

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 210, 228, 229, 240, 249, 270 and 274

[Release Nos. 33-8238; 34-47986; IC-26068; File Nos. S7-40-02; S7-06-03]

RIN 3235-AI66 and 3235-AI79

Management's Report on Internal Control Over Financial Reporting and Certification of Disclosure in Exchange Act Periodic Reports

AGENCY: Securities and Exchange Commission.

ACTION: Final rule.

SUMMARY: As directed by Section 404 of the Sarbanes-Oxley Act of 2002, we are adopting rules requiring companies subject to the reporting requirements of the Securities Exchange Act of 1934, other than registered investment companies, to include in their annual reports a report of management on the company's internal control over financial reporting. The internal control report must include: a statement of management's responsibility for establishing and maintaining adequate internal control over financial reporting for the company; management's assessment of the effectiveness of the company's internal control over financial reporting as of the end of the company's most recent fiscal year; a statement identifying the framework used by management to evaluate the effectiveness of the company's internal control over financial reporting; and a statement that the registered public accounting firm that audited the company's financial statements included in the annual report has issued an attestation report on management's assessment of the company's internal control over financial reporting. Under the new rules, a company is required to file the registered public accounting firm's attestation report as part of the annual report. Furthermore, we are adding a requirement that management evaluate any change in the company's internal control over financial reporting that occurred during a fiscal quarter that has materially affected, or is reasonably likely to materially affect, the company's internal control over financial reporting. Finally, we are adopting amendments to our rules and forms under the Securities Exchange Act of 1934 and the Investment Company Act of 1940 to revise the Section 302 certification requirements and to require issuers to provide the certifications required by Sections 302 and 906 of the Sarbanes-Oxley Act of

2002 as exhibits to certain periodic reports.

DATES: *Effective Date:* August 14, 2003.

Compliance Dates: The following compliance dates apply to companies other than registered investment companies. A company that is an "accelerated filer," as defined in Exchange Act Rule 12b-2, as of the end of its first fiscal year ending on or after June 15, 2004, must begin to comply with the management report on internal control over financial reporting disclosure requirements in its annual report for that fiscal year. A company that is not an accelerated filer as of the end of its first fiscal year ending on or after June 15, 2004, including a foreign private issuer, must begin to comply with the annual internal control report for its first fiscal year ending on or after April 15, 2005. A company must begin to comply with the requirements regarding evaluation of any material change to its internal control over financial reporting in its first periodic report due after the first annual report required to include a management report on internal control over financial reporting. Companies may voluntarily comply with the new disclosure requirements before the compliance dates. A company must comply with the new exhibit requirements for the certifications required by Sections 302 and 906 of the Sarbanes-Oxley Act of 2002 and changes to the Section 302 certification requirements in its quarterly, semi-annual or annual report due on or after August 14, 2003. To account for the differences between the compliance date of the rules relating to internal control over financial reporting and the effective date of changes to the language of the Section 302 certification, a company's certifying officers may temporarily modify the content of their Section 302 certifications to eliminate certain references to internal control over financial reporting until the compliance date, as further explained in Section III.E. below.

Registered investment companies must comply with the rule and form amendments applicable to them on and after August 14, 2003, except as follows. Registered investment companies must comply with the amendments to Exchange Act Rules 13a-15(a) and 15d-15(a) and Investment Company Act Rule 30a-3(a) that require them to maintain internal control over financial reporting with respect to fiscal years ending on or after June 15, 2004. In addition, a registered investment company's certifying officers may temporarily modify the content of their Section 302

certifications to eliminate certain references to internal control over financial reporting, as further explained in Section II.I. below. Registered investment companies may voluntarily comply with the rule and form amendments before the compliance dates.

FOR FURTHER INFORMATION CONTACT: N. Sean Harrison, Special Counsel, or Andrew D. Thorpe, Special Counsel, Division of Corporation Finance, at (202) 942-2910, or with respect to registered investment companies, Christian Broadbent, Senior Counsel, Division of Investment Management, at (202) 942-0721, or with respect to attestation and auditing issues, Edmund Bailey, Assistant Chief Accountant, Randolph P. Green, Professional Accounting Fellow, or Paul Munter, Academic Accounting Fellow, Office of the Chief Accountant, at (202) 942-4400, U.S. Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549.

SUPPLEMENTARY INFORMATION: We are revising Items 307, 401 and 601 of Regulations S-B¹ and S-K;² adding new Item 308 to Regulations S-B and S-K; amending Form 10-K,³ Form 10-KSB,⁴ Form 10-Q,⁵ Form 10-QSB,⁶ Form 20-F,⁷ Form 40-F,⁸ Rule 12b-15,⁹ Rule 13a-14,¹⁰ Rule 13a-15,¹¹ Rule 15d-14¹² and Rule 15d-15¹³ under the Securities Exchange Act of 1934 (the "Exchange Act");¹⁴ amending Rules 1-02 and 2-02¹⁵ of Regulation S-X;¹⁶ amending Rules 8b-15,¹⁷ 30a-2¹⁸ and 30a-3¹⁹ under the Investment Company Act of 1940 ("Investment Company Act");²⁰ and amending Forms N-CSR²¹ and N-SAR²² under the Exchange Act and the Investment Company Act.

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I. Background

¹ 17 CFR 228.10 *et seq.*

² 17 CFR 229.10 *et seq.*

³ 17 CFR 249.310.

⁴ 17 CFR 249.310b.

⁵ 17 CFR 249.308a.

⁶ 17 CFR 249.308b.

⁷ 17 CFR 249.220f.

⁸ 17 CFR 249.240f.

⁹ 17 CFR 240.12b-15.

¹⁰ 17 CFR 240.13a-14.

¹¹ 17 CFR 240.13a-15.

¹² 17 CFR 240.15d-14.

¹³ 17 CFR 240.15d-15.

¹⁴ 15 U.S.C. 78a *et seq.*

¹⁵ 17 CFR 210.1-02 and 2-02.

¹⁶ 17 CFR 210.1-01 *et seq.*

¹⁷ 17 CFR 270.8b-15.

¹⁸ 17 CFR 270.30a-2.

¹⁹ 17 CFR 270.30a-3.

²⁰ 15 U.S.C. 80a-1 *et seq.*

²¹ 17 CFR 249.331; 17 CFR 274.128.

²² 17 CFR 249.330; 17 CFR 274.101.