

To Improve Accuracy & Reliability of Corporate Disclosure



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What is Disclosure?

- To inform
- To lay bare
- To give feedback
- To be transparent



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Why Disclosure?

- Management needs to know
- Employees need to know
- Shareholders need to know
- Investors need to know
- Stakeholders need to know
- Government needs to know
- Basic human need
- Fundamental to trust

"The corporate governance framework should ensure that timely and accurate disclosure is made on all material matters regarding the corporation, including the financial situation, performance, ownership, and governance of the organization" [OECD IV]



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Why Disclosure?

"The corporate governance framework should ensure that timely and accurate disclosure is made on all material matters regarding the corporation, including the financial situation, performance, ownership, and governance of the organization"

[OECD IV]



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Investor Trust Has Been Breached

- | | |
|------------|--------------|
| • ENRON | • AHOLD |
| • WORLDCOM | • ABB |
| • TYCO | • VIVENDI |
| • PARMALAT | • MANNESMANN |
| • SHELL | • SK TELECOM |
| • ADECCO | • TOYOTA |
| • UTI | • SKANDIA |
| • NYSE | • DISNEY |
| • AIG | • HOLLINGER |



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Sarbanes-Oxley Act

The Most Comprehensive Piece of Legislation on Disclosure



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Sarbanes-Oxley Act of 2002

The most far-reaching reforms of American business practices since the time of Franklin Delano Roosevelt."

President George W. Bush, upon signing of the Sarbanes-Oxley Act of 2002 ("SOX")



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What is Sarbanes-Oxley?

- SOX is sweeping legislation, effecting significant changes to laws affecting officers, directors and reporting obligations of public companies, and mandating a myriad of new regulations to prevent securities fraud and other abuses.
- The Act was signed into law on July 30, 2002 and includes eleven titled sections: Title I Public Company Accounting Oversight Board(Sections 101-109)
- Title II Auditor Independence(Sections 201-209)
- Title III Corporate Responsibility(Sections 301-308)



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What is Sarbanes-Oxley? (cont)

- Title IV Enhanced Financial Disclosures (Sections 401-409)
- Title V Analyst Conflicts of Interest (Section 501)
- Title VI Commission Resources and Authority (Sections 601-604)
- Title VII Studies and Reports (Sections 701-705)
- Title VIII Corporate and Criminal Fraud Accountability (Sections 801-807)



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What is Sarbanes-Oxley? (cont)

- **Title IX White Collar Crime Penalty Enhancements (Sections 901-906)**
- **Title X Corporate Tax Returns (Section 1001)**
- **Title XI Corporate Fraud and Accountability (Sections 1101-1107)**

Some of the provisions of Sarbanes-Oxley became effective upon its enactment, although many required (and still require) rulemaking by the Securities and Exchange Commission ("SEC").



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Applicability of Sarbanes-Oxley?

- **Most of Sarbanes (Titles I-VII and X) directed toward "issuers" of securities (whether U.S. or non-U.S.)**
- **"Issuer" defined as any issuer that:**
 - has securities registered under Section 12 of the Securities Exchange Act of 1934 ("Exchange Act"); or
 - is required to file reports with the SEC under Section 15(d) of the Exchange Act; or
 - has filed a registration statement under the Securities Act of 1933 ("Securities Act"), which has not become effective or been withdrawn.



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Applicability of Sarbanes-Oxley?

- Some provisions apply to "persons" (whether or not issuers).
- Securities, mail and wire fraud (various sections of Titles IX and XI)
- Obstruction of justice (various sections of Titles VIII and XI)
- Retaliation against whistleblowers (various sections of Titles VIII and XI)



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Non-U.S. Company Exemption

- **Law contains no specific exemption for non-U.S. companies.**
- **SEC rules provide some accommodations for "foreign private issuers."**

• A "foreign private issuer" is a company that is incorporated outside the U.S. and in which:

- U.S. residents do not hold a majority of the shares; or
- if U.S. residents do hold a majority of the shares, then
 - a majority of its directors and officers are not U.S. citizens or residents,
 - its business is administered from outside the U.S. and
 - a majority of its assets are located outside the U.S.



