

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 210, 228, 229, 230, 240,
249 and 260

[Release Nos. 33-8070, 34-45590; 35-
27503; 39-2395; IA-2018; IC-25464; FR-62;
File No. S7-03-02]

RIN 3235-AI46

Requirements for Arthur Andersen LLP Auditing Clients

AGENCY: Securities and Exchange
Commission.

ACTION: Temporary final rules and final
rules.

SUMMARY: The Securities and Exchange Commission (the "Commission") is adopting rules to assure a continuing and orderly flow of information to investors and the U.S. capital markets and to minimize any potential disruptions that may occur as a result of the indictment of Arthur Andersen LLP. In addition, the Commission is modifying, in a manner appropriate for the protection of investors, the requirements for including audited financial statements in registration statements under the Securities Act of 1933 and filings required by the Trust Indenture Act of 1939 by registrants that are unable to or elect not to have Andersen issue a manually signed audit report, if the audit report was not issued on or before March 14, 2002. The rules the Commission adopts today, as well as the interpretations set forth in this release, are necessary to effect these modifications. The Commission emphasizes that companies should make their own independent decisions regarding completion of current audits and that these actions are intended only to provide neutral flexibility for companies as they make those decisions. In the document, the Commission also publishes companion orders relating to, among other matters, the inclusion of financial statements in filings under the Securities Exchange Act of 1934, the Investment Advisers Act of 1940, the Investment Company Act of 1940 and the Public Utility Holding Company Act of 1935 where those filings would have included audited or reviewed financial statements for which Andersen had been engaged as the independent public accountant. To further an understanding of the interactions between the rules we adopt today, the interpretations set forth in this document and the exemptions provided in the orders, this document includes a description of a number of actions taken in those orders.

EFFECTIVE DATE: March 18, 2002, except Temporary Notes 1T, 2T and 3T preceding § 210.3-01; § 228.304T; Temporary Notes 1T and 2T in § 228.310; §§ 228.601T, 229.304T, 229.601T, 230.427T; Instruction 2T following paragraph (b)(2)(iv) in § 230.428; and the amendments to Form 20-F will be effective from March 18, 2002 to December 31, 2002.

FOR FURTHER INFORMATION CONTACT: Investors with questions can call a special hotline maintained by the Commission's Office of Investor Education and Assistance at 1-800-SEC-0330 or e-mail the office at help@sec.gov.

Issuers with questions regarding Securities Act or Exchange Act filings or compliance with the Trust Indenture Act, please call the Division of Corporation Finance's hotline at 202-942-2816 or e-mail the Division at cfhotline@sec.gov.

Auditors with transition questions may call the Office of the Chief Accountant at 202-942-4400 or e-mail the office at oca@sec.gov.

For questions regarding broker-dealers, self-regulatory organizations, and transfer agents, please call the Division of Market Regulation's hotline at 202-942-0069 or e-mail the Division at marketreg@sec.gov.

For questions regarding investment companies, investment advisers or public utility holding companies, please call the Division of Investment Management's hotline at 202-942-0590 or e-mail the Division at IMOCA@sec.gov.

SUPPLEMENTARY INFORMATION: We are adopting temporary amendments to Item 310¹ of Regulation S-B² and Article 3³ of Regulation S-X⁴ under the Securities Act of 1933⁵ ("Securities Act") and Form 20-F⁶ under the Securities Exchange Act of 1934⁷ ("Exchange Act"). We are also adopting amendments to Rule 2-02⁸ of Regulation S-X and Rule 428⁹ under the Securities Act. Additionally, we are adopting temporary Items 304T¹⁰ and 601T¹¹ of Regulation S-B, temporary Items 304T¹² and 601T¹³ of Regulation

S-K,¹⁴ temporary Rule 427T,¹⁵ Rule 401a¹⁶ and Rule 437a¹⁷ under the Securities Act, Rule 12b-37¹⁸ under the Exchange Act and Rule 19a-1¹⁹ under the Trust Indenture Act of 1939²⁰ ("Trust Indenture Act"). We are also attaching to this release a copy of Release No. 34-45589 (March 18, 2002) as Appendix A (the "34 Act Order"), a copy of Release Nos. IA-2017 and IC-25463 (March 18, 2002) as Appendix B (the "40 Act Order") and a copy of Release No. 35-27502 (March 18, 2002) as Appendix C (the "35 Act Order").

I. Introduction

The Securities and Exchange Commission is taking necessary and immediate regulatory actions to assure a continuing and orderly flow of information to investors and U.S. capital markets and to minimize any potential disruptions that may occur as a result of the indictment of Arthur Andersen LLP ("Andersen"). The actions the Commission takes today, through this release and by separate Commission orders attached as Appendices A, B and C to this release (the "Orders") apply, and the guidance issued in Staff Accounting Bulletin No. 90, Topic I.L.,²¹ does not apply. The Commission has requested and received assurances from Andersen that it will continue to audit financial statements in accordance with generally accepted auditing standards ("GAAS") and applicable professional and firm auditing standards, including quality control standards. Andersen has also told the Commission that if it becomes unable to continue to provide those assurances, it will advise the Commission immediately.

As discussed more fully in this release, companies to whom Andersen issues a manually signed audit report after March 14, 2002 must file a letter as an exhibit to their filings stating they have received certain representations from Andersen concerning audit quality controls, including representations regarding the continuity of Andersen personnel working on the audit, the availability of national office consultation, and the availability of personnel at foreign affiliates of Andersen to conduct relevant portions of the audit. So long as Andersen continues to be in a position to provide

¹ 17 CFR 228.310.

² 17 CFR 228.10 *et seq.*

³ 17 CFR 210.3-01-3-20.

⁴ 17 CFR 210.1-01 *et seq.*

⁵ 15 U.S.C. § 77a *et seq.*

⁶ 17 CFR 249.220f.

⁷ 15 U.S.C. § 78a *et seq.*

⁸ 17 CFR 210.2-02.

⁹ 17 CFR 230.428.

¹⁰ 17 CFR 228.304T.

¹¹ 17 CFR 228.601T.

¹² 17 CFR 229.304T.

¹³ 17 CFR 229.601T.

¹⁴ 17 CFR 229.10 *et seq.*

¹⁵ 17 CFR 230.427T.

¹⁶ 17 CFR 230.401a.

¹⁷ 17 CFR 230.437a.

¹⁸ 17 CFR 240.12b-37.

¹⁹ 17 CFR 260.19a-1.

²⁰ 15 U.S.C. § 77sss, *et seq.*

²¹ Staff Accounting Bulletin No. 90 (Feb. 7, 1991) [56 FR 4938].

those assurances, the Commission will continue to accept financial statements audited by Andersen in filings.

In addition, if companies for which Andersen had been engaged as the independent public accountant²² are unable to obtain from Andersen or elect not to have Andersen issue a manually signed audit report, these companies may need additional time to engage new independent accountants and complete their filings. Further, as a number of requirements throughout the federal securities laws are contingent upon the flow of accurate and timely information into the market, any potential disruption may, absent the actions the Commission takes today, have a significant impact on a company's compliance with a number of provisions under the federal securities laws.

Accordingly, the Commission is taking action for those Andersen clients that are unable to obtain from Andersen or elect not to have Andersen issue a manually signed audit report. The Commission will require adherence to existing filing deadlines, but will accept filings that include unaudited financial statements from any such issuer unable to provide timely audited financial statements. Issuers electing this alternative will generally be required to amend their filings within 60 days to include audited financial statements. The Commission has taken similar actions regarding reviews of interim financial statements.

The actions the Commission takes today, through this release and by the Orders, are meant to provide investors with the timely financial information to which they are entitled under the federal securities laws, while giving certain Andersen clients time to address any timing constraints and temporary disruptions they may face. In addition to those actions, in this release we also adopt rules and express interpretations concerning the impact of those actions upon other requirements of the federal securities laws.²³ None of the actions announced by the Commission today affects the liability standards to which an issuer's filing is subject.

