

enable companies to keep costs of compliance as low as possible. Therefore, it does not seem necessary to develop separate requirements for small entities.

The final rules impose both design and performance standards regarding disclosure of management's responsibility for establishing and maintaining adequate internal control over financial reporting for the company and management's assessment of the effectiveness of such controls. The rules do, however, afford a company the flexibility to design its internal control over financial reporting to fit its particular circumstances. We believe that it would be inconsistent with the purposes of the Sarbanes-Oxley Act to specify different requirements for small entities.

### VIII. Statutory Authority and Text of Rule Amendments

The amendments described in this release are being adopted under the authority set forth in Sections 5, 6, 7, 10, 17 and 19 of the Securities Act, as amended, Sections 12, 13, 15, 23 and 36 of the Exchange Act, Sections 8, 30, 31 and 38 of the Investment Company Act, as amended and Sections 3(a), 302, 404, 405 and 906 of the Sarbanes-Oxley Act.

#### List of Subjects

##### 17 CFR Part 210

Accountants, Accounting, Reporting and recordkeeping requirements, Securities.

##### 17 CFR Part 228

Reporting and recordkeeping requirements, Securities, Small businesses.

##### 17 CFR Parts 229, 240 and 249

Reporting and recordkeeping requirements, Securities.

##### 17 CFR Parts 270 and 274

Investment companies, Reporting and recordkeeping requirements, Securities.

#### Text of Amendments

■ For the reasons set out in the preamble, the Commission amends title 17, chapter II, of the Code of Federal Regulations as follows:

### PART 210—FORM AND CONTENT OF AND REQUIREMENTS FOR FINANCIAL STATEMENTS, SECURITIES ACT OF 1933, SECURITIES EXCHANGE ACT OF 1934, PUBLIC UTILITY HOLDING COMPANY ACT OF 1935, INVESTMENT COMPANY ACT OF 1940, INVESTMENT ADVISERS ACT OF 1940, AND ENERGY POLICY AND CONSERVATION ACT OF 1975

■ 1. The authority citation for Part 210 is revised to read as follows:

**Authority:** 15 U.S.C. 77f, 77g, 77h, 77j, 77s, 77z-2, 77z-3, 77aa(25), 77aa(26), 78c, 78j-1, 78l, 78m, 78n, 78o(d), 78q, 78u-5, 78w(a), 78ll, 78mm, 79e(b), 79j(a), 79n, 79t(a), 80a-8, 80a-20, 80a-29, 80a-30, 80a-31, 80a-37(a), 80b-3, 80b-11, 7202 and 7262, unless otherwise noted.

■ 2. Section 210.1-02 is amended by:

■ a. Removing the authority citation following § 210.1-02;

■ b. Redesignating paragraph (a) as paragraph (a)(1); and

■ c. Adding paragraph (a)(2).

The revisions read as follows:

#### § 210.1-02 Definitions of terms used in Regulation S-X (17 CFR part 210).

\* \* \* \* \*

(a)(1) \* \* \*

(2) *Attestation report on management's assessment of internal control over financial reporting.* The term *attestation report on management's assessment of internal control over financial reporting* means a report in which a registered public accounting firm expresses an opinion, or states that an opinion cannot be expressed, concerning management's assessment of the effectiveness of the registrant's internal control over financial reporting (as defined in § 240.13a-15(f) or 240.15d-15(f) of this chapter) in accordance with standards on attestation engagements. When an overall opinion cannot be expressed, the registered public accounting firm must state why it is unable to express such an opinion.

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■ 3. Amend § 210.2-02 by:

■ a. Revising the section heading;

■ b. Revising the headings of paragraphs (a), (b), (c) and (d); and

■ c. Adding paragraph (f).

The addition and revisions read as follows.

#### § 210.2-02 Accountants' reports and attestation reports on management's assessment of internal control over financial reporting.

(a) *Technical requirements for accountants' reports.* \* \* \*

(b) *Representations as to the audit included in accountants' reports.* \* \* \*

(c) *Opinions to be expressed in accountants' reports.* \* \* \*

(d) *Exceptions identified in accountants' reports.* \* \* \*

\* \* \* \* \*

(f) *Attestation report on management's assessment of internal control over financial reporting.* Every registered public accounting firm that issues or prepares an accountant's report for a registrant, other than an investment company registered under section 8 of the Investment Company Act of 1940 (15 U.S.C. 80a-8), that is included in an annual report required by section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*) containing an assessment by management of the effectiveness of the registrant's internal control over financial reporting must attest to, and report on, such assessment. The attestation report on management's assessment of internal control over financial reporting shall be dated, signed manually, identify the period covered by the report and clearly state the opinion of the accountant as to whether management's assessment of the effectiveness of the registrant's internal control over financial reporting is fairly stated in all material respects, or must include an opinion to the effect that an overall opinion cannot be expressed. If an overall opinion cannot be expressed, explain why. The attestation report on management's assessment of internal control over financial reporting may be separate from the accountant's report.

### PART 228—INTEGRATED DISCLOSURE SYSTEM FOR SMALL BUSINESS ISSUERS

■ 4. The general authority citation for Part 228 is revised to read as follows:

**Authority:** 15 U.S.C. 77e, 77f, 77g, 77h, 77j, 77k, 77s, 77z-2, 77z-3, 77aa(25), 77aa(26), 77ddd, 77eee, 77ggg, 77hhh, 77jjj, 77nnn, 77sss, 78l, 78m, 78n, 78o, 78u-5, 78w, 78ll, 78mm, 80a-8, 80a-29, 80a-30, 80a-37, 80b-11, 7202, 7241, and 7262; and 18 U.S.C. 1350, unless otherwise noted.

\* \* \* \* \*

■ 5. Revise § 228.307 to read as follows:

#### § 228.307 (Item 307) Disclosure controls and procedures.

Disclose the conclusions of the small business issuer's principal executive and principal financial officers, or persons performing similar functions, regarding the effectiveness of the small business issuer's disclosure controls and procedures (as defined in § 240.13a-15(e) or 240.15d-15(e) of this chapter) as of the end of the period covered by the report, based on the evaluation of these