

TABLE 1—Continued

Section of Sarbanes-Oxley Act	Description	Implementing SEC rules
Section 401(b)	Requires the SEC to issue rules that prohibit issuers from including misleading pro forma financial information in their filings with the SEC or in any public release, and that require issuers to reconcile any pro forma financial information included in such filings or public releases with the issuer's financial statements prepared in accordance with generally accepted accounting principles (GAAP).	The SEC adopted final rules on January 8, 2003. See SEC Press Release 2003–6. Proposed rules were issued for public comment in November 2002. See 67 FR 68790, Nov. 13, 2002.
Section 404	Mandates that the SEC issue rules that require all annual reports filed under section 13(a) or 15(d) of the Exchange Act to include certain statements and assessments related to the issuer's internal control structures and procedures for financial reporting. ⁶	Proposed rules issued for comment. See 67 FR 66207, Oct. 30, 2002.
Section 406	Mandates that the SEC adopt rules that require public companies to (1) disclose in their periodic reports filed under the Exchange Act whether the issuer has adopted a code of ethics for its senior financial officers and, if not, the reasons why such a code has not been adopted; and (2) promptly disclose on Form 8–K any change to, or waiver of, the issuer's code of ethics.	The SEC adopted final rules on January 8, 2003. See SEC Press Release 2003–6. Proposed rules were issued for comment in October 2002. See 67 FR 66207, Oct. 30, 2002.
Section 407	Mandates that the SEC adopt rules that require public companies to disclose in their periodic reports filed under the Exchange Act whether the audit committee of the issuer includes at least one “financial expert” and, if not, the reasons why the audit committee does not include such an expert.	The SEC adopted final rules on January 8, 2003. See SEC Press Release 2003–6. Proposed rules were issued for comment in October 2002. See 67 FR 66207, Oct. 30, 2002.

⁵ The SEC has proposed to modify these certification requirements in certain respects. See 67 FR 66207, Oct. 30, 2002.

⁶ Section 404 also requires the registered public accounting firm that prepares or issues the audit report for the issuer's annual report to attest to, and report on, the issuer's assessment of its internal control structures and procedures for financial reporting.

Section 12(i) of the Exchange Act permits the Board to modify how the New SEC Rules apply to registered banks if the Board determines that the New SEC Rules are not necessary or appropriate in the public interest or for the protection of investors, and the Board publishes such findings (and the reasons supporting such findings) in the **Federal Register**.⁷ The interim rule requested comment on whether it would be appropriate for the Board to modify any of the New SEC Rules at this time.

Commenters did not request that the Board specifically modify any of the New SEC Rules. One commenter, however, requested that the Board, in conjunction with the other Federal banking agencies, solicit public comment after any New SEC Rules are adopted for purposes of determining whether the rule should be modified for registered banks. The Board has reviewed and will continue to review the rules, regulations and forms adopted by the SEC under the Sarbanes-Oxley Act to determine whether it would be appropriate to modify these rules, regulations or forms for registered banks. Members of the public that believe any New SEC Rules issued in the future should be modified for registered banks are encouraged to contact their local Federal Reserve Bank or Board staff. If the Board determines that it would be appropriate to modify any New SEC Rule for registered banks,

the Board will publish notice of the modification in the **Federal Register** in accordance with section 12(i) of the Exchange Act.⁸

Both commenters asked the Board to clarify how section 906 of the Sarbanes-Oxley Act applies to registered banks. Section 906 is a criminal provision that requires each “periodic report filed by an issuer with the Securities [and] Exchange Commission pursuant to section 13(a) or 15(d) of the Securities Exchange Act of 1934” to be accompanied by a written statement by the issuer's chief executive officer and chief financial officer (or equivalent) that the report (1) fully complies with the requirements of section 13(a) or 15(d) of the Exchange Act, and (2) fairly presents, in all material respects, the financial condition and results of operations of the issuer.⁹ This

⁸ One commenter expressed concern that the audit committee and internal control report rules issued by the SEC under sections 301, 404 and 407 of the Sarbanes-Oxley Act may conflict with the audit committee and internal control report requirements imposed by section 36 of the Federal Deposit Insurance Act on insured depository institutions. See 12 U.S.C. 1831m; 12 CFR part 363. The SEC has indicated that it intends to work with the Federal banking agencies to eliminate, to the extent possible, conflicts between the internal controls reports required by section 404 of the Sarbanes-Oxley Act and the internal controls reports required by section 36 of the FDI Act. See 67 FR 66208, 66222, Oct. 30, 2002. Staffs of the Board and SEC also have met to discuss potential conflicts and overlaps between the Sarbanes-Oxley Act and Federal banking laws and regulations.

⁹ Sarbanes-Oxley Act at section 906 (codified at 18 U.S.C. 1350).

certification requirement is separate from the certification requirement imposed by section 302 of the Sarbanes-Oxley Act. Because section 906 amends the Federal criminal code, the Department of Justice (DOJ) is the appropriate agency to interpret its scope and application. Nevertheless, pending interpretive guidance from DOJ concerning section 906, the Board has indicated that any periodic reports (*i.e.* 10-K or 10-Q reports) filed with the Board by registered banks after July 29, 2002 (the effective date of section 906), should be accompanied by the certifications required by section 906.¹⁰ This approach is consistent with the current practice of the Federal Deposit Insurance Corporation and Office of the Comptroller of the Currency with respect to state nonmember banks and national banks, respectively, that file reports with such agencies under section 12(i) of the Exchange Act.¹¹

Other Sarbanes-Oxley Act Issues Relevant to Registered Banks

Besides the provisions discussed above, the Sarbanes-Oxley Act also

¹⁰ See Letter from Gerald A. Edwards, Jr., Associate Director and Chief Accountant-Supervision of the Board, to Chief Executive Officers and Chief Financial Officers of Banks Reporting to the Board under the Exchange Act, dated Aug. 15, 2002.

¹¹ See Letter from Robert F. Storch, Chief, Accounting and Securities Section of the FDIC, to Chief Executive Officers and Chief Financial Officers of Banks Reporting to the FDIC under the Exchange Act, dated Aug. 13, 2002.

⁷ See 15 U.S.C. 78l(i)(4).