We emphasize that companies should make their own independent decisions regarding completion of current audits and that these actions are intended only to provide neutral flexibility for companies as they make those decisions. Consistent with this

approach, our actions do not apply to issuers to whom Andersen had issued a signed audit report on or before March 14, 2002. We also recognize there are a number of situations that will be fact-specific. We strongly encourage companies to contact the staff of the Commission listed at the beginning of this release and request consideration of specific situations and the appropriateness of additional Commission or staff action.

II. Registrants Under the Securities Act of 1933

A. Registrants That Continue To Engage Andersen

For issuers that make filings that include accountant's reports from Andersen issued after March 14, 2002, the Commission has adopted Temporary Note 3T to Article 3 of Regulation S-X (and Temporary Note 2T to Item 310 of Regulation S-B for small business issuers²⁴ and General Instruction A-T2 to Form 20-F for foreign private issuers²⁵) to specify special disclosure requirements for these issuers. While the exact nature of each issuer's disclosure may vary depending on the facts and circumstances applicable to each of Andersen's public company audit clients, these issuers are required to include as an exhibit to their filings a letter by the issuer addressed to the Commission that states that Andersen has represented to the issuer that the audit was subject to Andersen's quality control system for the U.S. accounting and auditing practice to provide reasonable assurance that the engagement was conducted in compliance with professional standards and that there was appropriate continuity of Andersen personnel working on audits, availability of national office consultation and availability of personnel at foreign affiliates of Andersen to conduct the relevant portions of the audit. We expect these assurances will be given in connection with the issuance of the audit report. So long as Andersen continues to be in a position to provide those assurances, the Commission will continue to accept financial statements audited by Andersen.

B. Registrants That Are Unable To, or Choose Not To, Engage Andersen

There may be issuers that are Andersen clients or whose filings are to include financial statements as to the examination of which Andersen had

been engaged on or after March 14, 2002 that are unable to obtain from Andersen or elect not to have Andersen issue a manually signed audit report. The following sections outline specific relief to be granted to these issuers. This relief does not apply for financial statements where Andersen has already issued a manually signed audit report for those financial statements on or before March 14, 2002.

1. Form Eligibility

Forms S-2,²⁶ S-3,²⁷ F-2,²⁸ F-3²⁹ and S-8³⁰ under the Securities Act permit alternative disclosure formats.³¹ Eligibility for those forms is dependent upon, among other requirements, whether the company filing the registration statement has filed all required reports under the Exchange Act for a specified period and whether the company has filed those reports in a timely manner for a specified period. The 34 Act Order provides alternate procedures for filing Exchange Act reports by issuers that are unable to obtain from Andersen or elect not to have Andersen issue a manually signed audit report. It is the Commission's view that the filing of reports in the manner permitted by the 34 Act Order is consistent with the protection of investors. Accordingly, it is our further view that compliance with the 34 Act Order should not negatively impact a company's eligibility to use Securities Act registration statement forms. We are adopting Rule 401a under the Securities Act to make clear that issuers that are eligible to rely on the 34 Act Order and that comply with its terms for the filing of their Exchange Act reports will be current and timely and, therefore, will not have their eligibility for Securities Act forms impacted negatively.

2. Financial Statements Required in Registration Statements

The financial statement requirements for registration statements on Forms S-

²⁶ 17 CFR 239.12.

²⁷ 17 CFR 239.13.

²⁸ 17 CFR 239.32.

²⁹ 17 CFR 239.33.

³⁰ 17 CFR 239.16b.

³¹ Forms S-4 and F-4 [17 CFR 239.25 and 17 CFR 239.34] under the Securities Act do not have "form eligibility" standards relating to the company registering a transaction on that form or the other company(ies) involved in the transaction. Rather, Forms S-4 and F-4 permit specific disclosure formats regarding each of those companies based on their eligibility to use Forms S-2 or S-3 and F-2 or F-3, respectively. As new Securities Act Rule 401a relates to eligibility to use Securities Act forms, that rule should be considered when completing those sections of Forms S-4 and F-4 that rely upon Securities Act form eligibility.

²² Throughout this release, where we refer to Andersen, we also include foreign affiliates of Andersen.

²³ The Commission's actions are procedural in nature and are of finite duration. The temporary rules and amendments we are adopting today expire on December 31, 2002.

²⁴ The term "small business issuer" is defined in Item 10(a)(1) of Regulation S-B.

²⁵ The term "foreign private issuer" is defined in Securities Act Rule 405 [17 CFR 230.405].

1,³² S-2, S-3, S-4, S-6,³³ S-8, S-11,³⁴ N-1,³⁵ N-1A,³⁶ N-2,³⁷ N-3,³⁸ N-4,³⁹ N-5⁴⁰ and N-14⁴¹ generally are set forth in Regulation S-X.⁴² The financial statement requirements for registration statements on Form SB-1⁴³ and Form SB-2,⁴⁴ as well as for financial statements regarding small business issuers on other Securities Act forms, generally are set forth in Item 310 of Regulation S-B. The financial statement requirements for registration statements on Forms F-1,⁴⁵ F-2, F-3 and F-4 generally are contained in Form 20-F under the Exchange Act. We have adopted temporary notes to Article 3 of Regulation S-X and Item 310 of Regulation S-B and a temporary instruction to Form 20-F for eligible issuers whose registration statements contain financial statements of an entity that has a fiscal year ending between and including November 30, 2001⁴⁶ and April 15, 2002, as to the examination of which Andersen had been engaged as the independent public accountant on or after March 14, 2002.⁴⁷ These new

items generally provide that unaudited information may be included in Securities Act registration statements so long as audited financial statements are subsequently provided by amendment. These new items may not be relied upon by any registrant that is a "blank check company"⁴⁸ as defined in Securities Act Rule 419(a)(2).⁴⁸ These items will have the following effect on the inclusion of audited financial statements in registration statements under the Securities Act:

- Registration statements filed by companies that, at the time of filing the registration statement, are not required to file reports under Section 13(a)⁴⁹ or 15(d)⁵⁰ of the Exchange Act, must in all circumstances include financial statements that meet the timeliness and audit requirements of Commission rules.

- Registration statements (or any pre-effective or post-effective amendments thereto) filed by companies that, at the time of filing the registration statement, are required to file reports under Section 13(a) or 15(d) of the Exchange Act,⁵¹ may include financial statements that meet the timeliness requirements of Commission rules but that are unaudited if Andersen had been engaged as the independent public accountant on or after March 14, 2002 to examine those financial statements and the issuer is unable to obtain from Andersen or elects not to have Andersen issue a manually signed audit report.⁵² The registration statement must also include disclosure reflecting the guidance in Temporary Note 2T to Article 3 of Regulation S-X.⁵³ These companies will then be required to file a pre-effective amendment, post-effective amendment or an amendment to a document incorporated by reference, as appropriate, containing the audited financial statements for the required periods if the registered offering or offerings have not been completed. Generally, if the registration statement is not yet effective and will become effective on or after the earlier

situations where a registrant is using financial information that has previously been audited by Andersen.

⁴⁸ 17 CFR 230.419(a)(2).

⁴⁹ 15 U.S.C. § 78m(a).

⁵⁰ 15 U.S.C. § 78o(d).

⁵¹ Including registered investment companies that have previously filed a registration statement under the Securities Act that has been declared effective by the Commission.

⁵² Unit investment trusts that offer a new series will continue to be required to provide audited financial statements for the registrant as currently required. The Commission believes that obtaining an audit that verifies the securities deposited in a unit investment trust is not unduly burdensome.

⁵³ See Section II.B.3 of this release.

of 60 days from the date when use of the financial statements would have been required and the date the audited financial statements are filed in the annual report of the registrant,⁵⁴ a pre-effective amendment to the registration statement or an amendment to a document incorporated by reference, as appropriate, containing audited financial statements must be filed before effectiveness.⁵⁵ If the registration statement is effective, the amendment containing audited financial statements generally must be filed by the earlier of 60 days from the date when use of the financial statements would have been required and the date the audited financial statements are filed in the annual report of the registrant,⁵⁶ if the offering or offerings are not complete (including any prospectus delivery period required by Section 4(3) of the Securities Act⁵⁷ and the rules thereunder) by such date.⁵⁸

- Registration statements for offerings that are registered in accordance with Securities Act Rule 415⁵⁹ and that are updated through "forward incorporation by reference" of the issuer's Exchange Act reports rather than through the filing of post-effective amendments will be updated in accordance with the procedures for including the audited financial information in the registrant's Exchange Act reports.

