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I. Background

A. Management's Report on Internal Control Over Financial Reporting

In this release, we implement Section 404 of the Sarbanes-Oxley Act of 2002

(the "Sarbanes-Oxley Act"),²³ which requires us to prescribe rules requiring each annual report that a company, other than a registered investment company,²⁴ files pursuant to Section 13(a) or 15(d) of the Exchange Act to contain an internal control report: (1) Stating management's responsibility for establishing and maintaining an adequate internal control structure and procedures for financial reporting; and (2) containing an assessment, as of the end of the company's most recent fiscal year, of the effectiveness of the company's internal control structure and procedures for financial reporting. Section 404 also requires every registered public accounting firm that prepares or issues an audit report on a company's annual financial statements to attest to, and report on, the assessment made by management. The attestation must be made in accordance with standards for attestation engagements issued or adopted by the Public Company Accounting Oversight Board ("PCAOB").²⁵ Section 404 further stipulates that the attestation cannot be the subject of a separate engagement of the registered public accounting firm.

We received over 200 comment letters in response to our release proposing requirements to implement Sections 404, 406 and 407 of the Sarbanes-Oxley Act.²⁶ Of these, 61 respondents commented on the Section 404 proposals.²⁷ These comment letters

²³ Pub. L. 107–204, 116 Stat. 745 (2002).

²⁴ Section 404 of the Sarbanes-Oxley Act does not apply to any registered investment company due to an exemption in Section 405 of the Sarbanes-Oxley Act. See sec. 405 of Pub. L. 107–204, 116 Stat. 745 (2002).

²⁵ On April 25, 2003, the Commission approved the PCAOB's adoption of the auditing and attestation standards in existence as of April 16, 2003 as interim auditing and attestation standards. See Release No. 33–8222 (Apr. 25, 2003) [68 FR 23335].

²⁶ Release No. 33–8138 (Oct. 22, 2002) [67 FR 66208] ("Proposing Release"). The public comments we received can be viewed in our Public Reference Room at 450 Fifth Street, NW, Washington, DC 20549, in File No. S7–40–02. Public comments submitted by electronic mail are available on our Web site, <http://www.sec.gov>.

²⁷ The commenters on File No. S7–40–02 are as follows: *Academics* Paul Walker, Ph.D., CPA; *Accounting Firms* BDO Seidman, LLP; Deloitte & Touche LLP; Ernst & Young LLP; KPMG LLP; PricewaterhouseCoopers LLP; *Associations* America's Community Bankers; American Bankers Association; American Bar Association; American Corporate Counsel Association; American Institute of Certified Public Accountants; Association for Financial Professionals; the Association of the Bar of the City of New York; Association for Investment Management and Research; the Business Roundtable; Community Bankers Association of New York State; Edison Electric Institute; Financial Executives International; Independent Community Bankers of America; the Institute of Internal Auditors; Maine Bankers Association; Manufacturers Alliance/MAPI Inc.; Massachusetts Bankers Association; National Association of Real

came from corporations, professional associations, accountants, law firms, consultants, academics, investors and others. In general, the commenters supported the objectives of the proposed new requirements. Investors supported the manner in which we proposed to achieve these objectives and, in some cases, urged us to require additional disclosure from companies. Other commenters, however, thought that we were requiring more disclosure than necessary to fulfill the mandates of the Sarbanes-Oxley Act and suggested modifications to the proposals. We have reviewed and considered all of the comments that we received on the proposals. The adopted rules reflect many of these comments—we discuss our conclusions with respect to each topic and related comments in more detail throughout the release.

B. Certifications

We also are adopting amendments to require companies to file the certifications mandated by Sections 302 and 906 of the Sarbanes-Oxley Act as exhibits to annual, semi-annual and quarterly reports. Section 302 required the Commission to adopt final rules that were to be effective by August 29, 2002, under which the principal executive and principal financial officers, or persons performing similar functions, of a company filing periodic reports under Section 13(a) or 15(d) of the Exchange Act²⁸ must provide a certification in

Estate Investment Trusts; New York Bankers Association; New York County Lawyers' Association; New York State Bar Association; Software & Information Industry Association; Software Finance and Tax Executives Council; Wisconsin Bankers Association; *Corporations* Cardinal Health, Inc.; Compass Bancshares, Inc.; Computer Sciences Corporation; Eastman Kodak Company; Eli Lilly and Company; Emerson Electric Co.; Executive Responsibility Advisors, LLC; Greif Bros.; Intel Corporation; International Paper Company; Protiviti; *Government Entities* Federal Reserve Bank of Atlanta; Small Business Administration; *Law Firms* Dykema Gossett PLLC; Karr Tuttle Campbell; Fried, Frank, Harris, Shriver and Jacobson; Sutherland, Asbill & Brennan LLP; *Individuals* Thomas Damman; D. Scott Huggins; Tim J. Leech; Simon Lorne; Ralph Saul; Lee Squire; Robert J. Stuckey; *Foreign Companies* Siemens Aktiengesellschaft; *International Entities* British Bankers Association; British Embassy; Canadian Bankers Association; Confederation of British Industry; European Commission; Institute of Chartered Accountants of England and Wales.

²⁸ 15 U.S.C. 78m(a) or 78o(d). Section 13(a) of the Exchange Act requires every issuer of a security registered pursuant to Section 12 of the Exchange Act [15 U.S.C. 78j] to file with the Commission such annual reports and such quarterly reports as the Commission may prescribe. Section 15(d) of the Exchange Act requires each issuer that has filed a registration statement that has become effective pursuant to the Securities Act of 1933 [15 U.S.C. 77a *et seq.*] (the "Securities Act") to file such supplementary and periodic information, documents and reports as may be required pursuant

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