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Non-U.S. Company Compliance Based on U.S. Contacts/Activities

No Compliance

No contacts with U.S. (no business transactions, no importing/exporting, no offices or employees)

No contractual agreement to comply



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Non-U.S. Company Compliance Based on U.S. Contacts/Activities (cont.)

- Full Compliance**
- Criminal Provisions
 - Whistleblower Provisions
 - CEO/CFO Certification Provisions
 - Corporate Governance Provisions
 - Audit Committee Provisions
 - Auditor Provisions
 - Disclosure Provisions
 - Attorney Conduct Provisions

- Securities listed on NYSE, AMEX or Nasdaq, either directly or through Levels II or III ADR's.¹
- Filing Form 20-F's and Form 6-K's.^{2,3}
- Filed a Registration Statement with SEC.

American Depositary Receipt, which is a stock that trades in ADR's that trade on either the NYSE, AMEX or Nasdaq. Level II ADR's that are issued as part of a public offering in the U.S.
Form 20-F is an annual report filed by foreign private issuers under Section 13(a) of the Exchange Act. Form 6-K is required to be filed by foreign private issuers to furnish information required by the public in the country of its domicile. (1) Form 6-K is required to be filed by foreign private issuers in which its securities are traded. (2) Securities in custody holder. The report must be furnished promptly after each material is made public. This form is not considered "filed" for Section 18 liability purposes. This is the only information furnished by foreign private issuers under annual reports, since such issuers are not required to file on Form 10-K or 10-Q.
Foreign private issuers "voluntarily" file Form 20-F's and furnishing Form 6-K's that is covering continued in relationships or other disclosures must comply with the provisions of SOX that relate to disclosures in such forms.



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Non-U.S. Company Compliance Based on U.S. Contacts/Activities (cont.)

- Some Compliance
- Criminal Provisions
 - Securities, mail and wire fraud
 - Obstruction of justice
 - Whistleblower Provisions

"Business only contacts; no securities listed on a U.S. exchange or trading over-the-counter;"

Level I ADR's trading in the U.S.;^{1*}

American Depositary Receipt, which is a stock that trades in the U.S., but which represent a specified number of shares in a non-U.S. Company that are acquired locally by a U.S. bank and then resold in the U.S. by the bank. Level I ADR's are ADR's that trade on the Over-the-Counter Bulletin Board.
Although legally compliance with only certain provisions is required, companies in this category may find that their lenders, institutional investors and insurers will require compliance with SOX's corporate governance provisions contained in the other titles.



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Whistleblower Provisions

- Civil Action

- **Section 806 (effective July 30, 2002)**

- Right of civil action protecting whistleblowers.

- Criminal Sanctions

- **Section 1107 (effective July 30, 2002)**

- Makes it a crime to retaliate against a whistleblower.

- Punishable by fine under applicable U.S. federal sentencing guidelines and imprisonment for up to 10 years.



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CEO/CFO Certification Provisions

- 906 Certificate

- **Section 906 (effective July 30, 2002)**

- CEO/CFO must certify each periodic report filed:

- » - Complies with the requirements of Section 13(a) or 15(d) of the Exchange Act, and
- » - Fairly represents the financial condition and results of operations of the issuer.

- **Section 906 is a criminal provision.**
- **Must accompany all reports filed with the SEC on Form 20-F.**



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CEO/CFO Certification Provisions

302 certification

- **Section 302 (effective August 29, 2002)**
 - CEO/CFO must certify in each annual report on Form 20-F:
 - » Reviewed;
 - » Accurate and complete;
 - » Fairly presents financial condition, results of operations and cash flows of the company;
 - » Disclosure controls and procedures;
 - » Disclosed to auditors and audit committee all deficiencies in internal accounting controls and any fraud involving management; And
 - » Any significant changes in internal controls or any corrective actions with regard to deficiencies and weaknesses.
- **Not required for reports on Form 6-K, even when they include financial information, because Form 6-K is considered "furnished," not "filed."**



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Corporate Governance Provisions