Issuers with effective registration statements for offerings registered in accordance with Rule 415 under the Securities Act must update the registration statement pursuant to undertakings included in those registration statements.⁶⁰ Among the events requiring an updating of the registration statement is the occurrence of facts or events that, individually or in

⁵⁴ Annual report to shareholders, in the case of a registered investment company.

⁵⁵ The 60 day period applies to foreign private issuers and issuers that meet all of the conditions in Rule 3-01(c) of Regulation S-X (or Item 310(g)(2) of Regulation S-B for small business issuers). For issuers that do not meet all of the conditions in Rule 3-01(c) of Regulation S-X (or Item 310(g)(2) of Regulation S-B for small business issuers), the period is 106 days. If the issuer is a registered investment company, the applicable time period is six months after the close of the fiscal year.

⁵⁶ Annual report to shareholders, in the case of a registered investment company.

⁵⁷ 15 U.S.C. 77d(3).

⁵⁸ The period is 106 days for issuers that do not meet all of the conditions in Rule 3-01(c) of Regulation S-X (or Item 310(g)(2) of Regulation S-B for small business issuers). If the issuer is a registered investment company, the applicable time period is six months after the close of the fiscal year.

⁵⁹ 17 CFR 230.415.

⁶⁰ Those undertakings, which are set forth in Item 512(a) of Regulation S-B or Regulation S-K [17 CFR 228.512 and 17 CFR 229.512], must be included in registration statements for offerings registered in accordance with Rule 415 under the Securities Act.

³² 17 CFR 239.11.

³³ 17 CFR 239.16.

³⁴ 17 CFR 239.18.

³⁵ 17 CFR 239.15.

³⁶ 17 CFR 239.15A.

³⁷ 17 CFR 239.14.

³⁸ 17 CFR 239.17a.

³⁹ 17 CFR 239.17b.

⁴⁰ 17 CFR 239.24.

⁴¹ 17 CFR 239.23.

⁴² These financial statement requirements may be included in the form indirectly, as they apply to the company's periodic reports, which are incorporated by reference into the registration statement. Form S-8 has an additional requirement, as expressed in Instruction 2 to Securities Act Rule 428(b) [17 CFR 230.428(b)], regarding the delivery of documents during the first 120 days of a fiscal year for a domestic company and the first 190 days of a fiscal year for a foreign private issuer. Under this instruction, the company may deliver a document that does not include audited financial information for the most recently completed fiscal year, so long as the company provides audited financial information by the end of the 120 day or 190 day period, as applicable. Consistent with the 34 Act Order, domestic companies may provide a document to plan participants within the first 180 days of the fiscal year that do not contain audited financial statements. Similarly, foreign private issuers may deliver such documents within the first 250 days of the fiscal year. The delivery of such documents will be permissible conditioned upon the delivery of audited financial statements by the end of the 180 day or 250 day period, as applicable.

⁴³ 17 CFR 239.9.

⁴⁴ 17 CFR 239.10.

⁴⁵ 17 CFR 239.31.

⁴⁶ For foreign private issuers, this date is August 31, 2001. For registered investment companies, this date is January 1, 2002. If the entity does not meet all of the conditions in Rule 3-01(c) of Regulation S-X (or Item 310(g) of Regulation S-B if the entity is a small business issuer), this date is December 29, 2001.

⁴⁷ We are using the date of March 14, 2002 to ensure that the registrant had engaged Andersen as its auditor for their most recent fiscal year end. Other rules and amendments adopted today address

the aggregate, represent a “fundamental change in the information set forth in the registration statement.”⁶¹ It is the Commission’s view that the failure of an eligible issuer to include audited financial statements in the registration statement, either through the filing of a post-effective amendment or amendments of Exchange Act reports or other documents incorporated by reference, in accordance with Temporary Note 1T to Article 3 of Regulation S–X (or Temporary Note 1T of Item 310 of S–B for small business issuers or Temporary Instruction A–T1 to Form 20–F for foreign private issuers) represents such a “fundamental change.” Accordingly, failure to comply with those requirements will require the filing of a post-effective amendment to the registration statement. Offerings under the registration statement must cease until a post-effective amendment that includes all information required by those requirements is declared effective.

Section 10(a)(3) of the Securities Act requires that the information in a prospectus that is used more than nine months after the effective date of the registration statement of which the prospectus is a part “shall be as of a date not more than sixteen months prior to such use so far as such information is known to the user of such prospectus or can be furnished without unreasonable effort or expense.”⁶² If the issuer is unable to obtain from Andersen or elects not to have Andersen issue a manually signed audit report, this presents a situation that we believe would cause compliance with Section 10(a)(3) to involve “unreasonable effort or expense.” Accordingly, we are adopting temporary Rule 427T under the Securities Act to extend for eligible issuers the sixteen month requirement in Section 10(a)(3) as it relates to audited financial statements. Under Rule 427T, the Section 10(a)(3) timeliness requirement for audited financial statements will be satisfied by any eligible issuer if two conditions are met. First, the prospectus used more than nine months after the effective date of the registration statement is updated to include unaudited financial information that is as of a date not more than sixteen months prior to use; provided that the registrant provides in the prospectus disclosure reflecting the guidance in Temporary Note 2T to Article 3 of Regulation S–X.⁶³ Second,

the prospectus used more than nine months after the effective date of the registration statement is updated to include audited financial information that is as of a date not more than eighteen months prior to use.⁶⁴ The updated prospectus should include a discussion of any material changes from the unaudited financial information and updated or revised information in any other section of the prospectus or documents incorporated by reference that should be updated or revised to reflect the changes in the audited financial information. Temporary Rule 427T may not be relied upon by any registrant that is a “blank check company” as defined in Securities Act Rule 419(a)(2).

3. Additional Disclosure Required in Filings

Issuers permitted to provide unaudited financial information in reliance on the temporary rules adopted today or in reliance on the Orders should consider whether any additional disclosure is necessary in those filings. The Commission has adopted Temporary Note 2T to Article 3 of Regulation S–X to provide guidance on the additional disclosure. The guidance in the note applies to all such issuers, including small business issuers and foreign private issuers. The temporary note is intended to provide guidance to issuers in meeting their disclosure obligations under the federal securities laws. While the exact content of each issuer’s disclosure may vary depending on the facts and circumstances applicable to each of Andersen’s former public company audit clients, issuers must provide on the cover page of their filings a prominent statement that the filing includes unaudited financial statements in lieu of the audited financial statements because the issuer was unable to obtain from Andersen or elected not to have Andersen issue a manually signed audit report. The issuer must also place this prominent statement in the filing immediately before the financial statements and follow guidance as to providing:

Exchange Act reports, each of the required updates may be accomplished in that manner. For registration statements that are updated through the filing of post-effective amendments, each update will require a post-effective amendment.

⁶⁴ Provisions of the 34 Act Order, the 40 Act Order or Temporary Note 1T to Article 3 of Regulation S–X may require the filing of audited financial statements at an earlier time than Rule 427T. For example, a registered investment company generally would be required to file its annual updating amendment with audited financial statements no later than the date it is required to file audited financial statements in its annual report to shareholders under the 40 Act Order, *i.e.*, typically 120 days after the close of its fiscal year.

- A statement as to when and how the issuer intends to provide the audited financial statements; and

- A statement that no auditor has opined that the unaudited financial statements present fairly, in all material respects, the financial position, the results of operations, cash flows and the changes in shareholders’ equity of the company (and, in the case of a registered investment company, the financial highlights) for each of the periods reported in accordance with generally accepted accounting principles.

Further, any audit report previously issued by Andersen that is required to be included in a filing should be included as required.

