

Management and Budget ("OMB") for review in accordance with the PRA.<sup>161</sup> The titles for the collection of information are:

- (1) "Form 10-Q" (OMB Control No. 3235-0070);
- (2) "Form 10-QSB" (OMB Control No. 3235-0416);
- (3) "Form 10-K" (OMB Control No. 3235-0063);
- (4) "Form 10-KSB" (OMB Control No. 3235-0420);
- (5) "Form 20-F" (OMB Control No. 3235-0288);
- (6) "Form 40-F" (OMB Control No. 3235-0381);
- (7) "Regulation S-X" (OMB Control No. 3235-0009);
- (8) "Regulation S-K" (OMB Control No. 3235-0071);
- (9) "Regulation S-B" (OMB Control No. 3235-0417); and
- (10) "Form N-CSR" (OMB Control No. 3235-0570).

The forms are periodic reports adopted under the Exchange Act and the Investment Company Act. The regulations set forth the disclosure requirements for periodic reports, registration statements and proxy and information statements filed by companies to ensure that investors are informed. The hours and costs associated with preparing, filing and sending these forms constitute reporting and cost burdens imposed by each collection of information. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. Compliance with the requirements is mandatory. Under our rules for the retention of manual signatures,<sup>162</sup> companies must retain, for a period of five years, an original signature page or other document authenticating, acknowledging or otherwise adopting the certifying officers' signatures that appear in their electronically filed periodic reports. Responses to the information collections are not kept confidential.

#### B. Summary of the Final Rules

The final rules require the annual report of every company that files periodic reports under Section 13(a) or 15(d) of the Exchange Act, other than reports by registered investment companies, to contain a report of management that includes:

- A statement of management's responsibility for establishing and maintaining adequate internal control

over financial reporting for the company;

- A statement identifying the framework used by management to evaluate the effectiveness of the company's internal control over financial reporting;
- Management's assessment of the effectiveness of the company's internal control over financial reporting, as of the end of the most recent fiscal year; and
- A statement that the registered public accounting firm that audited the financial statements included in the annual report has issued an attestation report on management's evaluation of the company's internal control over financial reporting.

We are adding these requirements pursuant to the legislative mandate in Section 404 of the Sarbanes-Oxley Act. Under our final rules, a company also will be required to evaluate and disclose any change in its internal control over financial reporting that occurred during the fiscal quarter that has materially affected, or is reasonably likely to materially affect, the company's internal control over financial reporting.

We are also adopting amendments to require companies to file the certifications mandated by Sections 302 and 906 of the Sarbanes-Oxley Act as exhibits to their annual, semi-annual and quarterly reports. These amendments will enhance the ability of investors, the Commission staff, the Department of Justice and other interested parties to easily and efficiently access the certifications through our Electronic Data Gathering, Analysis and Retrieval ("EDGAR") system and facilitate better monitoring of a company's compliance with the certification requirements.

#### C. Summary of Comment Letters and Revisions to Proposals

We requested comment on the PRA analysis contained in the proposing releases addressing Section 404 and Sections 302 and 906 of the Sarbanes-Oxley Act.<sup>163</sup> We received no comments on our PRA estimates for the certification requirements. With respect to our PRA estimates for the rules implementing Section 404 of the Sarbanes-Oxley Act, eight commenters thought that our PRA estimates significantly understated the actual time and costs that companies would have to expend evaluating and reporting on their internal control over financial

reporting.<sup>164</sup> However, few of these commenters provided actual alternative cost estimates, and none provided estimates that could be applied generally to all types and sizes of companies. One commenter believed that, based on its experience, we understated the burden estimate by at least a factor of 100.<sup>165</sup> In response to these commenters, and based on follow-up conversations with several of the commenters who expressed a view on our burden and cost estimates, we have revised our estimates as discussed more fully in Section IV.D below.

We have made a substantive modification to the proposed rules in response to the cost concerns expressed by commenters. Specifically, the final rules require companies to undertake a quarterly evaluation only of any change occurring during the fiscal quarter that has materially affected, or is reasonably likely to materially affect, the company's internal control over financial reporting. This change should substantially mitigate some of the costs and burdens associated with the proposed requirements.

We have made additional substantive changes to the proposed rule as well. First, the final rules require management to evaluate the company's internal control over financial reporting using a suitable framework, such as the COSO Framework. Second, the final rules expand the list of information that must be included in the management report and specify that management cannot conclude that a company's internal control over financial reporting is effective if there are one or more material weaknesses in such control. Under the final rules, management must identify the framework used to evaluate the company's internal control over financial reporting and disclose any material weaknesses in the company's internal control over financial reporting discovered through the evaluation. We do not believe that these changes significantly alter the burdens imposed on companies resulting from the required assessment of internal control over financial reporting.

#### D. Revisions to PRA Reporting and Cost Burden Estimates

As discussed above, in consideration of commenters' remarks, we are revising our PRA burden and cost estimates for the rules pertaining to Section 404 that we originally submitted to the OMB in connection with the proposed rules.

<sup>161</sup> 44 U.S.C. 3507(d) and 5 CFR 1320.11.

<sup>162</sup> See Rule 302 of Regulation S-T [17 CFR 232.302].

<sup>163</sup> See Release No. 33-8138 (Oct. 22, 2002) [67 FR 66208] and Release No. 33-8212 (Mar. 21, 2003) [68 FR 15600].

<sup>164</sup> <sup>164</sup> See letters regarding File No. S7-40-02 of: AICPA; BDO; D&T; Emerson; E&Y; IPC; Intel; and NYCB-CCL.

<sup>165</sup> See Intel letter regarding File No. S7-40-02.