Loans to Officers and Directors

- **Section 402 (effective July 30, 2002)**
 - Prohibits loans to or for any director or executive officer.
- **Does not apply to loans outstanding on July 30, 2002; material modifications or renewals are prohibited.**

Forfeiture of Bonuses by CFO and CEO

- **Section 304 (effective July 30, 2002)**
 - Accounting restatement due to misconduct, the CEO and CFO must pay back:
 - Any bonus or other incentive-based compensation; and
 - Any profits from the sale of securities.
- **No definition of "misconduct."**
- **Only CEO's and CFO's misconduct or misconduct of any employee?**



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Corporate Governance Provisions

Insider Trades During Pension Fund Blackout Periods

- **Section 306; SEC adopted new Regulation BTR (effective January 26, 2003)**
 - Directors, executive officers cannot buy or sell any equity security of the issuer during a pension fund "blackout period."
 - Notice required; file as exhibit to Form 20-F.
- **Exemptions for foreign private issuers.**
 - Plans approved by a foreign taxing authority or are eligible for preferential treatment under foreign tax laws not subject to Regulation BTR.
 - Plans maintained by foreign private issuers not subject to Regulation BTR if the blackout period affects less than 50% of the total number of participants located in the U.S., and the number of U.S. participants affected by the blackout period does not exceed 15% or 50,000 of the total worldwide employees of the issuer.



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Corporate Governance Provisions

Code of Ethics

- **Section 406; SEC adopted new rules (effective for fiscal years ending on or after June 15, 2003)**
 - Issuers must:
 - Disclose in Form 20-F whether it has a code of ethics; if not, explain why;
 - Make copy available to the public; and
 - Disclose changes or waivers.
- **Options for making codes of ethics available to the public:**
 - Exhibit to Form 20-F;
 - Post copy on website; include website address in Form 20-F; or
 - Undertake in Form 20-F to provide a free copy.
- **Not required to disclose changes and waivers on Form 6-K.**



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Audit Committee Provisions

Financial Expert

- **Section 407; SEC adopted new rules (compliance required by July 31, 2005)**
 - Must disclose in Form 20-F identity and independence of financial expert; if not, explain why.
- **Some accommodations for foreign private issuers.**
- Independence and Responsibilities
- **Section 301; SEC adopted new rules (compliance required by July 31, 2005)**
 - NYSE, AMEX and Nasdaq must prohibit the listing of any issuer that is not in compliance with audit committee standards.
- **Some accommodations for foreign private issuers.**



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Auditor Provisions

Auditor Independence

- **Section 303(a); SEC adopted new rules (effective June 27, 2003)**
 - Prohibits the improper influence of auditors.
- **Various sections under Title II; SEC adopted new rules (effective May 6, 2003; certain transition rules)**
 - New rules designed to enhance the independence of auditors;
 - Identify prohibited non-audit services and require pre-approval process for audit and permitted non-audit services;
 - Require mandatory rotation of "audit partners" and a mandatory "cooling off" period;
 - Require the auditor to report certain information to audit committee;
 - Prohibits the delivery of audit services for lack of independence; and
 - Require disclosure in Form 20-F (beginning with the 2003 fiscal year) regarding services, fees and approval process.



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Auditor Provisions

Public Company Accounting Oversight Board

- **Sections 101-109**
 - Creates Public Company Accounting Oversight Board to oversee the audit of issuers that are subject to U.S. securities laws.
 - Each public accounting firm that prepares or issues an audit report with respect to an issuer must register with the Board.
 - Foreign public accounting firms that prepare or furnish an audit report with respect to an issuer are subject to the rules of the Board.
 - The Board (subject to SEC approval) has authority to exempt any foreign public accounting firm.



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Disclosure Provisions

Use of Non-GAAP Financial Measures

- **Section 401(b). SEC adopted new Regulation G (effective March 28, 2003) and new disclosure rules for Form 20-F (effective for fiscal years ending on or after March 28, 2003)**
- **Regulation G:**
 - If disclose or release non-GAAP financial measures, must present most directly comparable GAAP financial measure (in equal or greater prominence).
- **Form 20-F requires disclosure of most directly comparable GAAP financial measure if a non GAAP financial measure is presented:**
 - GAAP must be of equal or greater prominence;
 - Reconciliation to GAAP required;
 - Statement re: Why non-GAAP presentation is useful.