4. Predecessor Auditor’s Reports

Each issuer filing audited financial statements as to the examination of which Andersen had been engaged as the independent public accountant is required to file a manually signed accountants’ report⁶⁵ from Andersen.⁶⁶ Issuers may be unable to obtain an accountants’ report for the period for which Andersen was engaged. Accordingly, the Commission is amending Rule 2–02 of Regulation S–X to provide that those issuers that cannot obtain an accountants’ report from Andersen after reasonable efforts may file a copy of the latest signed and dated accountants’ report issued by Andersen for such period. The issuer must disclose prominently on such copy that the report is a copy of a previously issued Andersen report and that the report has not been reissued by Andersen. This rule is available only to issuers filing documents containing financial statements for a period with respect to which Andersen issued an accountants’ report.

5. Written Consents

Each issuer filing a Securities Act registration statement containing financial statements as to the examination of which Andersen had been engaged as the independent public accountant is required to file a written consent from Andersen. An issuer may be unable to obtain these consents. Accordingly, the Commission is adopting Securities Act Rule 437a to provide that, notwithstanding any other Commission rule or regulation, every registrant eligible to rely on this rule may dispense with the requirement for

⁶⁵ See Item 302 of Regulation S–T [17 CFR 232.302] for requirements related to signatures in electronic submissions.

⁶⁶ See Rule 2–02(a) of Regulation S–X [17 CFR 210.2–02(a)] for the technical requirements of an accountants’ report.

⁶¹ 17 CFR 228.512(a)(1)(ii) and 17 CFR 229.512(a)(1)(ii).

⁶² *Id.*

⁶³ For registration statements that are updated through “forward incorporation by reference” of

the registrant to file the written consent of Andersen as required by Section 7 of the Securities Act where:

- The registrant has not already obtained the written consent that would be required if not for this temporary rule,
- The registrant is not able to obtain the written consent after reasonable efforts, and
- The registrant discloses clearly any limitations on recovery by investors posed by the lack of consent.

This rule is available only to issuers filing registration statements containing financial statements audited by Andersen. The rule may not be relied upon by any registrant that is a "blank check company" as defined in Securities Act Rule 419(a)(2).

6. Rule 144

Rule 144(c)(1)⁶⁷ provides that there shall be adequate, current public information available for purposes of Rule 144 if the issuer of the securities to be offered has been subject to the reporting requirements of Section 13(a) or 15(d) of the Exchange Act for a period of at least 90 days preceding the subject sale of securities and has filed all required reports for the 12 months preceding that sale. It is the view of the Commission that the requirement to have filed all required reports for purposes of Rule 144(c)(1) is satisfied for issuers eligible to rely on the 34 Act Order if they have filed their Exchange Act reports as permitted under the 34 Act Order.⁶⁸

7. Rule 144A

Rule 144A(d)(4)⁶⁹ addresses the information that an issuer that is not a reporting company under the Exchange Act, not a foreign government and not a foreign company exempt from registration under Section 12 of the Exchange Act⁷⁰ by Exchange Act Rule 12g3-2(b)⁷¹ must agree to provide to investors or prospective investors if Rule 144A is to be relied upon. Among other requirements, an issuer subject to Rule 144A(d)(4) must provide financial information that "should be audited to the extent reasonably available." It is the view of the Commission that resales under Rule 144A will not be affected by the unavailability of audited financial

information due to reliance on the 34 Act Order and temporary rules adopted today.

8. Rule 701

The conditions for the Rule 701 exemption from Securities Act registration for certain offerings of securities include financial statement requirements. It is the view of the Commission that, to the extent required, where the information referenced in Rule 701(e) is prepared in compliance with the 34 Act Order by issuers eligible to rely on the 34 Act Order, the information contained in those reports is sufficient for purposes of Rule 701.

9. Regulation D

Rule 502(b)(2)(ii)⁷² sets forth the financial information requirements for issuers that are subject to the Exchange Act reporting requirements. Subject to various conditions, that rule may require the furnishing of annual reports under Exchange Act Rule 14a-3,⁷³ reports under the Exchange Act or registration statements under the Securities Act. It is the view of the Commission that, where the reports and registration statements referenced in Rule 502(b)(2)(ii) are prepared in compliance with the 34 Act Order by issuers eligible to rely on the 34 Act Order, the information contained in those reports and registration statements is sufficient for purposes of Regulation D.

10. Items 304 and 601 of Regulation S-K and Regulation S-B

Item 304 of Regulation S-K⁷⁴ sets forth the disclosure requirements for an issuer when its independent public accountant is dismissed or resigns. This disclosure would include a discussion of any disagreements with the independent accountants regarding accounting and financial disclosure. Subject to various conditions, the issuer may be required to request that its former independent accountant furnish a letter addressed to the Commission stating whether it agrees with the statements made by the issuer in response to Item 304(a) and, if not, stating the matters on which it does not agree. This letter must be filed as an exhibit to certain of the issuer's filings

in accordance with Item 601(b)(16) of Regulation S-K.⁷⁵

The resignation or dismissal of the independent accountant triggers an issuer's obligation to file a current report on Form 8-K.⁷⁶ That Form 8-K must include the information required by Item 304. Further, the disclosure and letter required by Item 304 must be included in any Exchange Act registration statement or report on Form 10,⁷⁷ 10-SB,⁷⁸ 10-K,⁷⁹ 10-KSB⁸⁰ or N-SAR⁸¹ or Securities Act registration statement on Form S-1, S-2, S-4 or S-11 that the issuer files. We are adopting temporary Items 304T and 601T of Regulation S-K and Regulation S-B for use by issuers for which Andersen had been engaged as the independent public accountant to examine the issuer's financial statements, or for which Andersen had been engaged to examine a significant subsidiary's financial statements and on which the principal accountant expressed reliance in its report, on or after March 14, 2002. Under Item 304T, the filing obligation of these issuers will be satisfied if the issuer's filings do not include the letter from Andersen if the issuer has not yet obtained it and is not able to obtain it after reasonable efforts.

III. Trust Indenture Act of 1939

Section 314(a)(1) of the Trust Indenture Act⁸² requires companies that are obligors on securities issued under an indenture that is qualified under the Trust Indenture Act to file certain information with the indenture trustee. The indenture obligor must "file with the indenture trustee all reports required to be filed with the Commission pursuant to Section 13 or Section 15(d) of the Exchange Act."⁸³ We have adopted a rule to make clear the application of Section 314(a)(1) to indenture obligors that file their Exchange Act reports with the

⁶⁷ 17 CFR 230.144(c)(1).

⁶⁸ This position, as well as the positions expressed with regard to Rule 701 [17 CFR 230.701] and Regulation D [17 CFR 230.501-508], are consistent with Exchange Act Rule 12b-37 which we are adopting today to address the satisfaction of an issuer's Exchange Act filing requirements.

⁶⁹ 17 CFR 230.144A(d)(4).

⁷⁰ 15 U.S.C. 77l.

⁷¹ 17 CFR 240.12g3-2(b).

⁷² 17 CFR 230.502(b)(2)(ii).

⁷³ 17 CFR 240.14a-3.

⁷⁴ 17 CFR 229.304. Item 304 of Regulation S-B [17 CFR 228.304] sets forth the same requirement for issuers reporting under the small business issuer reporting system. The discussion of Item 304T in this section refers to new Item 304T of Regulation S-K and Regulation S-B.

⁷⁵ 17 CFR 229.601(b)(16). The discussion of Item 601 of Regulation S-K applies equally to Item 601 of Regulation S-B [17 CFR 228.601].

⁷⁶ 17 CFR 249.308.

⁷⁷ 17 CFR 249.10.

⁷⁸ *Id.*

⁷⁹ 17 CFR 249.310.

⁸⁰ 17 CFR 249.310b.

⁸¹ 17 CFR 249.330. In the case of registered investment companies, the disclosure and letter must also be included in the annual report to shareholders.

⁸² 15 U.S.C. 77nnn(a)(1).

⁸³ *Id.* Section 314(a)(1) also discusses the obligations for indenture obligors that are not required to file reports with the Commission pursuant to Section 13 or Section 15(d) of the Exchange Act. The discussion in this section and new Rule 19a-1 do not apply to indenture obligors that are not required to file reports with the Commission pursuant to Section 13 or Section 15(d) of the Exchange Act.

