

- Section 303 requires the SEC to issue rules prohibiting the officers and directors of public issuers, and persons acting under their direction, from fraudulently influencing, coercing, manipulating, or misleading the issuer's independent auditor for purposes of rendering the issuer's financial statements materially misleading. The SEC published proposed rules implementing this section on October 24, 2002.⁶ On April 24, 2003, the SEC voted to adopt final rules, which will take effect 30 days after publication in the **Federal Register**.⁷

- Section 304 requires the chief executive officer and chief financial officer of public issuers to reimburse the issuer for certain compensation and profits received if the issuer is required to restate its financial reports due to material noncompliance, as a result of misconduct, with any financial reporting requirements under the Federal securities laws. The requirements of section 304 took effect on July 30, 2002. No implementing regulations are required.

- Section 306(a) prohibits the directors and executive officers of any public issuer of equity securities from purchasing, selling, or transferring any equity security acquired by the director or executive officer in connection with his or her service as a director or executive officer during any "blackout period" with respect to the security. A "blackout period" generally is a period of three consecutive business days during which trading in the issuer's securities is suspended for 50% or more of the beneficiaries of the issuer's individual account plans. The SEC adopted final regulations pursuant to section 306(a) on January 26, 2003.⁸ The rules took effect on the same day.

- Section 401(b) requires the SEC to issue rules that prohibit issuers from including misleading *pro forma* financial information in their reports under the securities laws or in any public release. Issuers also must reconcile any *pro forma* financial information included in such filings or public releases with the issuer's financial statements prepared in

accordance with generally accepted accounting principles (GAAP). The SEC has issued final implementing regulations,⁹ which apply to releases and disclosures made after March 28, 2003, and to annual and quarterly reports filed with respect to fiscal periods ending after March 28, 2003.

- Section 404 mandates that the SEC issue rules that require all annual reports filed under section 13(a) or 15(d) of the Exchange Act to include certain statements and assessments related to the issuer's internal control structures and procedures for financial reporting.¹⁰ There is no statutory deadline for adoption of final rules implementing the requirements of section 404. The SEC published a proposed rule on October 30, 2002.¹¹

- Section 406 mandates that the SEC adopt rules that require public issuers to (1) disclose in their periodic reports filed under the Exchange Act whether the issuer has adopted a code of ethics for its senior financial officers and, if not, the reasons why such a code has not been adopted; and (2) promptly disclose on Form 8-K any change to, or waiver of, the issuer's code of ethics. The SEC published a final rule implementing this section on January 31, 2003.¹² The requirements of that rule took effect on March 3, 2003.

- Section 407 mandates that the SEC adopt rules that require public issuers to disclose in their periodic reports filed under the Exchange Act whether the audit committee of the issuer includes at least one financial expert and, if not, the reasons why the audit committee does not include such an expert. The SEC published a final rule implementing this section on January 31, 2003.¹³ The requirements of that rule took effect on March 3, 2003.

Description of the Proposed Rule

Part 11 of the OCC's regulations, entitled "Securities Exchange Act Disclosure Rules," currently implements the requirements of section 12(i) by applying to registered national banks, by means of cross-reference, the SEC's regulations implementing the reporting and disclosure provisions of sections 12, 13, 14(a), 14(c), 14(d), 14(f), and 16 of the Exchange Act. Part 11 requires national banks to file with the

OCC any reports or forms required by the SEC's regulations.

We are proposing to amend part 11 to reflect the new provisions of the Sarbanes-Oxley Act that the OCC is required to administer and enforce with respect to registered national banks. Accordingly, the proposal revises § 11.2 to cross-reference new subsection 10A(m) of the Exchange Act and sections 302, 303, 304, 306, 401(b), 404, 406, and 407 of the Sarbanes-Oxley Act. The effect of the proposal is to require registered national banks to comply with the rules issued by the SEC pursuant to those statutory provisions.

Part 16 of the OCC's regulations, entitled "Securities Offering Disclosure Rules," sets forth rules governing the offer and sale of securities by national bank issuers that are not subject to the registration and reporting requirements of the Securities Act of 1933.¹⁴ Section 16.20 of the regulation mirrors the requirements of section 15(d) of the Exchange Act¹⁵ and requires each national bank that files a registration statement that has been declared effective by the OCC pursuant to part 16 to file the current and periodic reports required by section 13 of the Exchange Act¹⁶ in accordance with the SEC's regulation 15D, as if the securities covered by the registration statement were securities registered pursuant to section 12 of the Exchange Act.

The proposal revises section 16.20 to reference sections 10A(m) and 13 of the Exchange Act and to cross-reference the requirements of the revised § 11.2(a)(1)(ii). The effect of the proposal is to require banks filing registration statements pursuant to part 16 to comply with certain provisions of the Exchange Act, including new subsection 10A(m), and those sections of the Sarbanes-Oxley Act that are directly applicable to section 15(d) filers and that are administered and enforced by the OCC with respect to registered national banks. The proposal is thus consistent with the objectives of part 16, which we adopted in order to promote generally comparable treatment between national bank issuers of securities and other issuers that are directly subject to section 15(d).¹⁷

Sections 11.2 and 16.20 currently cross-reference both the statutory provisions that the OCC has the authority to administer and enforce and the SEC's regulations implementing

Because section 906 is a criminal statute, the Department of Justice has jurisdiction to determine whether the requirements of the statute apply to issuers that file their periodic reports with the Federal banking agencies rather than the SEC. Until the Department of Justice clarifies this issue, national bank issuers should continue to file their section 906 certifications as part of the periodic reports that they file with the OCC.

⁶ 67 FR 65325 (Oct. 24, 2002).

⁷ See SEC Press Release 2003-51 (Apr. 24 2003). The publication of this rule in the **Federal Register** is pending.

⁸ 68 FR 4338 (Jan. 28, 2003).

⁹ 68 FR 4820 (Jan. 30, 2003).

¹⁰ Section 404 also requires the registered public accounting firm that prepares or issues the audit report for the issuer's annual report to attest to, and report on, the issuer's assessment of its internal control structures and procedures for financial reporting.

¹¹ 67 FR 66207 (Oct. 30, 2002).

¹² 68 FR 5110 (Jan. 31, 2003).

¹³ 68 FR 5110 (Jan. 31, 2003).

¹⁴ As of December 31, 2002, there were approximately 20 national banks subject to the requirements of part 16.20.

¹⁵ 15 U.S.C. 78o(d).

¹⁶ 15 U.S.C. 78m.

¹⁷ See 59 FR 54789, 54790 (Nov. 2, 1994) (preamble to most recent revisions to part 16).