

- The report fully complies with the requirements of section 13(a) or 15(d) of the Exchange Act; and

- The information contained in the report fairly presents, in all material respects, the financial condition and results of operations of the issuer.

Section 906 expressly creates new criminal penalties for a knowingly or willfully false certification.³¹ This provision became effective on July 30, 2002. As discussed below, we propose to require the inclusion of the certifications required by sections 302 and 906 of the Act as exhibits to the periodic reports to which they relate.

II. Proposed Amendments

A. Section 302 Certifications

To implement section 302's directive that the required certifications be "in" each quarterly or annual report filed or submitted under section 13(a) or 15(d) of the Exchange Act, we amended Forms 10-Q, 10-QSB, 10-K, 10-KSB, 20-F and 40-F under the Exchange Act to require the certifications to appear immediately after the signature block at the end of these reports. Because the certifications are part of the text of the report to which they relate, however, investors are not able to easily access the certifications through our Electronic Data Gathering, Analysis and Retrieval ("EDGAR") system. In addition, the Commission staff must review the actual text of a quarterly or annual report to confirm that the certifications have been filed.

Consequently, we propose to amend our rules and forms to require issuers to file these certifications as an exhibit to the periodic reports to which they relate. Specifically, we propose to amend Item 601 of Regulations S-B and S-K to add the section 302 certifications to the list of required exhibits as new Item 31.³² With this change, investors using third-party databases to access an issuer's Exchange Act reports should be able to locate the section 302 certifications more easily and efficiently. In addition, the Commission staff should be able to search a periodic report more expeditiously to verify that the required certifications have been

included in the report and to review the certifications.

The signatures appearing at the end of the certifications that we propose to require as an exhibit would continue to be part of the periodic reports to which they relate and, therefore, would be subject to the signature requirement of our rules.³³ Aside from our proposal to require issuers to file the section 302 certifications as an exhibit,³⁴ we do not propose in this release to modify any other substantive aspect of the certification requirements under Exchange Act Rules 13a-14 and 15d-14.³⁵ In particular, we note that the consequences for failing to file a required certification or making a false or misleading certification would not be affected by the proposed amendments.³⁶

B. Section 906 Certifications

Each periodic report containing financial statements filed by an issuer with the Commission pursuant to section 13(a) or 15(d) of the Exchange Act must "be accompanied by" a

³³ See Exchange Act Rule 12b-11(d) [17 CFR 240.12b-11(d)]. Rule 302 of Regulations S-T applies to the signatures appearing in a certification. Regulation S-T contains the rules prescribing requirements for filing information electronically and the procedures for making such filings. Instructions for electronic filing, including technical formatting requirements, are set forth in the EDGAR Filer Manual. See Rule 301 of Registration S-T [17 CFR 232.301].

³⁴ In connection with this change, we are proposing to revise Exchange Act Rules 13a-14(b) and 15d-14(b) and Investment Company Rule 30a-2(b) to delete from those paragraphs the detailed description of the contents of the required certifications and to revise the instructions to Forms 10-Q, 10-QSB, 10-K, 10-KSB and N-CSR to delete the references to the section 302 certification requirements. As proposed, it is contemplated that the specific form and content of the required certifications will be set forth in the exhibit item (or in the appropriate item of the form, in the case of Forms 20-F, 40-F, 40-F and N-CSR). Further, we are proposing to move the definition of the term "disclosure controls and procedures" from Exchange Act Rules 13a-14(c) and 15d-14(c) and Investment Company Act Rule 30a-2(c) to new Exchange Act Rules 13a-15(c) and 15d-15(c) and Investment Company Act Rule 30a-3(c), respectively, and to redesignate the subsequent paragraphs of Exchange Act Rules 13a-14 and 15d-14 and Investment Company Act Rule 30a-2. Finally, we are proposing technical conforming amendments to Exchange Act Rules 12b-15, 13a-14(a), 13a-14(d) (proposed to be redesignated as Rule 13a-14(c), 13a-14(e) (proposed to be redesignated as Rule 13a-14(d), 13a-14(f) (proposed to be redesignated as Rule 13a-14(e), 13a-15(a), 15d-14(a), 15d-14(d) (proposed to be redesignated as Rule 15d-14(c)), 15d-14(e) (proposed to be redesignated as Rule 15d-14(d)), 15d-14(f) (proposed to be redesignated as Rule 15d-14(e)) and 15d-15(a).