Commission in compliance with the 34 Act Order.⁸⁴ Trust Indenture Act Rule 19a-1 states that the indenture obligor's filing with the indenture trustee of those Exchange Act reports filed in accordance with the 34 Act Order shall satisfy the indenture obligor's responsibility to "file with the indenture trustee all reports required to be filed with the Commission pursuant to Section 13 or Section 15(d) of the Exchange Act" for purposes of Section 314(a)(1).

IV. Registrants Under the Securities Exchange Act of 1934

A. Registrants That Continue To Engage Andersen

For issuers that make filings that include accountant's reports from Andersen issued after March 14, 2002, the Commission has adopted Temporary Note 3T to Article 3 of Regulation S-X (and Temporary Note 2T to Item 310 of Regulation S-B for small business issuers and General Instruction A-T2 to Form 20-F for foreign private issuers) to specify special disclosure requirements for these issuers. While the exact nature of each issuer's disclosure may vary depending on the facts and circumstances applicable to each of Andersen's public company audit clients, these issuers are required to include as an exhibit to their filings a letter by the issuer addressed to the Commission that states that Andersen has represented to the issuer that the audit was subject to Andersen's quality control system for the U.S. accounting and auditing practice to provide reasonable assurance that the engagement was conducted in compliance with professional standards and that there was appropriate continuity of Andersen personnel working on audits, availability of national office consultation and availability of personnel at foreign affiliates of Andersen to conduct the relevant portions of the audit. We expect these assurances will be given in connection with the issuance of the audit report. So long as Andersen continues to be in a position to provide those assurances, the Commission will continue to accept financial statements audited by Andersen.

⁸⁴ Trust Indenture Act Rule 19a-1 is consistent with Exchange Act Rule 12b-37 which we are adopting today regarding satisfaction of an issuer's Exchange Act filing requirements. Trust Indenture Act Rule 19a-1 uses the term "eligible indenture obligors." The rule defines "eligible indenture obligors" as those obligors that may rely on any of the provisions of the 34 Act Order with regard to the filing of reports with the Commission pursuant to Section 13 or Section 15(d) of the Exchange Act.

B. Registrants That Are Unable To, or Choose Not To, Engage Andersen

There may be issuers that are Andersen clients or whose filings are to include financial statements as to the examination of which Andersen had been engaged on or after March 14, 2002 that are unable to obtain from Andersen or elect not to have Andersen issue a manually signed audit report. The 34 Act Order issued by the Commission provides affected issuers extensions of time to file audited financial statements or obtain reviews of financial statements for quarterly reports under specified conditions. In most cases, the relief is conditioned on timely filing of the financial statements on an unaudited basis and requiring an amendment to the filing within 60 days after the original due date to provide the audited financial statements. The relief does not apply for financial statements where Andersen has already issued a manually signed report for those financial statements on or before March 14, 2002. In addition, the relief does not apply to any filings by a "blank check company" as defined in Securities Act Rule 419(a)(2). We are adopting Rule 12b-37 under the Exchange Act to make clear that reports filed in compliance with the 34 Act Order and the 40 Act Order will satisfy the issuer's Exchange Act filing requirements.

1. Annual Reports on Form 10-K/Form 10-KSB

For issuers that file annual reports on Form 10-K or Form 10-KSB, the relief provided by the 34 Act Order applies to issuers with a fiscal year ending between and including November 30, 2001 and April 15, 2002. The 34 Act Order maintains the existing filing deadlines for these reports, but permits eligible issuers to file their annual reports with those financial statements on an unaudited basis. The 34 Act Order's conditions require the issuer to provide disclosure reflecting the guidance in Temporary Note 2T to Article 3 of Regulation S-X in the report.⁸⁵ Further, within 60 days of the original due date for filing, the issuer must file an amendment presenting the financial statements audited by an accountant other than Andersen, a discussion of any material changes from the unaudited financial statements and any other section of the report, including without limitation Management's Discussion and Analysis of Financial Condition and Results of Operations,⁸⁶ that should be amended to

⁸⁵ See Section II.B.3 of this release.

⁸⁶ Item 303 of Regulation S-K and Regulation S-B [17 CFR 229.303 and 17 CFR 228.303].

reflect any changes in the financial statements.⁸⁷

For example, the 34 Act Order permits a company with a fiscal year that ended on December 31, 2001, for which Andersen had been engaged as the independent public accountant to examine the company's financial statements on or after March 14, 2002, to file timely its annual report responding to all items required in the report by April 1, 2002,⁸⁸ but include the financial statements on an unaudited basis.⁸⁹ Under the 34 Act Order, the company will then file the audited financial statements, any required selected financial data, a discussion of any material changes from the unaudited financial statements and any other section of the annual report that should be amended to reflect any changes in the financial statements as an amendment no later than May 31, 2002.⁹⁰

2. Quarterly Reports on Form 10-Q/Form 10-QSB

For issuers that file quarterly reports on Form 10-Q⁹¹ or Form 10-QSB,⁹² the relief provided by the 34 Act Order applies to issuers that have fiscal quarters ending between and including January 26, 2002 and June 15, 2002. The 34 Act Order maintains the existing

⁸⁷ If the original filing was on Form 10-K and Andersen had been engaged originally as the independent public accountant to examine the issuer's financial statements, selected financial data required by Item 6 of Form 10-K based on the audited financial statements must also be provided.

⁸⁸ General Instruction A. to Form 10-K and Form 10-KSB set the due date for these reports at 90 days after the end of the issuer's fiscal year. If that date falls on a Saturday, Sunday or holiday, Exchange Act Rule 0-3 [17 CFR 240.0-3] allows such reports to be filed on the first business day following March 31, 2002, which is 90 days after December 31, 2001, falls on a Sunday, so the report will be due by April 1, 2002.

⁸⁹ One-time extensions of time to file the report are available under certain circumstances under Exchange Act Rule 12b-25 [17 CFR 240.12b-25]. If an issuer complies with that rule, it can file its annual report no later than the fifteenth calendar day following the prescribed due date for that report, and the report will be deemed to be filed on the prescribed due date. If the issuer is relying on Exchange Act Rule 12b-25 in connection with a report covered by the Orders, the 34 Act Order provides that the issuer need not attach as an exhibit to its Form 12b-25 filing a statement by Andersen as required by Exchange Act Rule 12b-25(c) if such statement cannot be obtained by the issuer after reasonable efforts.

⁹⁰ Reliance on the 34 Act Order is conditioned upon filing the amendment within 60 days after the original due date of the report, excluding any additional period issuers had to actually file the report under Exchange Act Rule 12b-25. Extensions under Exchange Act Rule 12b-25 are not available for filing the amendment.

⁹¹ 17 CFR 249.308.

⁹² 17 CFR 249.308b.

filing deadlines for these reports,⁹³ but permits eligible issuers to file their quarterly reports with financial statements that have not been reviewed pursuant to Rule 10-01(d) of Regulation S-X (or Item 310(b) of Regulation S-B for issuers filing on Form 10-QSB). The 34 Act Order's conditions require the issuer to provide similar disclosure reflecting the guidance in Temporary Note 2T to Article 3 of Regulation S-X in the report.

Under the 34 Act Order's conditions, if, upon completion of the review, there is a change in those financial statements, the issuer must amend its quarterly report to present the reviewed financial statements, a discussion of any material changes from the unreviewed financial statements and any other section of the quarterly report, including without limitation Management's Discussion and Analysis of Financial Condition and Results of Operations, that should be amended to reflect any changes in the financial statements. Otherwise, the 34 Act Order's conditions only require the issuer to state in its next quarterly report that the financial statements for the previous quarter had subsequently been reviewed by an accountant other than Andersen, but the issuer is not required to include a copy of the review report. If an amendment to the previous quarterly report is not required, we encourage issuers to make public that there were no material changes as a result of the review prior to the submission of the next required periodic report.

