

companies, and we are not extending any of the requirements that would implement section 404 to registered investment companies.¹²⁰ Several commenters objected to the proposed requirement that the Section 302 certification include a statement of the officers' responsibility for internal controls.¹²¹ These commenters argued that this requirement would contradict Section 405 of the Sarbanes-Oxley Act and represent a "back-door" application of Section 404, from which registered investment companies are exempt.¹²² We disagree. The certification requirements implement Section 302 of the Sarbanes-Oxley Act, from which registered investment companies are not exempt.¹²³ We are not subjecting registered investment companies to the requirements implementing Section 404 of the Sarbanes-Oxley Act, including the annual and quarterly evaluation requirements with respect to internal control over financial reporting and the requirements for an annual report by management on internal control over financial reporting and an attestation report on management's assessment.

We are adopting the following technical changes to our rules and forms implementing Section 302 of the

Sarbanes-Oxley Act for registered investment companies in order to conform to the changes that we are adopting for operating companies.¹²⁴

- *Paragraph (d) of Investment Company Act Rule 30a-3.* The amendments use the same term "internal control over financial reporting" that we are using in the rules for operating companies and include the same definition of "internal control over financial reporting" that we are adopting in Exchange Act Rules 13a-15(f) and 15d-15(f).

- *Paragraph (a) of Investment Company Act Rule 30a-3.* The amendments require every registered management investment company, other than a small business investment company, to maintain internal control over financial reporting. These amendments parallel those that we are adopting for operating companies in Exchange Act Rules 13a-15(a) and 15d-15(a).

- *Introductory text and sub-paragraph (b) of paragraph 4 of the certification in Item 10(a)(2) of Form N-CSR.* The amendments require the signing officers to state that they are responsible for establishing and maintaining internal control over financial reporting, and that they have designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under their supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles.

- *Paragraph (4)(d) of the certification of Item 10(a)(2), and Item 9(b) of Form N-CSR.* The amendments require disclosure of any change in the investment company's internal control over financial reporting that occurred during the most recent fiscal half-year that has materially affected, or is reasonably likely to materially affect, the company's internal control over financial reporting.

- *Paragraph (5) of the certification of Item 10(a)(2) of Form N-CSR.* The amendments require the signing officers to state that they have disclosed to the investment company's auditors and the audit committee 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 investment company's ability to

record, process, summarize, and report financial information.

We are not, however, adopting proposed amendments that would have required the evaluation by an investment company's management of the effectiveness of its disclosure controls and procedures to be as of the end of the period covered by each report on Form N-CSR, rather than within 90 days prior to the filing date of the report, as our certification rules currently require.¹²⁵ Commenters noted that this would require investment company complexes that have funds with staggered fiscal year ends to perform evaluations of their disclosure controls and procedures as many as twelve times per year. They argued that requiring such frequent evaluations would be extremely costly, inefficient, and operationally disruptive, and would not provide any benefits to shareholders.¹²⁶ We agree that the costs of requiring investment company complexes to perform evaluations of their disclosure controls and procedures twelve times per year would outweigh the benefits to investors. The certification rules we are adopting will require an investment company complex to perform at most four such evaluations per year.¹²⁷

Transition Period for Registered Investment Companies

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, registered investment companies must comply with the portion of the introductory language in paragraph 4 of the certification in Item 10(a)(2) of Form N-CSR that refers to the certifying officers' responsibility for establishing

¹²⁰ See Section 405 of the Sarbanes-Oxley Act ("Nothing in section 401, 402, or 404, the amendments made by those sections, or the rules of the Commission under those sections shall apply to any investment company registered under section 8 of the Investment Company Act of 1940 (15 U.S.C. 80a-8)."). The provisions that would not extend to registered investment companies include amendments to Exchange Act rules 13a-15(c) and 15d-15(c) (requiring annual evaluation of the effectiveness of internal control over financial reporting); Exchange Act rules 13a-15(d) and 15d-15(d) (requiring quarterly evaluation of any change in internal control over financial reporting that has materially affected, or is reasonably likely to materially affect, internal control over financial reporting); and Items 308(a) and (b) of Regulations S-K and S-B (requiring annual report by management on internal control over financial reporting and attestation report on management's evaluation of internal control over financial reporting).

¹²¹ Proposed paragraph 4 of the certification section of proposed Form N-CSR. Proposing Release, note 26 above, 67 FR at 66250. We received 7 comment letters on the proposed changes to the certification rules with respect to investment companies in the Proposing Release. See letters regarding File No. S7-40-02 of: the Investment Company Institute ("ICI"); Protiviti; OppenheimerFunds, Inc. ("Oppenheimer"); The Association of the Bar of the City of New York; Leslie Ogg of Board Services Corporation ("Ogg"); Federated Funds; and D&T.

¹²² See letters regarding File No. S7-40-02 of: Association of the Bar of the City of New York; ICI; and Oppenheimer.

¹²³ See Section 302(a)(4)(A) and (B) of the Sarbanes-Oxley Act (requiring signing officers to certify that they are responsible for establishing and maintaining internal controls and have designed the internal controls to ensure that material information relating to the issuer is made known to the signing officers).

¹²⁴ For a discussion of changes to the form of the Section 302 certification for operating companies, see Section III.D. below.

¹²⁵ Proposed Exchange Act Rules 13a-15(c) and 15d-15(c), proposed Investment Company Act Rule 30a-2(b)(4)(iii), and proposed Investment Company Act Rule 30a-3(b).

¹²⁶ See letters regarding File No. S7-40-02 of: D&T; ICI; Ogg; and Oppenheimer.

¹²⁷ See Release No. IC-25914 (Jan. 27, 2003) [68 FR 5348, 5352 n. 43] (noting that in the case of a series fund or family of investment companies in which the disclosure controls and procedures for each fund in the series or family are the same, a single evaluation of the effectiveness of the disclosure controls and procedures for the series or family could be used in multiple certifications for the funds in the series or family, as long as the evaluation has been performed within 90 days of the report on Form N-CSR).