

for investment companies meet on a quarterly basis.²²⁴

H. Expanded Disclosure

To allow the issuer's investors to be better able to evaluate the independence of the accountant, we believe that disclosures should be made by issuers of the scope of services provided by its independent public accountants. Section 202 of the Sarbanes-Oxley Act requires pre-approval of all audit and non-audit services, with exceptions provided for *de minimis* amounts under certain circumstances, as described in the Act and in rules discussed previously in this release. The Sarbanes-Oxley Act further requires disclosure in periodic reports of non-audit services approved by the audit committee.

Current proxy disclosure rules require that a registrant disclose, in the most recent fiscal year, the professional fees paid for both audit and non-audit services to its principal independent accountant. As a result of the requirements of Sarbanes-Oxley and partly in response to public comment on the current proxy disclosures requirements since their adoption in 2000, we proposed rules to change both the types of fees that must be described and the number of years for which the disclosures must be provided.²²⁵ The proposed rules would have increased the disclosed categories of professional fees paid for audit and non-audit services from three to four. The categories of reportable fees proposed were: (1) Audit Fees, (2) Audit-Related Fees, (3) Tax Fees, and (4) All Other Fees.²²⁶ The proposed disclosure called for information to be provided for each of the two most recent fiscal years, rather than just the most recent fiscal year. In addition, we proposed that registrants be required to describe in subcategories the nature of the services provided that are categorized as audit-related fees and all other fees.

Our proposed changes to the proxy disclosure rules were intended to clarify the categorization of services provided by the audit firm in order to provide increased transparency for investors. Many commenters²²⁷ favored the

approach of our proposals, however, some commenters²²⁸ requested clarification relating to the categorization of certain types of services. For example, the discussion accompanying the proposed rules stated that the "tax fees" category would capture all services performed by professional staff in the independent accountant's tax division. Thus, the proposed rules would have required that the fees associated with the review by the tax partner of the tax accrual during the audit be included within the "tax services category." However, as stated elsewhere in the proposing release, the "audit services" category should include services performed to fulfill the accountant's responsibility under GAAS. Likewise, complex accounting issues may require that the firm engage in consultation with national office or other technical reviewers to reach an audit judgment.

Some commenters²²⁹ generally agreed with the proposed categories of services. Some,²³⁰ however, suggested modifications or clarifications to the categories or reductions in the number of categories. Additionally, some commenters suggested that the disclosures should be provided for three years²³¹ and others suggested that they be provided for only one year.²³²

Our final rules retain the basic provisions of our proposals. In response to the requests by commenters for clarification of the categorization of services, we expect that all services performed to comply with GAAS should be classified as "audit services" in providing the disclosures. Certain

services, such as tax services and accounting consultations, may not be billed as audit services. However, to the extent that such services are necessary to comply with GAAS, an appropriate allocation of those fees may be included in the audit fee category. We recognize, however, that some services may be difficult to classify and we encourage issuers and their accountants to contact our staff to discuss the appropriate classifications.

Consistent with our proposal, we are adopting rules requiring issuers to provide disclosures of fees paid to the independent accountant segregated into the four previously-identified categories. Additionally, other than for the audit category, the issuer is required to describe, in qualitative terms, the types of services provided under the remaining three categories. Also, consistent with our proposal, this information is required for the two most recent years. Finally, consistent with our proposal, this information must be provided either in the issuer's proxy statement, or its periodic annual filing.

While the rules we are adopting continue to require issuers to disclose fees paid to the principal accountant for audit services, we are expanding the types of fees that should be included in this category to include fees for services that normally would be provided by the accountant in connection with statutory and regulatory filings or engagements. In addition to including fees for services necessary to perform an audit or review in accordance with GAAS,²³³ this category also may include services that generally only the independent accountant reasonably can provide, such as comfort letters, statutory audits, attest services, consents and assistance with and review of documents filed with the Commission.

We believe that the addition of a new category, "Audit-Related Fees," will enable registrants to present the audit fee relationship with the principal accountant in a more transparent fashion. In general, "Audit-Related Fees" are assurance and related services (e.g., due diligence services) that traditionally are performed by the independent accountant. More specifically, these services would include, among others: employee benefit plan audits, due diligence related to mergers and acquisitions, accounting consultations and audits in connection with acquisitions, internal control reviews, attest services that are not required by statute or regulation and

²²⁴ Similarly, the accountant only would need to disclose those non-audit services provided to the investment company complex that they were engaged to perform during the intervening period since their last communication, but for which pre-approval by the investment company's audit committee was not required.

²²⁵ See, proposed Item 9(e), Schedule 14A.

²²⁶ Previously, registrants were required to disclose only "Audit Fees," "Financial Systems Design and Implementation Fees" and "All Other Fees."

²²⁷ See, e.g., letter from California Public Employees' Retirement System, dated January 10,

2003; letter from The Business Roundtable, dated January 13, 2003; letter from American Community Bankers, dated January 13, 2003; letter from American Institute of Certified Public Accountants, dated January 9, 2003; letter from Financial Executives International's Committee on Corporate Reporting, dated January 14, 2003.

²²⁸ See, e.g., letter from Eli Lilly and Company, dated January 9, 2003; letter from KPMG, dated January 9, 2003; letter from Deloitte & Touche, LLP, dated January 10, 2003.

²²⁹ See, e.g., letter from Ralph S. Saul, dated December 23, 2002; letter from Ernst & Young, dated January 6, 2003; letter from Commercial Federal Corporation, dated January 13, 2003.

²³⁰ See, e.g., letter from Lynn E. Turner, dated January 13, 2003; letter from California Public Employees' Retirement System, dated January 10, 2003; letter from Eli Lilly and Company, dated January 9, 2003; letter from American Bar Association, Sector of Business Law, dated January 14, 2003.

²³¹ See, e.g., letter from California Public Employees' Retirement System, dated January 10, 2003; letter from California Board of Accountancy, dated January 13, 2003; letter from Lynn E. Turner, dated January 13, 2003.

²³² See, e.g., letter from American Institute of Certified Public Accountants, dated January 9, 2003; letter from Wells Fargo & Company, dated January 13, 2003.

²³³ See also, Section 2(a)(2) the Sarbanes-Oxley Act which defines the term "audit."