3. Annual Reports on Form 20-F

For foreign private issuers that file annual reports on Form 20-F, the 34 Act Order applies to foreign private issuers with fiscal years ending between and including August 31, 2001 and April 15, 2002. The 34 Act Order maintains the existing filing deadline for Form 20-F, but permits eligible foreign private issuers to file their annual reports on Form 20-F with financial statements on an unaudited basis. The 34 Act Order's conditions require these financial statements to include an unaudited reconciliation to U.S. generally accepted

⁹³ General Instruction A.1. to Form 10-Q and Form 10-QSB set the due date for these reports at 45 days after the end of the issuer's first three fiscal quarters. As with reports on Form 10-K and Form 10-KSB, one-time extensions of time to file the report are available under certain circumstances under Exchange Act Rule 12b-25. If the issuer complies with that rule, it can file its quarterly report no later than the fifth calendar day following the prescribed due date for that report, and the report will be deemed to be filed on the prescribed due date. See *supra* note 89 for additional relief provided by the 34 Act Order regarding Exchange Act Rule 12b-25.

accounting principles (GAAP) if the foreign private issuer prepares its financial statements in accordance with local GAAP or international accounting standards (IAS). The 34 Act Order's conditions also require the foreign private issuer to provide disclosure reflecting the guidance in Temporary Note 2T to Article 3 of Regulation S-X in the report.

Within 60 days after the original due date for filing, a foreign private issuer relying on the 34 Act Order must file an amendment presenting the audited financial statements (including the audited reconciliation to U.S. GAAP where the issuer's financial statements are prepared in accordance with local GAAP or IAS) audited by an accountant other than Andersen, a discussion of any material changes from the unaudited financial statements and any other section of the report that should be amended to reflect any changes in the financial statements, including without limitation the Operating and Financial Review and Prospects required by Item 5 of Form 20-F.⁹⁴

For example, the 34 Act Order permits a foreign private issuer with a fiscal year that ended on December 31, 2001 for which Andersen had been engaged as the independent public accountant to examine the financial statements to file timely its annual report on Form 20-F responding to all items required in the report by July 1, 2002,⁹⁵ but include the financial statements and the reconciliation to U.S. GAAP on an unaudited basis.⁹⁶ Under the 34 Act Order, the foreign private issuer must then file the audited financial statements and reconciliation, any required selected financial data, a discussion of any material changes from the unaudited financial statements and any other section of the annual report

⁹⁴ If Andersen or a foreign affiliate of Andersen had been engaged originally as the independent public accountant for the foreign private issuer's financial statements, selected financial data required by Item 3.A. of Form 20-F (and any reconciliation of that data to U.S. GAAP and Regulation S-K if required by Instruction 2 to Item 3.A. of Form 20-F) must also be provided.

⁹⁵ General Instruction A.(b) of Form 20-F sets the due date for these annual reports at six months after the end of the fiscal year covered by the report. June 30, 2002 falls on a Sunday, so the report will be due by July 1, 2002 for foreign private issuers with a December 31 fiscal year end.

⁹⁶ As with reports on Form 10-K and Form 10-KSB, one-time extensions of time to file the report are available under certain circumstances under Exchange Act Rule 12b-25. If a foreign private issuer complies with that rule, it can file its annual report no later than the fifteenth calendar day following the prescribed due date for that report, and the report will be deemed to be filed on the prescribed due date. See *supra* note 89 for additional relief provided by the 34 Act Order regarding Exchange Act Rule 12b-25.

that should be amended to reflect any changes in the financial statements as an amendment no later than August 30, 2002.⁹⁷

4. Employee Benefit Plan Annual Reports on Form 11-K

For non-ERISA⁹⁸ employee stock purchase, savings and similar plans subject to Section 15(d) of the Exchange Act, the 34 Act Order applies to plans with a fiscal year ending between and including November 30, 2001 and April 15, 2002. The 34 Act Order maintains the existing filing deadlines for Form 11-K,⁹⁹ but permits non-ERISA plans whose annual reports would need to include audited plan financial statements for which Andersen had been engaged as the independent public accountant on or after March 14, 2002 to file their annual reports on Form 11-K with unaudited plan financial statements. The 34 Act Order's conditions require the plan to provide disclosure reflecting the guidance in Temporary Note 2T to Article 3 of Regulation S-X in the report. Further, within 60 days of the original due date for filing, the plan must file an amendment presenting the financial statements audited by an accountant other than Andersen and a discussion of any material changes from the unaudited financial statements filed originally.

Exchange Act Rule 15d-21¹⁰⁰ provides plans with the alternative of including audited financial statements in the annual report of the issuer of the stock or other securities offered to employees through their participation in the plan. If the plan follows this alternative procedure, the 34 Act Order permits unaudited plan financial statements (with appropriate disclosures) to be filed in the annual report (or an amendment thereto) of the issuer within 120 days after the end of the fiscal year of the plan. The 34 Act Order's conditions require audited plan financial statements to be filed as an amendment within 180 days after the end of the fiscal year of the plan. Plans with fiscal years that end within 62 days before the end of the fiscal year of the issuer that elect to furnish the

⁹⁷ As with reports on Form 10-K and Form 10-KSB, reliance on the 34 Act Order is conditioned upon filing of the amendment in 60 days after the original due date of the report, excluding any additional period foreign private issuers had to actually file the report under Exchange Act Rule 12b-25. Extensions under Exchange Act Rule 12b-25 are not available for filing the amendment.

⁹⁸ ERISA stands for the Employee Retirement Income Security Act of 1974, as amended [29 U.S.C. §§ 1001-1461].

⁹⁹ 17 CFR 249.311.

¹⁰⁰ 17 CFR 240.15d-21.

information as part of the issuer's next annual report, as permitted by Exchange Act Rule 15d-21(b), will not be affected.

For example, the 34 Act Order permits a plan with a fiscal year ending December 31, 2001 for which Andersen had been engaged as the independent public accountant to examine the plan's financial statements on or after March 14, 2002, to file timely its annual report on Form 11-K by April 1, 2002,¹⁰¹ but include the plan financial statements on an unaudited basis.¹⁰² Under the 34 Act Order, the plan will then file its audited plan financial statements, a discussion of any material changes from the unaudited plan financial statements and any other section of the annual report that should be amended to reflect any changes in the financial statements as an amendment by May 31, 2002.¹⁰³

If the alternative procedure in Exchange Act Rule 15d-21 is followed, the 34 Act Order permits unaudited plan financial statements to be filed in the annual report of the issuer, or as an amendment to that report, by April 30, 2002. Under the 34 Act Order's conditions, audited plan financial statements, a discussion of any material changes from the unaudited plan financial statements and any other section of the annual report related to the plan that should be updated will need to be filed as an amendment by July 1, 2002.¹⁰⁴ If the plan has a fiscal year that ends within 62 days before the end of the fiscal year of the issuer, it may elect to file the plan financial statements in the issuer's next annual report pursuant to Exchange Act Rule 15d-21(b).

Plans subject to ERISA will remain subject to the existing requirements for filing plan financial statements.

¹⁰¹ General Instruction A. to Form 11-K sets the due date for these reports at 90 days after the end of the fiscal year of the plan for non-ERISA plans. March 31, 2002 falls on a Sunday, so the report will be due by April 1 for plans with a December 31 fiscal year end.

¹⁰² As with reports on Form 10-K and Form 10-KSB, one-time extensions of time to file the report are available under certain circumstances under Exchange Act Rule 12b-25. If a plan complies with that rule, it can file its annual report no later than the fifteenth calendar day following the prescribed due date for that report, and the report will be deemed to be filed on the prescribed due date. See *supra* note 89 for additional relief provided by the 34 Act Order regarding Exchange Act Rule 12b-25.

¹⁰³ As with reports on Form 10-K and Form 10-KSB, reliance on the 34 Act Order is conditioned upon filing of the amendment in 60 days after the original due date of the report, excluding any additional period the plan had to actually file the report under Exchange Act Rule 12b-25. Extensions under Exchange Rule 12b-25 are not available for filing the amendment.

¹⁰⁴ 180 days after the end of a fiscal year of a plan with a December 31 fiscal year is June 29, 2002, which falls on a Saturday. Accordingly, the amendment will be due by July 1, 2002.

