

on a Form 6-K or its Internet Web site.⁶⁶ We strongly encourage foreign private issuers to use these alternative means of disclosure in the interest of promptness.

D. Asset-Backed Issuers

In several of our releases implementing provisions of the Sarbanes-Oxley Act, including the Proposing Release, we have noted the special nature of asset-backed issuers.⁶⁷ Because of the nature of these entities, such issuers are subject to substantially different reporting requirements. Most significantly, asset-backed issuers generally are not required to file the financial statements that other companies must file. Also, such entities typically are passive pools of assets, without an audit committee or board of directors or persons acting in a similar capacity. Accordingly, we are excluding asset-backed issuers from the new disclosure requirements.

E. Transition Periods

We received numerous comments urging us to adopt transition periods for compliance. Commenters noted that some companies desiring audit committee financial experts and codes of ethics that meet the definitions included in the new rules may need some time to adjust. Several commenters asserted that no special transition periods were necessary because the new rules only require disclosure. They noted that a company that has no audit committee financial expert or code of ethics would not be at risk of non-compliance with our rules as long as it makes appropriate disclosure. However, we recognize that a company that does not have an audit committee financial expert or a code of ethics that complies with these new definitions may be harmed by having to disclose these facts even if the company intends to obtain such expert or code. Therefore, we have decided to provide a limited transition period. 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 disclosure of their code of ethics 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. Recognizing that smaller businesses may have the greatest difficulty attracting qualified audit committee financial experts, 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.

III. Paperwork Reduction Act

The amendments contain "collection of information" requirements within the meaning of the Paperwork Reduction Act of 1995 ("PRA"). We published a notice requesting comment on the collection of information requirements in the Proposing Release, and we submitted requests to the Office of Management and Budget ("OMB") for approval in accordance with the PRA. These requests are pending before the OMB.

The titles for the collection of information are "Form 10-K," "Form 10-KSB," "Form 20-F," "Form 40-F" and "Form 8-K." 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.

Form 10-K (OMB Control No. 3235-0063) prescribes information that a registrant must disclose annually to the market about its business. Form 10-KSB (OMB Control No. 3235-0420) prescribes information that a "small business issuer" as defined under our rules must disclose annually to the market about its business. Form 20-F (OMB Control No. 3235-0288) prescribes information that a foreign private issuer must disclose annually to the market about its business. Form 40-F (OMB Control No. 3235-0381) prescribes information that certain Canadian issuers must disclose annually to the market about their businesses. Form 8-K (OMB Control No. 3235-0060) prescribes information about significant events that a registrant must disclose on a current basis. Form 8-K also may be used, at a registrant's option, to report any events that the registrant deems to be of importance to shareholders. Additionally, companies may use the form to disclose the nonpublic information required to be disclosed by Regulation FD.⁶⁸

A. Summary of Amendments

The amendments require two new types of disclosure that must be included in Form 10-K, Form 10-KSB, Form 20-F and Form 40-F. A domestic company may, at its discretion, provide the new disclosures in its proxy or information statement on Schedule 14A or 14C and incorporate those disclosures by reference into its annual report. These new disclosure items require a company to disclose the following:

- 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.

- Whether it has adopted a code of ethics that applies to the company's principal executive officer, principal financial officer, principal accounting officer, 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.

None of these amendments requires a company to have an audit committee financial expert or a code of ethics.

B. Summary of Comment Letters and Revisions to Proposals

We requested comment on the PRA analysis contained in the proposing release. Several commenters asserted that the benefits of a rule requiring a company to file its code of ethics do not justify the costs. In response to those comments, the final rules provide for two additional means by which a company may make copies of its code of ethics available to the public. Instead of filing the code, the rules permit a company to either post its code of ethics on the company's Web site if it discloses in its annual report that it intends to do so or to include a written undertaking in its annual report to provide any person with a copy of the code of ethics free of charge upon request. We include in this PRA analysis an adjustment to reflect the added disclosure required if a company intends to post its ethics code on its Web site and by the undertaking if a company elects to make copies available to the public without charge upon request. The purpose of these new disclosures is to provide flexibility for companies in making their

⁶⁶ See new Item 16B to Form 20-F and new paragraph (9) to General Instruction B of Form 40-F.

⁶⁷ The term "asset-backed issuer" is defined in Exchange Act Rules 13a-14(g) and 15d-14(g) [17 CFR 240.13a-14(g) and 240.15d-14(g)].

⁶⁸ 17 CFR 243.100-103.