

The company's other certifying officer(s) and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the company's auditors and the audit committee of the company's board of directors (or persons performing the equivalent functions):

(a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the company's ability to record, process, summarize and report financial information; and

(b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the company's internal control over financial reporting.

We expect that if a certifying officer becomes aware of a significant deficiency, material weakness or fraud requiring disclosure outside of the formal evaluation process or after the management's most recent evaluation of internal control over financial reporting, he or she will disclose it to the company's auditors and audit committee.

4. Conclusions Regarding Effectiveness of Disclosure Controls and Procedures

In disclosures required under current Item 307 of Regulations S-K and S-B, Item 15 of Form 20-F and General Instruction B(6) to Form 40-F, some companies have indicated that disclosure controls and procedures are designed only to provide "reasonable assurance" that the controls and procedures will meet their objectives. In reviewing those disclosures, the Commission staff generally has not objected to that type of disclosure. The staff has, however, requested companies including that type of disclosure to set forth, if true, the conclusions of the principal executive and principal financial officer that the disclosure controls and procedures are, in fact, effective at the "reasonable assurance" level. Other companies have included disclosure that there is "no assurance" that the disclosure controls and procedures will operate effectively under all circumstances. In these instances, the staff has requested companies to clarify that the disclosure controls and procedures are designed to provide reasonable assurance of achieving their objectives and to set forth, if true, the conclusions of the principal executive and principal financial officers that the controls and procedures are, in fact, effective at the "reasonable assurance" level.

The concept of reasonable assurance is built into the definition of internal control over financial reporting that we are adopting. This conforms to the standard contained in the internal

accounting control provisions of Section 13(b)(2) of the Exchange Act¹⁰¹ and current auditing literature.¹⁰² If management decides to include a discussion of reasonable assurance in the internal control report, the discussion must be presented in a manner that neither makes the disclosure in the report confusing nor renders management's assessment concerning the effectiveness of the company's internal control over financial reporting unclear.

G. Attestation to Management's Internal Control Report by the Company's Registered Public Accounting Firm

In the Proposing Release, we proposed to amend Rules 210.1-02 and 210.2-02 of Regulation S-X to make conforming revisions to Regulation S-X to reflect the registered public accounting firm attestation requirements mandated by Section 404(b) of the Sarbanes-Oxley Act. Under the proposals, we set forth a definition for the new term "attestation report on management's evaluation of internal control over financial reporting" and certain requirements for the accountant's attestation report. We are adopting the proposals substantially as proposed. However, the final rules define the expanded term "attestation report on management's evaluation of internal control over financial reporting." Several commenters suggested that we use this more specific term, noting that auditors currently perform attestation engagements on a broad variety of subjects. Amended Rule 2-02 requires every registered public accounting firm that issues an audit report on the company's financial statements that are included in its annual report required by Section 13(a) or 15(d) of the Exchange Act containing an assessment by management of the effectiveness of the registrant's internal control over financial reporting must attest to, and report on, such assessment.

At the time of the enactment of the Sarbanes-Oxley Act, the applicable standard for attestation by auditors of internal control over financial reporting was set forth in Statements on Standards for Attestation Engagements No. 10 ("SSAE No. 10"). That standard was used by auditors providing attestations on a voluntary basis to companies, as well as by auditors whose financial institution clients are required to obtain attestations under Federal Deposit Insurance Corporation

Improvement Act of 1991,¹⁰³ as discussed below. Under the Sarbanes-Oxley Act, the PCAOB has become the body that sets auditing and attestation standards generally for registered public accounting firms to use in the preparation and issuance of audit reports on the financial statements of issuers, and under Section 404(b) of the Sarbanes-Oxley Act, the PCAOB is required to set standards for the registered public accounting firms' attestations to, and reports on, management's assessment regarding its internal control over financial reporting.

On April 16, 2003, the PCAOB designated Statements on Standards for Attestation Engagements as existed on April 16 as the standard for attestations of management's assessment of the effectiveness of internal control over financial reporting pending further PCAOB standard-setting in the area (and subject to our approval of the PCAOB's actions), and on April 25, we approved the PCAOB's action. SSAE No. 10 is thus the standard applicable on a transition basis for attestations required under Section 404 of the Act and the rules we are adopting today, again pending further PCAOB standard-setting (and our approval). We expect that the PCAOB will assess the appropriateness of those standards and modify them as needed, and any future standards adopted by the PCAOB will apply to registered public accounting firms in connection with the preparation and issuance of attestation reports on management's assessment of the effectiveness of internal control over financial reporting.

H. Types of Companies Affected

Section 404 of the Sarbanes-Oxley Act states that the Commission must prescribe rules that require each annual report required by Section 13(a) or 15(d) of the Exchange Act to contain an internal control report. The Act exempts registered investment companies from this requirement.¹⁰⁴

1. Foreign Private Issuers

Section 404 of the Sarbanes-Oxley Act makes no distinction between domestic and foreign issuers and, by its terms, clearly applies to foreign private issuers. These amendments, therefore, apply the management report on internal control over financial reporting requirement to foreign private issuers that file reports under Section 13(a) or 15(d) of the Exchange Act. We have, however, adopted a later compliance date for

¹⁰¹ 101 U.S.C. 78m(b)(2).

¹⁰² See Codification of Statement on Auditing Standards AU § 319.18.

¹⁰³ Pub. L. 102-242, 105 Stat. 2242 (1991).

¹⁰⁴ See Section 405 of the Sarbanes-Oxley Act.