5. Filings on Schedules 14A and 14C

For issuers that file proxy statements or information statements that require audited financial statements pursuant to Item 13 or Item 14 of Schedule 14A¹⁰⁵ or Item 1 of Schedule 14C,¹⁰⁶ the 34 Act Order permits the filing of unaudited financial statements of issuers and, where applicable, of acquired companies, where the independent public accountant of the entity in question had been Andersen on or after March 14, 2002.¹⁰⁷ For issuers that are not registered investment companies, the relief provided by the 34 Act Order applies to proxy statements or information statements that are sent on or before September 13, 2002. For registered investment companies, the relief provided by the 34 Act Order applies to proxy statements or information statements that are sent on or before August 13, 2002. The 34 Act Order's conditions require the proxy statement or information statement to include disclosure reflecting the guidance in Temporary Note 2T to Article 3 of Regulation S-X.

Under the 34 Act Order, these issuers must file revised material or amend documents incorporated by reference, as appropriate, containing financial statements audited by an accountant other than Andersen for the required periods by the earlier of 60 days¹⁰⁸ from the date when the financial statements were required to be included in the proxy statement or information statement and the date the audited financial statements are filed in the annual report of the registrant,¹⁰⁹ if the solicitation for purposes of proxy statements (or corporate action for purposes of information statements) has not been completed by such date. The revised material or amended documents must present the audited financial statements, a discussion of any material

¹⁰⁵ 17 CFR 240.14a-101.

¹⁰⁶ 17 CFR 240.14c-101.

¹⁰⁷ Under the 34 Act Order, the entity in question must also have a fiscal year ending with a date between and including November 30, 2001 and April 15, 2002 (for entities that meet the requirements of Rule 3-01(c) of Regulation S-X (or Item 310(b) of Regulation S-B if the entity is a small business issuer)), a fiscal year ending with a date between and including December 29, 2001 and April 15, 2002 (for entities that do not meet the requirements of Rule 3-01(c) of Regulation S-X (or Item 310(b) of Regulation S-B if the entity is a small business issuer)) or a fiscal year ending with a date between and including January 1, 2002 and April 15, 2002 (if the entity is a registered investment company).

¹⁰⁸ This period is 106 days for an issuer that does not meet all of the conditions in Rule 3-01(c) of Regulation S-X (Item 310(g) of Regulation S-B for small business issuers).

¹⁰⁹ Or the annual report to shareholders in the case of a registered investment company.

changes from the unaudited financial statements and any other section of the materials that should be updated to reflect the changes in the financial statements.¹¹⁰

Additionally, the Commission recognizes that issuers sending their proxy statement or information statement prior to obtaining their audit report will be unable to provide disclosure regarding audit committee reports pursuant to Item 7(d)(3)(i) of Schedule 14A and audit fees pursuant to Item 9(e) of Schedule 14A or Item 1 of Schedule 14C. The 34 Act Order permits the omission of this information for issuers with a fiscal year end between November 30, 2001 and April 15, 2002 from proxy statements and information statements in full satisfaction of those disclosure requirements if the issuer meets the 34 Act Order's conditions.

The 34 Act Order's conditions require the issuer to send its proxy statement or information statement on or before September 13, 2002.¹¹¹ Further, the issuer must respond to all other applicable disclosure requirements in their proxy statement or information statement. Under the 34 Act Order, the issuer will then include disclosure in response to Items 7(d)(3)(i) and Item 9(e) of Schedule 14A in their amended Form 10-K or Form 10-KSB, if this information was required in the Schedule 14A or Schedule 14C.

6. Annual Reports to Shareholders in Connection With Annual Meeting Proxy Solicitations

Issuers furnishing proxy statements or information statements in connection with their annual meeting of security holders, or written consents in lieu of annual meetings, at which directors are to be elected, must accompany or precede that proxy statement with an annual report to shareholders. That annual report to shareholders must satisfy the requirements of Exchange Act Rule 14a-3(b)¹¹² for proxy statements and Exchange Act Rule 14c-3¹¹³ for information statements. The 34 Act Order applies to issuers with a fiscal year ending between and including

¹¹⁰ Unless the company is eligible to rely on Regulation S-B for its disclosure requirements, if Andersen had been engaged originally as the independent public accountant to examine the company's financial statements, selected financial data required by Item 301 of Regulation S-K based on the audited financial statements are also required to be provided if this information would otherwise have been required in the proxy statement or information statement.

¹¹¹ This date is August 13, 2002 in the case of an issuer that is a registered investment company.

¹¹² 17 CFR 240.14a-3(b).

¹¹³ 17 CFR 240.14c-3.

November 30, 2001 and April 15, 2002 for proxy statements or information statements sent on or before September 13, 2002.

Where their annual reports will include financial statements as to the examination of which Andersen had been engaged as the independent public accountant on or after March 14, 2002, the 34 Act Order permits issuers to provide those financial statements on an unaudited basis, if the document containing the unaudited financial statements includes disclosure reflecting the guidance in Temporary Note 2T to Article 3 of Regulation S-X. The 34 Act Order's conditions require any issuer that does not include audited financial statements to inform its shareholders (i.e., through a press release¹¹⁴ and posting the audited financial statements on the issuer's website, if it has one) when it files or amends its Form 10-K or Form 10-KSB to include the financial statements audited by an accountant other than Andersen, if the issuer's solicitation or corporate action has not been completed before the time the audited financial statements are filed.

7. Tender Offer Filings on Schedules TO

For offerors that commence tender offers that require financial statements pursuant to Item 10 of Schedule TO,¹¹⁵ the 34 Act Order permits the filing of unaudited financial statements where the independent public accountant of the entity in question had been Andersen on or after March 14, 2002. The relief provided by the 34 Act Order applies to a Schedule TO filed on or before September 13, 2002 that would need to contain audited financial statements of an entity that has a fiscal year ending between and including November 30, 2001 and April 15, 2002 and where Andersen had been engaged as the independent public accountant on or after March 14, 2002 to examine those financial statements. The 34 Act Order's conditions require the Schedule TO to include disclosure reflecting the guidance in Temporary Note 2T to Article 3 of Regulation S-X.

Under the 34 Act Order, the offeror must file revised material or amend documents incorporated by reference, as appropriate, to provide the financial statements audited by an accountant other than Andersen no later than the earlier of 60 days from the date the audited financial statements were

required to be included in the Schedule TO and the date the audited financial statements are filed in the annual report of the registrant,¹¹⁶ if the tender offer has not been completed by that date. The 34 Act Order's conditions require the revised material or amended documents to present the audited financial statements, a discussion of any material changes from the unaudited financial statements and any other section of the materials that should be updated to reflect the changes in the financial statements.¹¹⁷

V. Special Case-by-Case Matters

A. Item 7 of Form 8-K—Financial Statements in Business Combination Transactions

Item 7 of Form 8-K requires the filing by an acquiring company of financial statements of a target company and *pro forma* financial statements within 75 days of the consummation for certain business combination transactions. The Commission invites acquiring companies to seek accommodation, such as extensions of time to file, or other relief, such as permitting use of unaudited financial statements if the acquiring or target company had Andersen as its independent accountant and audited financial statements are not available and cannot be obtained without unreasonable effort and expense, in writing under Rule 3-13 of Regulation S-X. Letters should name all parties involved and state the relief or accommodation sought, the reason(s) the relief or accommodation is being sought and any other relevant information. Letters should be addressed to the Commission at 450 Fifth Street, NW, Washington, DC 20549-0410 (Facsimile: 202-942-9582). For purposes of the significance tests of Regulation S-X used to determine whether financial statements of a target company and *pro forma* financial statements are required, if Andersen was the independent accountant of the issuer, the issuer should use the most recent annual consolidated financial statements filed at, or prior to, the date of acquisition, even though the most recent filing may include unaudited financial statements.

¹¹⁶ Or annual report to shareholders in the case of a registered investment company.

¹¹⁷ Unless the offeror is eligible to rely on Regulation S-B for its disclosure requirements, if Andersen had been engaged originally as the independent public accountant to examine the offeror's financial statements, selected financial data required by Item 301 of Regulation S-K based on the audited financial statements must also be provided.

