

and maintaining internal control over financial reporting, as well as paragraph 4(b) of the certification, beginning with the first annual report filed on Form N-CSR for a fiscal year ending on or after June 15, 2004.

J. Transition Period

We received a number of comments urging us to adopt an extended transition period for compliance with the new disclosure requirements.¹²⁸ We have decided to delay the compliance date of the requirement to provide a management report assessing the effectiveness of internal control over financial reporting and an auditor's attestation to, and report on, that assessment beyond that in the Proposing Release so that companies and their auditors will have time to prepare and satisfy the new requirements. These compliance dates do not apply to registered investment companies, which are not required to provide the management report assessing the effectiveness of internal control over financial reporting and the related auditor's attestation.¹²⁹ 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 promulgated under Section 404 of the Sarbanes-Oxley Act in its annual report for that fiscal year. We recognize that non-accelerated filers, including smaller companies and foreign private issuers, may have greater difficulty in preparing the management report on internal control over financial reporting. Therefore, these types of companies must begin to comply with the disclosure requirements in annual reports for their first fiscal year ending on or after April 15, 2005. A company must begin to comply with the quarterly evaluation of changes to internal control over financial reporting requirements for its first periodic report due after the first annual report that must include management's report on internal control over financial reporting. We believe that the transition period is appropriate in light of both the substantial time and resources needed to properly implement the rules¹³⁰ and the corresponding benefit to investors that will result. In

addition, the transition period will provide additional time for the PCAOB to consider relevant factors in determining and implementing any new attestation standard as it finds appropriate, subject to our approval.

Consistent with this extended compliance period for management's internal control report and the related attestation, and for the subsequent evaluation of changes in internal control over financial reporting, the following provisions of the rules adopted today are subject to the extended compliance period:

- The provisions of Items 308(a) and (b) of Regulations S-K and S-B and the comparable provisions of Forms 20-F and 40-F requiring management's internal control report and the related attestation;
- The amendments to Rules 13a-15(a) and 15d-15(a) under the Exchange Act relating to maintenance of internal control over financial reporting; and
- The provisions of Rules 13a-15(c) and (d) and 15d-15(c) and (d) under the Exchange Act requiring evaluations of internal control over financial reporting and changes thereto.

The extended compliance period does not in any way affect the provisions of our other rules and regulations regarding internal controls that are in effect, including, without limitation, Rule 13b-2 under the Exchange Act.

Other rules relating to evaluation and disclosure adopted today are effective on August 14, 2003. These other rules include amendments to Items 308(c) of Regulations S-K and S-B and the comparable provisions of Forms 20-F and 40-F requiring disclosure regarding certain changes in internal control over financial reporting. These amendments modify existing requirements regarding disclosure of changes in internal control over financial reporting, are related to statements made in the Section 302 certifications of principal executive and financial officers, and provide clarifications that are beneficial and whose implementation need not be delayed. These other rules that are effective on August 14, 2003 also include amendments relating to disclosure controls and procedures.

III. Discussion of Amendments Related to Certifications

A. Proposed Rules

We proposed to amend our rules and forms to require companies to file the certifications required by Section 302 of the Sarbanes-Oxley Act as an exhibit to the periodic reports to which they relate. Specifically, we proposed to amend the exhibit requirements of

Forms 20-F and 40-F and Item 601 of Regulations S-B and S-K to add the Section 302 certifications to the list of required exhibits. In addition, we proposed to amend Exchange Act Rules 13a-14 and 15d-14 to require that Section 906 certifications accompany the periodic reports to which they relate, and to amend Forms 20-F and 40-F and Item 601 of Regulations S-B and S-K to add Section 906 certifications to the list of required exhibits. We also proposed to amend Investment Company Act Rule 30a-2 to require that Section 906 certifications accompany the periodic reports on Form N-CSR to which they relate and Item 10 of Form N-CSR to add the Section 906 certifications as a required exhibit.

We received eight comment letters in response to the proposals.¹³¹ The primary topic addressed by the commenters was whether Section 906 of the Sarbanes-Oxley Act applied to annual reports filed on Form 11-K. Most of the commenters believed that issuers required to file annual reports on Form 11-K should be exempt from the requirement to furnish a Section 906 certification as an exhibit.¹³² Two commenters noted that the language of Section 906 that requires certification of the chief executive officer and chief financial officer (or equivalent thereof) is inconsistent with the actual administration of employee benefit plans because such plans do not have individuals acting as chief executive officer and chief financial officer.¹³³ Those commenters noted that employee benefit plans are typically administered through one or more committees that are appointed as the plan's named fiduciaries to administer the plan and oversee investments.¹³⁴ In addition, some commenters believed that we should provide an exemption for Form 11-K because employee benefit plans are already subject to extensive regulation under the Employee Retirement Income Security Act of 1974 ("ERISA"),¹³⁵ which includes a requirement for the plan administrator to certify, under penalties of perjury and other criminal and administrative

¹²⁸ See, for example, the letters regarding File No. S7-40-02 of: AICPA; D&T; CSC; E&Y; and Association of the Bar of the City of New York, Committee on Securities Regulation ("NYCB-CSR").

¹²⁹ See Section II. I., above, for compliance dates applicable to registered investment companies.

¹³⁰ See Section V. below.

¹³¹ See letters regarding File No. S7-06-03 of: ABA; Cleary, Gottlieb, Steen & Hamilton ("Cleary"); Prof. Paul A. Griffin ("Griffin"); Intel Corporation ("Intel"); ICI; PwC; John Stalnaker and Patrick Derksen ("Stalnaker"); and Rooks Pitts ("Rooks").

¹³² See letters regarding File No. S7-06-03 of: ABA; Cleary; Intel; and PwC.

¹³³ See letters File No. S7-06-03 of ABA and Cleary.

¹³⁴ *Id.*

¹³⁵ Pub. L. No. 83-406, 88 Stat. 129 (1974).