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Disclosure Provisions (cont.)

- **Regulation G does not apply to foreign private issuers if:**
 - The securities of the issuer are listed or quoted outside the U.S.;
 - The non-GAAP financial measure is not derived from or based on a measure calculated in accordance with U.S. GAAP; and
 - The disclosure is released only outside the U.S. and is not targeted at persons in the U.S., or is released in the U.S. contemporaneously with its release outside the U.S.
- **Regulation G does not apply to foreign private issuers if:**



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Disclosure Provisions (cont.)

- A non-GAAP financial measure included in Form 20-F that is otherwise prohibited will be permitted by a foreign private issuer if:
 - Required or expressly permitted by the standard-setter that establishes GAAP used in the financial statements; and
 - Included in the annual report or financial statements used in its home country.
- Off-Balance Sheet Arrangements and Contractual Obligations
- **Section 401(a); SEC adopted new rules (effective for fiscal years ending on or after June 15, 2003)**
 - Disclose all material off-balance sheet arrangements and contractual obligations in MD&A section of annual reports on Form 20-F.

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Disclosure Provisions (cont.)

Internal Controls

- **Section 404**
 - SEC must issue rules requiring that each annual report contains an internal control report regarding management's assessment of the effectiveness of internal controls.
 - Auditors must attest to and report on the assessment.

Plain English Updates

- **Section 409**
 - Each issuer must disclose in "plain English" and on a "rapid and current basis" such additional information concerning material changes in its financial condition or operations as the SEC determines, by rule, is necessary for the protection of investors in the public interest.
 - No deadline for SEC rulemaking under this section and the SEC has not yet proposed any rules.

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Attorney Conduct Provisions

Standards of Conduct for Attorneys

- **Section 307; SEC adopted new rules (effective August 5, 2003)**
 - Governs conduct of attorneys who represent public companies before the SEC:
 - Requires up the ladder reporting and withdrawal if no agreement
- **Does not apply to foreign attorneys if compliance is prohibited by applicable foreign laws.**
- **Does not apply to "non-appearing foreign attorneys." A "nonappearing foreign attorney" is an attorney who:**
 - Is admitted to practice in a jurisdiction outside of the U.S.;
 - Does not give legal advice regarding U.S. law; and
 - Conducts activities that would constitute "appearing and practicing" before the SEC only (a) incidentally to foreign law practice or (b) in consultation with U.S. counsel.

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Internal Controls: Defined (SEC)

A process designed by, or under the supervision of, the registered principal executive and principal financial officers, or persons performing similar functions, and effected by the registrant's board of directors, management reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles and includes those policies and procedures that:

- (1) Pertain to the maintenance of records that in reasonable detail accurately and fairly reflect the transactions and dispositions of the assets of the registrant
- (2) Provide reasonable assurance that transactions are recorded as necessary to permit preparation of financial statements in accordance with generally accepted accounting principles, and that receipts and expenditures of the registrant are being made only in accordance with authorization of management and directors of the registrant
- (3) Provide reasonable assurance regarding prevention or timely detection of unauthorized acquisition, use or disposition of the registrant's assets that could have a material effect on the financial statements.

WORLD COUNCIL FOR CORPORATE GOVERNANCE U.S. Securities and Exchange Commission, Final Rule 33-828, 2003 070305 31

Internal Controls: Responsibility

- **Who is responsible for IC system?**
 - Sr. management has primary responsibility
 - Functional area managers implement
 - Internal/external auditors test IC system
 - CEO/CFO, BOD, audit crime and int/ext auditors responsible for results
- **What about process owners or users?**
- **Common thread = IT**

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What Are "Disclosures Controls & Procedures"?

