

the percentage of fees in each category where the audit committee used the *de minimis* exception to the pre-approval requirements. Finally, the rules extend the disclosure requirements to all entities filing Forms 10-K, 10-KSB, 20-F, 40-F and N-CSR.³¹²

The rules require all entities filing Forms 10-K, 10-KSB, 20-F, 40-F and N-CSR to include the disclosure either in the proxy or information statement or, if the company does not issue a proxy or information statement, in Forms 10-K, 10-KSB, 20-F, 40-F or Form N-CSR. The rules, therefore, may require smaller entities to spend additional time and incur additional costs in preparing disclosures. Smaller entities also may incur costs to set up procedures to monitor the activities of the audit committee in order to collect and record the information to be disclosed under the rules.

F. Agency Action To Minimize Effect on Small Entities and Significant Alternatives

The Regulatory Flexibility Act directs us to consider significant alternatives that would accomplish the stated objective, while minimizing any significant adverse impact on small entities. In connection with the amendments, we considered the following alternatives:

- The establishment of differing compliance or reporting requirements or timetables that take into account the resources of smaller entities;
- The clarification, consolidation, or simplification of compliance and reporting requirements under the rule for smaller entities;
- The use of performance rather than design standards; and
- An exemption from coverage of the proposed amendments, or any part thereof, for smaller entities.

We believe investors in both smaller companies and larger companies want and benefit from the revisions to the auditor independence rules, enhanced communications between the auditor and the audit committee, and enhanced disclosures required by the rule.

We, nevertheless, have determined that the two specific exemptions from the final rules for smaller accounting firms that are described above are appropriate and consistent with the Sarbanes-Oxley Act.

VII. Codification Update

The Commission is amending the "Codification of Financial Reporting Policies" announced in Financial Reporting Release No. 1 (April 15, 1982):

By amending Section 602 to add a new discussion at the end of that section under the Financial Reporting Release Number (FR-68) assigned to the adopting release and including the text in the adopting release that discusses the final rules would be as presented in Section II of this release.

The Codification is a separate publication of the Commission. It will not be published in the Code of Federal Regulations.

VIII. Statutory Bases and Text of Amendments

We are adopting amendments to Rules 2-01 and 2-07 of Regulation S-X, Item 9 of Schedule 14A, Forms 10-K, 10-KSB, 20-F and 40-F, Form N-CSR and Exchange Act Rule 10A-2 under the authority set forth in Schedule A and Sections 7, 8, 10, 19 and 28 of the Securities Act, Sections 3, 10A, 12, 13, 14, 17, 23 and 36 of the Exchange Act, Sections 5, 10, 14 and 20 of the Public Utility Holding Company Act of 1935, Sections 8, 30, 31 and 38 of the Investment Company Act of 1940, Sections 203 and 211 of the Investment Advisers Act of 1940, and Sections 3(a) and 208 of the Sarbanes-Oxley Act.

Text of Amendments

List of Subjects

17 CFR Part 210

Accountants, Accounting.

17 CFR Part 240

Broker-dealers, Issuers, Securities.

17 CFR Part 249

Reporting and recordkeeping requirements, Securities.

17 CFR Part 274

Investment companies, Reporting and recordkeeping requirements, Securities.

In accordance with the foregoing, Title 17, Chapter II of the Code of Federal Regulations is amended 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 continues 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-37(a), 80b-3, 80b-11 unless otherwise noted.

2. Section 210.2-01 is amended by:
- a. Revising paragraph (c)(2)(iii);
 - b. Revising paragraph (c)(4);
 - c. Adding paragraph (c)(6);
 - d. Adding paragraph (c)(7);
 - e. Adding paragraph (c)(8);
 - f. Revising paragraph (e)(1);
 - g. Removing paragraph (e)(2);
 - h. Redesignating paragraph (e)(3) as (e)(2);
 - i. Revising paragraph (f)(1);
 - j. Revising paragraph (f)(3);
 - k. Revising paragraph (f)(7); and
 - l. Adding paragraph (f)(17).

The revisions and additions read as follows:

§ 210.2-01 Qualifications of accountants.

- * * * * *
- (c) * * *
- (2) *Employment relationships.* * * *
- (i) * * *
- (ii) * * *
- (iii) *Employment at audit client of former employee of accounting firm.*

(A) A former partner, principal, shareholder, or professional employee of an accounting firm is in an accounting role or financial reporting oversight role at an audit client, unless the individual:

- (1) Does not influence the accounting firm's operations or financial policies;
- (2) Has no capital balances in the accounting firm; and
- (3) Has no financial arrangement with the accounting firm other than one providing for regular payment of a fixed dollar amount (which is not dependent on the revenues, profits, or earnings of the accounting firm);

(i) Pursuant to a fully funded retirement plan, rabbi trust, or, in jurisdictions in which a rabbi trust does not exist, a similar vehicle; or

(ii) In the case of a former professional employee who was not a partner, principal, or shareholder of the accounting firm and who has been disassociated from the accounting firm

³¹² Form 10-K is the annual report that registrants file with the Commission pursuant to Section 13 or 15(d) of the Exchange Act, if no other annual reporting form has been prescribed. Small business issuers may use abbreviated Form 10-KSB. A "small business issuer" is an entity that (1) has revenues of less than \$25,000,000, (2) is a U.S. or Canadian issuer, (3) is not an investment company, and (4) if a majority owned subsidiary, the parent corporation also is a small business issuer. An entity is not a "small business issuer," however, if the aggregate market value of its outstanding voting and non-voting common stock held by non-affiliates is \$25,000,000 or more. See 17 CFR 240.12b-2. Registered management investment companies use Form N-CSR to file certified shareholder reports with the Commission.