunity to analyze the performance of the company, and the risks associated with an investment. Without proper disclosure, it is impossible for investors to make informed investment decisions, hold senior management accountable, and ensure that capital is efficiently allocated to firms. The American system of corporate disclosure is the best in the world. Yet, sometimes it seems that the needs of the average investor are forgotten by some companies. These disclosure practices can and should be significantly improved to better suit the needs of investors.

Proposal #1: *Each investor should have quarterly access to the information needed to judge a firm's financial performance, condition, and risks.* The SEC should ensure that public companies are responsible for providing investors a true and fair picture of themselves, and that this information is provided in "plain English." A company should disclose information in its control that a reasonable investor would find necessary to assess the company's value, without compromising competitive secrets. Today, disclosure practices have fallen behind the advanced techniques of corporate finance, allowing some firms to conceal the true risks faced by investors. And too many firms have mistaken GAAP compliance for proper disclosure.

Proposal #2: *Each investor should have prompt access to critical information.* Under this proposal, the SEC would expand the list of significant events requiring prompt disclosure between reporting periods.

MAKING CORPORATE OFFICERS ACCOUNTABLE

Unlike shareholders or even directors, corporate officers work full-time to promote and protect the well-being of the firm. The Chief Executive Officer, in particular, has a duty to oversee the entire firm on a full-time basis. Accordingly, the CEO bears particular responsibility for informing the firm's shareholders of its financial health. This obligation goes well beyond complying with "check-the-box" accounting. The CEO must be held responsible for informing investors about the financial condition of the public company and the risks it faces.

Proposal #3: *CEOs should personally vouch for the veracity, timeliness, and fairness of their companies' public disclosures, including their financial statements.* CEOs would personally attest each quarter that the financial statements and company disclosures accurately and fairly disclose the information of which the CEO is aware that a reasonable investor should have to make an informed investment decision. Currently, CEOs typically sign only a bare-bones certification regarding the annual financial statements.

Proposal #4: *CEOs or other officers should not be allowed to profit from erroneous financial statements.* Under this proposal, CEO bonuses and other incentive-based forms of compensation would be disgorged in cases of accounting restatements resulting from misconduct.

Proposal #5: *CEOs or other officers who clearly abuse their power should lose their right to serve in any corporate leadership positions.* This proposal, which would require legislation, would authorize the SEC to ban individuals from serving as officers or directors of publicly-held corporations if they engage in serious misconduct. At present, the SEC needs to seek court approval in certain types of cases.

Proposal #6: *Corporate leaders should be required to tell the public promptly whenever they buy or sell company stock for personal gain.* This proposal would cause companies to disclose significant transactions involving officers' and directors' purchase and sale of the company stock within two business days of execution. Currently, corporate leaders can go as long as a year or more without disclosing personal transactions with the company and as long as 40 days for open-market transactions.

Developing a Stronger, More Independent Audit System

Just as they do with corporate officers, investors depend on the judgment, integrity and competence of independent auditors. While auditors cannot prevent intentional deceit, they are a critical external check on corporate management. Accordingly, a sound audit system is essential to maintain investor confidence.

Accounting firms' expanded services, including tax planning and the design of information technology systems, are often offered alongside traditional audit services. In fact, the accounting profession is uniquely qualified to offer many services that strengthen corporations' controls, and the performances of some services can enhance the quality of audits. However, fees from such services must never compromise the integrity of an independent audit.

Proposal #7: *Investors should have complete confidence in the independence and integrity of companies' auditors.* Under this proposal, the SEC would establish guidelines for audit committees to prohibit an external auditor from performing any other service to an audit client, if the service compromises the independence of the audit. The SEC would also set forth prohibitions against the performance by an outside auditor of internal audit functions for the same client. In addition, the client would be forced to disclose in greater detail all fees paid to the auditing firm and its affiliates. Finally, the audit committees would directly report their recommended choice of auditor to the shareholders.

Proposal #8: *An independent regulatory board should ensure that the accounting profession is held to the highest ethical standards.* Under this proposal, an independent regulatory board would be established, under the supervision of the SEC, to develop standards of professional conduct and competence. This board would have the ability to monitor, investigate, and where needed, enforce its ethics principles by punishing individual offenders.

Proposal #9: *The authors of accounting standards must be responsive to the needs of investors.* Under this proposal, the SEC would exercise more effective and broader oversight of the Financial Accounting Standards Board, insure its independence, and require prompt promulgation of standards that reflect economic reality rather than compliance with technical requirements. This change would help ensure that the accounting standards are more responsive to the needs of investors, rather than based on the interests of professional accountants.

Proposal #10: *Firms' accounting systems should be compared with best practices, not simply against minimum standards.* Under this proposal, auditors would be required to compare the quality of a company's financial controls with the best practices of the industry and communicate its findings to the audit committee. The audit committee would be obligated to discuss these findings and the improvement of practices with management, the Board of Directors, and the auditor, and to act independently to require improvement where necessary.

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FORM	SUBJECT/TITLE	PAGES	DATE	RESTRICTION(S)
List	[CEO Questions]	1	N.D.	P5;

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Sumerlin, D. Marcus (Marc)
FOLDER TITLE:
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2014-0373-F

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FORM	SUBJECT/TITLE	PAGES	DATE	RESTRICTION(S)
Report	Corporate Governance	3	07/03/2002	P5; P6/b6;

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FORM	SUBJECT/TITLE	PAGES	DATE	RESTRICTION(S)
Speech	Remarks on Corporate Responsibility	8	07/09/2002	P5; P6/b6;

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FORM	SUBJECT/TITLE	PAGES	DATE	RESTRICTION(S)
Outline	New Policy Options for President's Remarks	1	N.D.	P5;

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FORM	SUBJECT/TITLE	PAGES	DATE	RESTRICTION(S)
Outline	Chairman Leahy's S.2010...	2	N.D.	P5;

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Analyst Conflict of Interest

On April 24, 2002, SEC announced it commenced a "formal inquiry" into market practices regarding research analysts and investment banks. This is equivalent to opening of civil investigation into wrongdoing.

