

“Exhibits” section of these reports. This relocation should enhance the ability of investors and the Commission staff to verify that the certifications have, in fact, been submitted with the Exchange Act reports to which they relate and to review the contents of the certifications to ensure compliance with the applicable requirements. The proposed amendments also would streamline compliance with section 1350 of Title 18 of the United States Code, added by section 906 of the Act, and should enable investors, the Commission staff and the Department of Justice, which has responsibility for enforcing section 1350, to verify submission and efficiently review the form and content of the certifications required by that provision.

We do not believe that the proposed amendments would impose any burden on competition. Depending on how an issuer’s chief executive and financial officers presently satisfy the section 906 certification requirements, issuers may incur some additional costs in submitting these certifications as an exhibit to their periodic reports. While these costs are difficult to quantify, we believe that they would be nominal. We request comment on whether the proposed amendments, if adopted, would promote competition. Commenters are requested to provide empirical data and other factual support for their views to the extent possible.

#### **X. Promotion of Efficiency, Competition and Capital Formation**

Section 3(f) of the Exchange Act <sup>75</sup> and section 2(c) of the Investment Company Act <sup>76</sup> require us, when engaging in rulemaking where we are required to consider or determine whether an action is necessary or appropriate in the public interest, to consider, in addition to the protection of investors, whether the action will promote efficiency, competition and capital formation. The proposed amendments would relocate the certifications required by Exchange Act

Rules 13a–14 and 15d–14 from the text of quarterly and annual reports filed or submitted under section 13(a) or 15(d) of the Exchange Act to the “Exhibits” section of these reports. This relocation should enhance the ability of investors and the Commission staff to verify that the certifications have, in fact, been submitted with the Exchange Act reports to which they relate and to review the contents of the certifications to ensure compliance with the applicable requirements. The proposed amendments also would streamline compliance with section 1350 of Title 18 of the United States Code, added by section 906 of the Act, and should enable investors, the Commission staff and the Department of Justice, which has responsibility for enforcing section 1350, to verify submission and efficiently review the form and content of the certifications required by that provision.

We do not believe that the proposed amendments would impose any burden on competition. Nor are we aware of any impact on capital formation that would result from the proposed amendments. Depending on how an issuer’s chief executive and financial officers presently satisfy the section 906 certification requirements, issuers may incur some additional costs in submitting these certifications as an exhibit to their periodic reports. While these costs are difficult to quantify, we believe that they would be nominal. We request comment on whether the proposed amendments, if adopted, would affect competition, efficiency and capital formation. Commenters are requested to provide empirical data and other factual support for their views to the extent possible.

#### **XI. Statutory Authority**

The amendments described in this release are being proposed under the authority set forth in sections 13, 15(d), 23(a) and 36 of the Exchange Act, sections 8, 30 and 38 of the Investment

Company Act and sections 3(a), 302 and 906 of the Sarbanes-Oxley Act of 2002.

#### **List of Subjects**

##### *17 CFR Part 228*

Reporting and recordkeeping requirements, Securities, Small businesses.

##### *17 CFR Parts 229, 240 and 249*

Reporting and recordkeeping requirements, Securities.

##### *17 CFR Parts 270 and 274*

Investment companies, Reporting and recordkeeping requirements, Securities.

#### **Text of the Proposed Amendments**

For the reasons set out in the preamble, the Commission proposes to amend title 17, chapter II, of the Code of Federal Regulations as follows:

#### **PART 228—INTEGRATED DISCLOSURE SYSTEM FOR SMALL BUSINESS ISSUERS**

1. The authority citation for Part 228 is amended by revising the authority citation for “Section 228.601” to read as follows:

**Authority:** 15 U.S.C. 77e, 77f, 77g, 77h, 77j, 77k, 77s, 77z–2, 77z–3, 77aa(25), 77aa(26), 77ddd, 77eee, 77ggg, 77hhh, 77jjj, 77nnn, 77sss, 78l, 78m, 78n, 78o, 78u–5, 78w, 78ll, 78mm, 80a–8, 80a–29, 80a–30, 80a–37 and 80b–11.

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Section 228.601 is also issued under secs. 3(a), 302, 406 and 906, Pub. L. 107–204, 116 Stat. 745.

2. By amending § 228.601 by:

- Removing the last sentence of paragraph (a)(1);
- Revising the Exhibit Table;
- Revising paragraph (b)(7) to read “No Exhibit Required.”; and
- Revising paragraphs (b)(27) through (b)(98).

The revisions read as follows.

#### **§ 228.601 (Item 601) Exhibits.**

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	Securities Act Forms					Exchange Act Forms			
	SB–2	S–2	S–3	S–4 <sup>3</sup>	S–8	10–SB	8–K	10–QSB	10–KSB
(1) Underwriting agreement .....	X	X	X	X	.....	.....	X	.....	.....
(2) Plan of purchase, sale, reorganization, arrangement, liquidation or succession. ....	X	X	X	X	.....	X	X	X	X
(3) (i) Articles of Incorporation ....	X	.....	.....	X	.....	X	.....	X	X
(ii) By-laws .....	X	.....	.....	X	.....	X	.....	X	X
(4) Instruments defining the rights of security holders, including indentures .....	X	X	X	X	X	X	X	X	X
(5) Opinion re: legality .....	X	X	X	X	X	.....	.....	.....	.....

<sup>75</sup> 15 U.S.C. 78c(f).

<sup>76</sup> 15 U.S.C. 80a–2(c).