

to be publicly provided. Civil liability already exists under our signature requirements and the Section 302 certifications. In addition, any Section 906 certification submitted to the Commission as correspondence is subject to the Freedom of Information Act.¹⁵³ Finally, the requirement to furnish Section 906 certifications as exhibits serves a number of important functions. First, the exhibit requirement enhances compliance by allowing the Commission, the Department of Justice and the public to monitor the certifications effectively. Second, by subjecting the Section 906 certifications to the signature requirements of Regulation S-T, companies are required to retain a manually signed signature page or other authenticating document for a five-year period. This requirement helps to preserve evidential matter in the event of prosecution.

There are important distinctions to be made between Sections 302 and 906 of the Sarbanes-Oxley Act. Unlike the Section 302 certifications, the Section 906 certifications are required only in periodic reports that contain financial statements. Therefore, amendments to periodic reports that do not contain financial statements would not require a new Section 906 certification, but would require a new Section 302 certification to be filed with the amendment.¹⁵⁴ In addition, unlike the Section 302 certifications, the Section 906 certifications may take the form of a single statement signed by a company's chief executive and financial officers.¹⁵⁵

C. Effect on Interim Guidance Regarding Filing Procedures

We provided interim guidance regarding voluntary filing procedures for Section 906 certifications.¹⁵⁶ That guidance encouraged issuers to submit their Section 906 certifications as exhibits to the periodic reports to which they relate.¹⁵⁷ For issuers that are not

investment companies, that interim voluntary guidance shall remain in effect until the rules become effective. In the event that the EDGAR system is not updated by the effective date, companies should submit the required certifications as Exhibit 99.¹⁵⁸ For registered investment companies, the interim guidance shall remain in effect until the rules become effective.¹⁵⁹

D. Form of Section 302 Certifications

We proposed several amendments to the form of certifications to be provided pursuant to Section 302 of the Sarbanes-Oxley Act. In particular, we proposed the following:

- The addition of a statement that principal executive and financial officers are responsible for designing internal controls and procedures for financial reporting or having such controls and procedures designed under their supervision;
- The clarification that disclosure controls and procedures may be designed under the supervision of principal executive and financial officers; and
- The revision of the statement as to the effectiveness of disclosure controls and procedures and internal controls and procedures for financial reporting would be as of the end of the period.

We have adopted the proposals referred to above substantially as proposed. In addition, we have made the following changes:

- We have incorporated the term "internal control over financial reporting" into the certification;
- We have amended the provision of the certification relating to changes in internal control over financial reporting, consistent with the final rules discussed above regarding evaluation and disclosure, so that it refers to changes that have materially affected or are reasonably likely to materially affect internal control over financial reporting;

insert the following legend after the text of each certification: "A signed original of this written statement required by Section 906, or other document authenticating, acknowledging, or otherwise adopting the signature that appears in typed form within the electronic version of this written statement required by Section 906, has been provided to [name of issuer] and will be retained by [name of issuer] and furnished to the Securities and Exchange Commission or its staff upon request."

¹⁵⁸ Use of Exhibit 99 for this purpose will remain in effect until we announce that our EDGAR system permits registrants to file or furnish exhibits 31 and 32 for Section 302 and 906 certifications. We will issue a statement and post it on the Commission's website to announce this date as soon as it becomes known.

¹⁵⁹ For a registered management investment company filing reports on Form N-CSR, the EDGAR document type should be EX-99.906CERT for the Section 906 certifications.

- We have clarified that the statement as effectiveness of disclosure controls and procedures be as of the end of the period, but that the date of the evaluation is not specified; and

- We have made minor changes in the organization of the certification.

E. Transition Period

The final rules regarding filing of certifications under Sections 302 and 906, for companies other than registered investment companies, will be effective on August 14, 2003. The compliance dates applicable to registered investment companies are described in Section II. I., above.

We believe that changes in the form of Section 302 certification described above are beneficial to both registrants and investors because they clarify the provisions of the certification. With one exception, discussed below, the changes are also not related to our new requirements regarding management's internal control report. With that one exception, appropriateness of the modified certification is thus not affected by the extended compliance period we are providing in connection with management's internal control report and the related attestation. Our rules adopted today also therefore provide that the form of Section 302 certification will be modified, with that one exception, in accordance with these rules effective on August 14, 2003.

We are applying the extended compliance period to the portion of the introductory language in paragraph 4 of the Section 302 certification that refers to the certifying officers' responsibility for establishing and maintaining internal control over financial reporting for the company, as well as paragraph 4(b), which must be provided in the first annual report required to contain management's internal control report and thereafter. As noted above, this extended compliance period does not in any way affect the provisions of our other rules and regulations regarding internal controls that are in effect.

IV. Paperwork Reduction Act

A. Background

Certain provisions of our final amendments contain "collection of information" requirements within the meaning of the Paperwork Reduction Act of 1995 ("PRA").¹⁶⁰ We published a notice requesting comment on the collection of information requirements in the proposing release for the rule amendments, and we submitted these requirements to the Office of

¹⁵³ 5 U.S.C. 552 *et seq.*

¹⁵⁴ See Exchange Act Rule 12b-15 [17 CFR 240.12b-15] and Investment Company Act Rule 8b-15 [17 CFR 270.8b-15]. Depending on the contents of the amendment, the form of certification required to be included may be subject to modification.

¹⁵⁵ See Exchange Act Rules 13a-14(b) and 15d-14(b) [17 CFR 240.13a-14(b) and 240.15d-14(b)] and Investment Company Act Rule 30a-2(b) [17 CFR 270.30a-2(b)].

¹⁵⁶ See Release No. 33-8212 (Mar. 21, 2003) [68 FR 15600] at Section III.

¹⁵⁷ We are modifying that interim guidance, however, to more closely parallel the provisions of Section 302 of Regulation S-T that require retention of manual signatures for electronically filed signed statements. Issuers furnishing Section 906 certifications to the Commission as an exhibit to the periodic reports to which they relate during the period covered by the interim guidance should

¹⁶⁰ 44 U.S.C. 3501 *et seq.*