Section 302 requires establishment of disclosure controls and procedures to ensure "information to be disclosed is

- recorded, processed, summarized and reported within the time periods
- communicated to company's principal executive officer and principal financial officer to allow timely decisions regarding required disclosure"

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CEO and CFO Responsibilities

CEO and CFO are personally responsible for

- Establishing and maintaining disclosure controls and procedures
- Designing disclosure controls and procedures to ensure material information is made known to the CEO and CFO
- Evaluating the effectiveness of the company's disclosure controls within 90 days or less
- Presenting in each quarterly or annual report the conclusions about the effectiveness of the disclosure controls
- Disclosing to the company's auditor
 - All significant deficiencies in the design or operation of internal controls
 - Any fraud, whether or not material
- Indicating in each quarterly or annual report any significant changes in internal controls that could significantly affect internal controls

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CEO and CFO Certification

CEO and CFO certify in each quarterly/annual report that they are responsible for establishing and maintaining disclosure controls

- Designed such controls and procedures to ensure that material information relating to the company is made known to them
- Evaluated the effectiveness of the company's disclosure controls

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Corporate Fear of SOX

"Big time executives have to eat worms, jump out of a moving car and for the final test, have to sign a Sarbanes-Oxley 404 Certificate"

Stephen M. Cutler
SEC Enforcement Chief


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SOX – 3 Years on

76 cases filed against lawyers

“I hope you will not expend significant time, money and energy devising structures aimed at evading requirements and trying to achieve an accounting or disclosure result that . . . artfully dodges the rule's purpose,”


William H. Donaldson
SEC Chairman
4 March 2004



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Implementation Has Shortchanged the Investor

- **Audit fees have doubled**
- **The Big Four cannot cope**
- **Does not provide competition and security**
- **Smaller clients being left out**



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The very accounting firms whose integrity was besmirched


ARE PROFITING MOST FROM SOX



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Challenges Ahead

- **Section 404 must not become an expensive check box**
- **Regulation should not be a surrogate to restrain human enterprise**
- **Auditors must work on behalf of investors and not act as agents of regulators**
- **The process must not imperil the exercise of judgment**




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Challenges Ahead

Excessive Audit Fees

• PRICE WATERHOUSE	134%
• KPMG	109%
• E&Y	96%
• DELOITTE	78%



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Challenges Ahead

Virulent competition & capitalism has spawned a culture of concealment.


Lord Penrose
about Equitable Life



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Astonishing Increase in Disclosure Requirements

SOX
Updated International Accounting Standards
Derek Higgs
IFRS
QFR
Basel II (Revised Framework)
Disclosure of Tax Avoidance Schemes
Environmental Reporting Regulations
Employee Consultation Requirements
Reporting Employees Having Shares to Inland Revenue



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We Are Entering An Extraordinary Age of Transparency



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We have no alternative

but to DISCLOSE all



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Business Must Be Visible To

**SHAREHOLDERS
CUSTOMERS
EMPLOYEES
NEIGHBOURS
SOCIETY**



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Three Types of Truth

- Truth that you tell others
- Truth that you tell yourself
- Truth that you don't even tell yourself



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POWER OF

**Internet
E-mail
Computer
Technology
The NET Generation**



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The Nasty Web

**Consumers compare products
Whistleblowers upload embarrassing details
Disgruntled employees wash dirty linen
Activist publicise transgressions
Investors learn of finance shenanigans**



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White Knights of Banking

**CITI
CSFB
MERRYLL LYNCH**

**Paid
\$1.4 billion
In Fines**



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**Strobe like glare
of public scrutiny
has nested the veil
of secrecy and made
the corporation**

NAKED



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Drivers of Transparency

**Economics: Business Webs and Knowledge Works
Technology: Media and the Internet
Demographics: The Power of Net Generation
Socio-political Changes: The Rising Global Civil
Society
Fusion of Economics, Technology and Socio-
political Changes**



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Transparency Payoffs

- Constructive relationships
- Improved quality
- Lower product costs
- Openness brings trust
- Lower transaction costs
- Greater partnerships/collaborations
- Customer involvement
- Employee involvement
- Innovation
- Brand building
- Competitive Advantage



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**Only the Firms
Who Harness
The Power of
TRANSPARENCY
Will Thrive**



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Make Ethics Work for Your Business

Make your goal - to make a difference
Go beyond the bottomline
Be utterly transparent
Seven Golden Words



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The Power of Owning a FAILURE



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Thank You



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