

## SECURITIES AND EXCHANGE COMMISSION

### 17 CFR Parts 228, 229 and 249

[Release Nos. 33-8177; 34-47235; File No. S7-40-02]

RIN 3235-A166

### Disclosure Required by Sections 406 and 407 of the Sarbanes-Oxley Act of 2002

**AGENCY:** Securities and Exchange Commission.

**ACTION:** Final rule; request for comment.

**SUMMARY:** We are adopting rules and amendments requiring companies, other than registered investment companies, to include two new types of disclosures in their annual reports filed pursuant to the Securities Exchange Act of 1934. First, the rules require a company to disclose whether it has at least one "audit committee financial expert" serving on its audit committee, and if so, the name of the expert and whether the expert is independent of management. A company that does not have an audit committee financial expert must disclose this fact and explain why it has no such expert. Second, the rules require a company to disclose whether it has adopted a code of ethics that applies to the company's principal executive officer, principal financial officer, principal accounting officer or controller, or persons performing similar functions. A company disclosing that it has not adopted such a code must disclose this fact and explain why it has not done so. A company also will be required to promptly disclose amendments to, and waivers from, the code of ethics relating to any of those officers. These rules implement the requirements in Sections 406 and 407 of the Sarbanes-Oxley Act of 2002. We also request additional comments regarding the appropriate treatment of foreign private issuers in light of our proposed rules implementing Section 301 of the Act.

**DATES:** *Effective Date:* March 3, 2003.

*Comment Date:* Comments regarding treatment of certain foreign private issuers should be received on or before February 18, 2003.

*Compliance Dates:* Companies must comply with the code of ethics disclosure requirements promulgated under Section 406 of the Sarbanes-Oxley Act in their annual reports for fiscal years ending on or after July 15, 2003. They also must comply with the requirements regarding disclosure of amendments to, and waivers from, their ethics codes on or after the date on

which they file their first annual report in which the code of ethics disclosure is required. Companies, other than small business issuers, similarly must comply with the audit committee financial expert disclosure requirements promulgated under Section 407 of the Sarbanes-Oxley Act in their annual reports for fiscal years ending on or after July 15, 2003. Small business issuers must comply with the audit committee financial expert disclosure requirements in their annual reports for fiscal years ending on or after December 15, 2003.

**ADDRESSES:** To help us process and review your comments more efficiently, comments should be sent by hard copy or e-mail, but not by both methods. Comments sent by hard copy should be submitted in triplicate to Jonathan G. Katz, Secretary, U.S. Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549-0609. Comments also may be submitted electronically at the following e-mail address: [rule-comments@sec.gov](mailto:rule-comments@sec.gov). All comment letters should refer to File No. S7-40-02; if e-mail is used, this file number should be included in the subject line. Comment letters will be available for inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, DC 20549-0102. Electronically submitted comment letters will be posted on the Commission's Internet Web site (<http://www.sec.gov>).<sup>1</sup>

**FOR FURTHER INFORMATION CONTACT:** Ray Be, Special Counsel, N. Sean Harrison, Special Counsel, or Kim McManus, Attorney-Advisor, Division of Corporation Finance, at (202) 942-2910, or with respect to accounting issues, Michael Thompson, Professional Accounting Fellow, Office of Chief Accountant, at (202) 942-4400, U.S. Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549.

**SUPPLEMENTARY INFORMATION:** We are adopting amendments to Form 8-K,<sup>2</sup> Form 10-K,<sup>3</sup> Form 10-KSB,<sup>4</sup> Form 20-F<sup>5</sup> and Form 40-F<sup>6</sup> under the Securities Exchange Act of 1934,<sup>7</sup> Regulation S-B,<sup>8</sup> and Regulation S-K.<sup>9</sup>

<sup>1</sup> We do not edit personal information, such as names or electronic mail addresses, from electronic submissions. You should submit only information that you wish to make available publicly.

<sup>2</sup> 17 CFR 249.308.

<sup>3</sup> 17 CFR 249.310.

<sup>4</sup> 17 CFR 249.310b.

<sup>5</sup> 17 CFR 249.220f.

<sup>6</sup> 17 CFR 249.240f.

<sup>7</sup> 15 U.S.C. 78a *et seq.*

<sup>8</sup> 17 CFR 228.10 *et seq.*

<sup>9</sup> 17 CFR 229.10 *et seq.*

## I. Background

The strength of the U.S. financial markets depends on investor confidence. Recent events involving allegations of misdeeds by corporate executives, independent auditors and other market participants have undermined that confidence.<sup>10</sup> In response to this threat to the U.S. financial markets, Congress passed, and the President signed into law, the Sarbanes-Oxley Act of 2002 (the "Sarbanes-Oxley Act"),<sup>11</sup> which effects sweeping corporate disclosure and financial reporting reform.

This release is one of several that the Commission is required to issue to implement provisions of the Sarbanes-Oxley Act. In this release, we adopt rules to implement the following two provisions of the Sarbanes-Oxley Act:

- Section 407, which directs us to adopt rules: (1) Requiring a company to disclose whether its audit committee includes at least one member who is a financial expert; and (2) defining the term "financial expert"; and
- Section 406, which directs us to adopt rules requiring a company to disclose whether it has adopted a code of ethics for its senior financial officers, and if not, the reasons therefor, as well as any changes to, or waiver of any provision of, that code of ethics.

We received over 200 comment letters in response to our release proposing requirements to implement Sections 404, 406 and 407 of the Sarbanes-Oxley Act.<sup>12</sup> These comment letters came from corporations, professional associations, accountants, law firms, analysts, consultants, academics, investors and others. In general, the commenters favored the objectives of the proposed new requirements. Investors generally supported the manner in which we proposed to achieve these objectives and, in some cases, urged us to require additional disclosure from companies. Many other commenters, however, thought that we were requiring more disclosure than necessary to fulfill the mandates of the Sarbanes-Oxley Act and suggested modifications to the proposals. We have reviewed and considered all of the comments on the proposals. The adopted rules reflect many of these comments—we discuss our conclusions with respect to each

<sup>10</sup> See, for example, John Waggoner and Thomas A. Fogarty, "Scandals Shred Investors' Faith: Because of Enron, Andersen and Rising Gas Prices, the Public Is More Wary Than Ever of Corporate America," USA Today, May 5, 2002, and Louis Aguilar, "Scandals Jolting Faith of Investors," Denver Post, June 27, 2002.

<sup>11</sup> Pub. L. 107-204, 116 Stat. 745 (2002).

<sup>12</sup> Release No. 33-8138 (October 22, 2002) [67 FR 66208] ("Proposing Release").