On May 8, 2002, SEC approved proposed changes to rules of NASD and NYSE to address conflicts of interest when research analysts recommend securities:

- Prohibits *quid pro quo* between favorable research and investment banking business; imposes 40 day quiet period between IPO and analyst research by investment bank.

- Prohibits research analysts from being supervised by investment banking departments.

- Prohibits securities firms from tying analyst compensation to specific investment banking transactions.

- Requires disclosure in research report of any compensation received by company over last 12 months or expected during next three months.

- Restricts analysts from investing pre-IPO in companies they takes public; prohibits analysts from trading against most recent recommendations; imposes "blackout period" for analysts investing in companies 30 days prior or 5 days after report issued.

- Requires analysts and investment banks to disclose if they own shares in companies being covered.

- Requires disclosure in research reports regarding the meaning of the companies' ratings.

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FORM	SUBJECT/TITLE	PAGES	DATE	RESTRICTION(S)
Memorandum	Corporate Responsibility Speech - To: Joshua Bolten - From: Marc Sumerlin	3	07/02/2002	P5;

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FORM	SUBJECT/TITLE	PAGES	DATE	RESTRICTION(S)
Outline	Obstruction of Justice	5	N.D.	P5;

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18 U.S.C. §983 (j)
(j) Restraining orders; protective orders.--

(1) Upon application of the United States, the court may enter a restraining order or injunction, require the execution of satisfactory performance bonds, create receiverships, appoint conservators, custodians, appraisers, accountants, or trustees, or take any other action to seize, secure, maintain, or preserve the availability of property subject to civil forfeiture--

(A) upon the filing of a civil forfeiture complaint alleging that the property with respect to which the order is sought is subject to civil forfeiture; or

(B) prior to the filing of such a complaint, if, after notice to persons appearing to have an interest in the property and opportunity for a hearing, the court determines that--

(i) **either that**

(a) there is a substantial probability that the United States will prevail on the issue of forfeiture, **or**

(b) the Attorney General, the Deputy Attorney General or the United States Attorney has certified that (1) the civil forfeiture action is in brought in connection with a criminal action that will be brought alleging a violation of 18 U.S.C. §§ 1341, 1343, 1344 or 1347 or 15 U.S.C. §78(j), and (2) the property is proceeds or assets traceable to proceeds of this criminal conduct, and

(ii) that failure to enter the order will result in the property being destroyed, removed from the jurisdiction of the court, or otherwise made unavailable for forfeiture; and

(iii) the need to preserve the availability of the property through the entry of the requested order outweighs the hardship on any party against whom the order is to be entered.

(2) An order entered pursuant to paragraph (1)(B)**(i)(a)** shall be effective for not more than 90 days, unless extended by the court for good cause shown, or unless a complaint described in paragraph (1)(A) has been filed.

(3) An order entered pursuant to paragraph (1)(B)(i)(b) shall be effective for not more than 180 days, unless extended by the court for good cause shown, or unless a complaint described in paragraph (1)(A) has been filed.

(4) A temporary restraining order under this subsection may be entered upon application of the United States without notice or opportunity for a hearing when a complaint has not yet been filed with respect to the property, if the United States demonstrates that there is probable cause to believe that the property with respect to which the order is sought is subject to civil forfeiture and that provision of notice will jeopardize the availability of the property for forfeiture. Such a temporary order shall expire not more than 10 days after the date on which it is entered, unless extended for good cause shown or unless the party against whom it is entered consents to an extension for a longer period. A hearing requested concerning an order entered under this paragraph shall be held at the earliest possible time and prior to the expiration of the temporary order.

(j) (4)
(4) The court may receive and consider, at a hearing held pursuant to this subsection, evidence and information that would be inadmissible under the Federal Rules of Evidence.

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FORM	SUBJECT/TITLE	PAGES	DATE	RESTRICTION(S)
List	Corporate Governance	1	07/02/2002	P5;

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FORM	SUBJECT/TITLE	PAGES	DATE	RESTRICTION(S)
Report	Corporate Responsibility	4	N.D.	P5;

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COLLECTION:
National Economic Council
SERIES:
Sumerlin, D. Marcus (Marc)
FOLDER TITLE:
Banking : Corporate Governance [Folder 4] [2]
FRC ID:
5551
OA Num.:
803
NARA Num.:
721

FOIA ID and Segment:
2014-0278-F
2014-0373-F

RESTRICTION CODES

Presidential Records Act - [44 U.S.C. 2204(a)]

P1 National Security Classified Information [(a)(1) of the PRA]
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PRM. Personal record misfile defined in accordance with 44 U.S.C. 2201(3).

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FORM	SUBJECT/TITLE	PAGES	DATE	RESTRICTION(S)
List	Corporate Governance	1	N.D.	P5;

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FORM	SUBJECT/TITLE	PAGES	DATE	RESTRICTION(S)
Memorandum	Corporate Responsibility Speech - To: Joshua Bolten - From: Marc Sumerlin	3	07/02/2002	P5;

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