

VI. Effect on Efficiency, Competition and Capital Formation

Section 23(a)(2) of the Exchange Act¹⁷⁸ requires us to consider the anti-competitive effects of any rules that we adopt under the Exchange Act. In addition, Section 23(a)(2) prohibits us from adopting any rule that would impose a burden on competition not necessary or appropriate in furtherance of the purposes of the Exchange Act. The amendments related to Section 404 of the Sarbanes-Oxley Act represent the implementation of a congressional mandate. The final rules require management reports that improve investors' understanding of management's responsibility for the preparation of reliable financial information and maintaining adequate internal control over financial reporting. We anticipate that these requirements will enhance the proper functioning of the capital markets by increasing the quality and accountability of financial reporting and restoring investor confidence.

Section 2(b) of the Securities Act,¹⁷⁹ Section 3(f) of the Exchange Act¹⁸⁰ and Section 2(c) of the Investment Company Act¹⁸¹ require us, when engaging in rulemaking to consider or determine whether an action is necessary or appropriate in the public interest, and consider whether the action will promote efficiency, competition, and capital formation. The amendments related to Section 404 are designed to enhance the quality and accountability of the financial reporting process and may help increase investor confidence, which implies increased efficiency and competitiveness of the U.S. capital markets. Increased market efficiency and investor confidence also may encourage more efficient capital formation. We requested comments on the effect of these amendments on efficiency, competition and capital formation analyses in the proposing release addressing Section 404. We received no comments in response to these requests.

The amendments related to Section 302 of the Sarbanes-Oxley Act would relocate the certifications required by Exchange Act Rules 13a-14 and 15d-14 from the text of quarterly and annual reports filed or submitted under Section 13(a) or 15(d) of the Exchange Act to the "Exhibits" section of these reports. This relocation will enhance the ability of investors and the Commission staff to verify that the certifications have, in

fact, been submitted with the Exchange Act reports to which they relate and to review the contents of the certifications to ensure compliance with the applicable requirements. The amendments related to Section 906 of the Sarbanes-Oxley Act also will streamline compliance with Section 1350 of Title 18 of the United States Code, added by Section 906 of the Act, and will enable investors, the Commission staff and the Department of Justice, which has responsibility for enforcing Section 1350, to verify submission and efficiently review the form and content of the certifications required by that provision.

We do not believe that the amendments related to certifications will impose any burden on competition, nor are we aware of any impact on capital formation that would result from the amendments. Depending on how an issuer's principal executive and principal financial officers presently satisfy the Section 906 certification requirements, issuers may incur some additional costs in submitting these certifications as an exhibit to their periodic reports. While these costs are difficult to quantify, we believe that they would be nominal. We requested comment on whether the amendments would affect competition, efficiency and capital formation. We received no comments in response to this request.

VII. Final Regulatory Flexibility Analysis

This Final Regulatory Flexibility Analysis ("FRFA") has been prepared in accordance with the Regulatory Flexibility Act.¹⁸² This FRFA relates to new rules and amendments that require Exchange Act companies, other than registered investment companies, to include in their annual reports a report of management on the company's internal control over financial reporting. The management report on internal control over financial reporting must include: a statement of management's responsibility for establishing and maintaining adequate internal control over financial reporting; a statement identifying the framework used 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 company's most recent fiscal year; and a statement that the registered public accounting firm that audited the company's 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. This FRFA also addresses new rules and amendments that require companies to file the certifications mandated by Sections 302 and 906 of the Sarbanes-Oxley Act as exhibits to their periodic reports. An Initial Regulatory Flexibility Analysis ("IRFA") was prepared in accordance with the Regulatory Flexibility Act in conjunction with each of the releases proposing these rules.¹⁸³ The proposing releases solicited comments on these analyses.

A. Need for the Amendments

We are adopting these disclosure requirements to comply with the mandate of, and to fulfill the purposes underlying the provisions of, the Sarbanes-Oxley Act of 2002. The new evaluation and disclosure requirements regarding a company's internal control over financial reporting are intended to enhance the quality of reporting and increase investor confidence in the fairness and integrity of the securities markets by making it clear that a company's management is responsible for maintaining and annually assessing such controls. The amendments related to Sections 302 and 906 of the Sarbanes-Oxley Act will enhance the ability of investors and the Commission staff to verify that the certifications have, in fact, been submitted with the Exchange Act reports to which they relate and to review the contents of the certifications to ensure compliance with the applicable requirements. The amendments also will streamline compliance with Section 1350 of Title 18 of the United States Code and will enable investors, the Commission staff and the Department of Justice, which has responsibility for enforcing Section 1350, to verify a company's submission of the Section 906 certification and efficiently review the form and content of the certifications.

B. Significant Issues Raised by Public Comment

In the Proposing Releases, we requested comment on any aspect of the IRFA, including the number of small entities that would be affected by the proposals, and both quantitative and qualitative nature of the impact. Several commenters expressed concern that small business issuers, including small entities, would be particularly disadvantaged by our proposal to require quarterly evaluations of internal control over financial reporting. We received no commentary on the impact

¹⁷⁸ 15 U.S.C. 78w(a)(2).

¹⁷⁹ 15 U.S.C. 77b(b).

¹⁸⁰ 15 U.S.C. 78c(f).

¹⁸¹ 15 U.S.C. 80a-2(c).

¹⁸² 5 U.S.C. 601.

¹⁸³ 5 U.S.C. 603.