³⁵ We note, however, that we have proposed substantive revisions to these rules in conjunction with our consideration of new rules implementing section 404 of the Act [15 U.S.C. 7262]. See Release No. 33-8138 (Oct. 22, 2002) [67 FR 66208]. These proposals are pending.

³⁶ See the Adopting Release at Section II.B.6.

written statement by the issuer's chief executive and financial officers containing the information specified in section 906 of the Act (referred to in this release as the "section 906 certifications").³⁷ After discussions with the Department of Justice, we propose to amend our rules and forms to require issuers to furnish these certifications as an exhibit to the periodic reports to which they relate. Specifically, we propose to amend Exchange Act Rules 13a-14 and 15d-14 to require the submission of the section 906 certifications with the periodic reports to which they relate,³⁸ and to amend Item 601 of Regulations S-B and S-K to add the section 906 certifications to the list of required exhibits as new Item 32. We also propose to amend Investment Company Act Rule 30a-2 to require the submission of the section 906 certifications with the periodic reports on Form N-CSR to which they relate³⁹ and Item 10 of Form N-CSR to add the section 906 certifications as a required exhibit.⁴⁰ Because the section 906 certification requirement applies to periodic reports containing financial statements that are filed by an issuer pursuant to section 13(a) or 15(d) of the Exchange Act, the proposed exhibit requirement would only apply to reports on Form N-CSR filed under these sections and not to reports on Form N-CSR that are filed under the

³⁷ This certification requirement applies to quarterly reports on Forms 10-Q and 10-QSB, annual reports on Forms 10-K, 10-KSB, 20-F and 40-F and semi-annual reports on Form N-CSR containing financial statements. It does not apply to reports that are current reports, such as reports on Forms 6-K [17 CFR 249.306] and 8-K [17 CFR 249.308], rather than periodic reports. In addition, this certification requirement does not apply to issues of asset-backed securities that are not required to file financial statements in their reports. Such entities typically are passive pools of assets, without an audit committee or board of directors or persons acting in a similar capacity. Accordingly, most asset-backed issuers are currently not subject to section 906. Similarly, unit investment trusts ("UITs"), as defined in section 4(2) of the Investment Company Act [15 U.S.C. 80a-4(2)], and small business investment companies ("SBICs") licensed under the Small Business Investment Act of 1958 are currently not subject to section 906. UITs and SBICs file reports on Form N-SAR pursuant to section 13(a) or 15(d) of the Exchange Act, and reports on Form N-SAR do not contain financial statements.

³⁸ See proposed Exchange Act Rules 13a-14(b) and 15d-14(b). As discussed in n. 34 above, we are proposing to delete existing Exchange Act Rules 13a-14(b) and 15d-14(b).

³⁹ See proposed Investment Company Act Rule 30a-2(b).

⁴⁰ See proposed Item 10(b) of Form N-CSR. Existing Items 10(a) and 10(b) of Form N-CSR would be redesignated as Items 10(a) and 10(a)(2). We also are proposing technical conforming amendments to Investment Company Act Rules 8b-15 and 30a-2(d) (proposed to be redesignated as Rule 30a-2(c)).

³¹ See section 1350(c) [18 U.S.C. 1350(c)]. An individual who willfully fails to submit a certification required by section 1350 may be subject to criminal prosecution under section 32 of the Exchange Act [15 U.S.C. 78ff]. See section 3(b)(1) of the Act [15 U.S.C. 7202(b)(1)].

³² We recently adopted Form N-CSR, to be used by registered management investment companies to file certified shareholder reports with the Commission. See Release No. IC-25914 [Jan. 27, 2003] [68 FR 5348]. As adopted, Form N-CSR requires the section 302 certifications to be filed as an exhibit to a report on Form No-CSR. Item 10(b) of Form No-CSR.