

statements if the method had been followed which the former accountants apparently would have concluded was required (unless that method ceases to be generally accepted because of authoritative standards or interpretations issued after the disagreement or event):

(1) In connection with a change in accountants subject to paragraph (a) of this Item, there was any disagreement or event as described in paragraph (a)(1)(iv) of this Item;

(2) During the fiscal year in which the change in accountants took place or during the later fiscal year, there have been any transactions or events similar to those involved in such disagreement or event; and

(3) Such transactions or events were material and were accounted for or disclosed in a manner different from that which the former accountants apparently would have concluded was required.

Instructions to Item 304: 1. The disclosure called for by paragraph (a) of this Item need not be provided if it has been previously reported as that term is defined in Rule 12b-2 under the Exchange Act (§240.12b-2); the disclosure called for by paragraph (a) of this Item must be provided, however, notwithstanding prior disclosure, if required pursuant to Item 9 of Schedule 14A (§249.14a-101 *et seq.*). The disclosure called for by paragraph (b) of this Item must be furnished, where required, notwithstanding any prior disclosure about accountant changes or disagreements.

2. When disclosure is required by paragraph (a) of this Item in an annual report to security holders pursuant to Rule 14a-3 or Rule 14c-3 (§240.14a-3 or 240.14c-3 of this chapter), or in a proxy or information statement filed pursuant to the requirements of Schedule 14A (§240.14a-101 *et seq.*) or 14C (§240.14c-101 *et seq.*), in lieu of a letter pursuant to paragraph (a)(2)(ii)(D) or (a)(3) of this Item, before filing such materials with or furnishing such materials to the Commission, the small business issuer shall furnish the disclosure required by paragraph (a) of this Item to each accountant who was engaged during the period set forth in paragraph (a) of this Item. If any such accountant believes that the statements made in response to paragraph (a) of this Item are incorrect or incomplete, it may present its views in a brief statement, ordinarily expected not to exceed 200 words, to be included in the annual report or proxy or information statement. This statement shall be submitted to the small business issuer within ten business days of the date the accountant receives the small business

issuer's disclosure. Further, unless the written views of the newly engaged accountant required to be filed as an exhibit by paragraph (a)(2)(ii)(D) of this Item have been previously filed with the Commission, the small business issuer shall file a Form 8-K (17 CFR 249.308 of this chapter) along with the annual report or proxy or information statement for the purpose of filing the written views as exhibits.

3. The information required by this Item need not be provided for a company being acquired by the small business issuer if such acquiree has not been subject to the filing requirements of either section 13(a) or 15(d) of the Exchange Act, or, because of section 12(i) of the Exchange Act, has not furnished an annual report to security holders pursuant to Rule 14a-3 or Rule 14c-3 (§240.14a-3 or 240.14c-3 of this chapter) for its latest fiscal year.

4. In determining whether any disagreement or reportable event has occurred, an oral communication from the engagement partner or another person responsible for rendering the accounting firm's opinion (or their designee) will generally suffice as the accountant advising the small business issuer of a reportable event or as a statement of a disagreement at the "decision-making level" within the accounting firm and require disclosure under this Item.

§§ 228.305–228.306 [Reserved]

§ 228.307 (Item 307) Disclosure controls and procedures.

Disclose the conclusions of the small business issuer's principal executive and principal financial officers, or persons performing similar functions, regarding the effectiveness of the small business issuer's disclosure controls and procedures (as defined in §240.13a-15(e) or 240.15d-15(e) of this chapter) as of the end of the period covered by the report, based on the evaluation of these controls and procedures required by paragraph (b) of §240.13a-15 or 240.15d-15 of this chapter.

[68 FR 36660, June 18, 2003]

§ 228.308 (Item 308) Internal control over financial reporting.

(a) *Management's annual report on internal control over financial reporting.* Provide a report of management on the small business issuer's internal control over financial reporting (as defined in §240.13a-15(f) or 240.15d-15(f) of this chapter) that contains:

(1) A statement of management's responsibility for establishing and maintaining adequate internal control over financial reporting for the small business issuer;

(2) A statement identifying the framework used by management to evaluate the effectiveness of the small business issuer's internal control over financial reporting as required by paragraph (c) of §240.13a-15 or 240.15d-15 of this chapter;

(3) Management's assessment of the effectiveness of the small business issuer's internal control over financial reporting as of the end of the small business issuer's most recent fiscal year, including a statement as to whether or not internal control over financial reporting is effective. This discussion must include disclosure of any material weakness in the small business issuer's internal control over financial reporting identified by management. Management is not permitted to conclude that the small business issuer's internal control over financial reporting is effective if there are one or more material weaknesses in the small business issuer's internal control over financial reporting; and

(4) A statement that the registered public accounting firm that audited the financial statements included in the annual report containing the disclosure required by this Item has issued an attestation report on the small business issuer's internal control over financial reporting.

(b) *Attestation report of the registered public accounting firm.* Provide the registered public accounting firm's attestation report on the small business issuer's internal control over financial reporting in the small business issuer's annual report containing the disclosure required by this Item.

(c) *Changes in internal control over financial reporting.* Disclose any change in the small business issuer's internal control over financial reporting identified in connection with the evaluation required by paragraph (d) of §240.13a-15 or 240.15d-15 of this chapter that occurred during the small business issuer's last fiscal quarter (the small business issuer's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reason-

ably likely to materially affect, the small business issuer's internal control over financial reporting.

Instructions to Item 308: 1. A small business issuer need not comply with paragraphs (a) and (b) of this Item until it either had been required to file an annual report pursuant to section 13(a) or 15(d) of the Exchange Act (15 U.S.C. 78m or 78o(d)) for the prior fiscal year or had filed an annual report with the Commission for the prior fiscal year. A small business issuer that does not comply shall include a statement in the first annual report that it files in substantially the following form: "This annual report does not include a report of management's assessment regarding internal control over financial reporting or an attestation report of the company's registered public accounting firm due to a transition period established by rules of the Securities and Exchange Commission for newly public companies."

2. The small business issuer must maintain evidential matter, including documentation, to provide reasonable support for management's assessment of the effectiveness of the small business issuer's internal control over financial reporting.

[68 FR 36661, June 18, 2003, as amended at 70 FR 1593, Jan. 7, 2005; 71 FR 76594, Dec. 21, 2006; 72 FR 35321, June 27, 2007]

§ 228.308T (Item 308T) Internal control over financial reporting.

NOTE TO ITEM 308T: This is a special temporary section that applies only to an annual report filed by the small business issuer for a fiscal year ending on or after December 15, 2007 but before December 15, 2008.

(a) *Management's annual report on internal control over financial reporting.* Provide a report of management on the small business issuer's internal control over financial reporting (as defined in §240.13a-15(f) or §240.15d-15(f) of this chapter). This report shall not be deemed to be filed for purposes of Section 18 of the Exchange Act or otherwise subject to the liabilities of that section, unless the small business issuer specifically states that the report is to be considered "filed" under the Exchange Act or incorporates it by reference into a filing under the Securities Act or the Exchange Act. The report must contain:

(1) A statement of management's responsibility for establishing and maintaining adequate internal control over financial reporting for the small business issuer;