B. Other Matters

We encourage issuers to contact the staff of the Commission and request consideration of the appropriateness of Commission or staff action in connection with their specific factual situation. Some of the areas where these types of requests may be appropriate include: companies with uncommon fiscal year ends, change in fiscal year end and the resultant need to file transition reports pursuant to either Exchange Act Rule 13a-10¹¹⁸ or Exchange Act Rule 15d-10,¹¹⁹ special financial reports required by Exchange Act Rule 15d-2,¹²⁰ filings by Canadian issuers under the Multi-Jurisdictional Disclosure System¹²¹ and issues concerning the need to recirculate a prospectus, resolicit a proxy statement or extend an offering.

VI. Broker-Dealers and Transfer Agents Registered Under the Exchange Act; Other Market Regulation Guidance

The 34 Act Order provides affected registered broker-dealers and transfer agents extensions of time to file audited financial statements and audited internal controls reports, respectively, under specified conditions. The 34 Act Order also permits affected registered broker-dealers to furnish unaudited annual financial statements to customers and certain other persons under specified conditions. The relief provided by the 34 Act Order is available with respect to registered broker-dealers and transfer agents that are unable or elect not to obtain from Andersen a manually signed audit report for those financial statements, or a manually signed internal controls report, so long as such manually-signed reports were not received on or before March 14, 2002.

A. Broker-Dealer Financial Statements

The relief provided by the 34 Act Order applies to broker-dealers with a fiscal year ending between and including January 14, 2002 and April 15, 2002. Paragraph (d) of Exchange Act Rule 17a-5¹²² generally requires a registered broker-dealer to file with the Commission annually, on a calendar or fiscal year basis, specified audited

¹¹⁸ 17 CFR 240.13a-10.

¹¹⁹ 17 CFR 240.15d-13.

¹²⁰ 17 CFR 240.15d-2.

¹²¹ As a general matter, it is the view of the Commission that MJDS filers on Forms F-7, F-8, F-9, F-10 or F-80 [17 CFR 239.37, 239.38, 239.39, 239.40 or 239.41] under the Securities Act will be in compliance with the requirements of the form relating to consents of Andersen if the issuer meets the eligibility requirements and conditions of new Securities Act Rule 437a.

¹²² 17 CFR 240.17a-5.

¹¹⁴ The press release is to announce that the audited financial statements are available and may be found in the issuer's filing on the Commission's website at www.sec.gov and on the issuer's website, citing the address, if the issuer has a website.

¹¹⁵ 17 CFR 240.14d-100.

financial statements no later than 60 days after the date of the financial statements. The 34 Act Order permits eligible broker-dealers to file their audited financial statements within 60 days after the date the statements otherwise would have been required to have been filed under paragraph (d)(5) of Rule 17a-5. For example, the 34 Act Order permits a broker-dealer with a fiscal year that ended on January 31, 2002, for which Andersen had been engaged as the independent public accountant to examine the broker-dealer's financial statements, and for which the manually-signed audit report has not been received on or before March 14, 2002, to file its audited financial statements no later than May 31, 2002.

In addition, paragraph (c) of Exchange Act Rule 17a-5 generally requires a registered broker-dealer to send to its customers and certain other persons¹²³ certain audited financial statements within 105 days after the date of the end of the calendar or fiscal year.¹²⁴ The 34 Act Order maintains the existing deadline under Rule 17a-5(c), but permits eligible broker-dealers to furnish financial statements on an unaudited basis. For example, the 34 Act Order permits a broker-dealer with a fiscal year that ended on January 31, 2002, for which Andersen had been engaged as the independent public accountant to examine the broker-dealer's financial statements, and for which the manually-signed audit report has not been received on or before March 14, 2002, to furnish unaudited annual financial statements to customers and such other persons no later than May 16, 2002.

B. Transfer Agent Internal Control Reports

Paragraph (a) of Exchange Act Rule 17Ad-13¹²⁵ generally requires a registered transfer agent to file annually with the Commission and the transfer agent's appropriate regulatory agency a report prepared by an independent accountant concerning the transfer agent's system of internal accounting control and related procedures for the

transfer of record ownership and the safeguarding of related securities and funds. That internal controls report must be filed within 90 calendar days of the date of the accountant's study and evaluation. The 34 Act Order permits eligible transfer agents to file their internal controls reports within 60 days after the date the reports otherwise would have been required to have been filed under paragraph (a) of Rule 17Ad-13. For example, the 34 Act Order permits a transfer agent, for which Andersen had been engaged to prepare its annual internal controls report and had conducted its study and evaluation as of January 31, 2002, and for which a manually-signed report has not been received on or before March 14, 2002, to file such report no later than June 30, 2002.

C. Other Market Regulation Guidance

1. Listing Requirements of Self-Regulatory Organizations

Self-regulatory organization ("SRO") listing standards typically require issuers to distribute to shareholders an annual report containing audited financial statements within a prescribed period after the end of the issuer's fiscal year and no later than a prescribed number of days before the issuer's annual meeting.¹²⁶ The Commission will work with applicable SROs to encourage them to grant relief to listed companies that are audit clients of Andersen that is consistent with the relief being issued by the Commission today.

2. SRO Member Firm Audit Requirements

To the extent that SRO rules require broker-dealer member firms to file annual audited financial statements,¹²⁷ the Commission will work with such SROs to encourage them to grant relief to member firms that are audit clients of Andersen that is consistent with the relief being issued by the Commission today. In addition, the Commission urges broker-dealer audit clients of Andersen with fiscal years ending before January 14, 2002 that have encountered delays in completing their audited financial statements to contact their designated examining authority for an appropriate extension of time to file under Exchange Act Rule 17a-5.¹²⁸

¹²⁶ E.g., NYSE Listed Company Manual Para. 203.01; NASD Rule 4350(b); Amex Listing Standards, Policies and Requirements Sections 610-611.

¹²⁷ E.g., NYSE Rule 418; CBOE Rule 15.6.

¹²⁸ Subparagraph (l)(1) of Exchange Act Rule 17a-5 permits a broker-dealer's designated examining authority to extend the period for filing annual

3. Municipal Securities Issuers: Contractual Requirements to Provide Audited Financial Statements

Exchange Act Rule 15c2-12¹²⁹ generally requires underwriters participating in municipal securities offerings to reasonably determine that issuers and certain other "obligated persons" have contracted to provide annual financial statements to certain information repositories,¹³⁰ and to disclose in material event notices¹³¹ and future official statements¹³² failures to do so by the contractual deadline. The Commission urges municipal securities market participants to interpret the filing of annual audited financial statements within 60 days of the contractual deadline, by municipal securities issuers and obligated persons with a fiscal year ending between and including September 15, 2001 and April 15, 2002 that are audited by Andersen, as not creating a material breach of their contractual undertaking. This interpretation would be appropriate, however, only if the issuer or obligated person files unaudited financial statements with the appropriate repositories by the contractual deadline.

VII. Registrants Under the Investment Company Act of 1940 and the Investment Advisers Act of 1940

The Commission is also issuing an order under the Investment Company Act¹³³ and Investment Adviser Act¹³⁴ that address issues investment companies and investment advisers may face that are unable to obtain the services of Andersen or that choose not to continue to engage Andersen as their independent public accountant.

A. Registration Statements and Reports Under the Investment Company Act

1. Eligibility

The 40 Act Order provides relief for investment companies with obligations to file amendments to registration statements under the 1940 Act, annual reports to shareholders, and annual

audit reports under paragraph (d) of Exchange Act Rule 17a-5.

¹²⁹ 17 CFR 240.15c2-12.

¹³⁰ Annual financial information is to be furnished to each nationally recognized municipal securities information repository and to the appropriate state information depository, if any. (Rule 15c2-12(b)(5)(i)(A)-(B)).

¹³¹ Rule 15c2-12(b)(5)(i)(D).

¹³² As defined in Rule 15c2-12(f)(3), the required "final official statement" must include a description of any instances in the previous five years in which the issuer or obligated person failed to comply, in all material respects, with any previous undertakings in a written contract or agreement specified by Rule 15c2-12(b)(5)(i).

¹³³ 15 U.S.C. 80a-1 *et seq.*

¹³⁴ 15 U.S.C. 80b-1 *et seq.*

¹²³ Subparagraph (c)(1) of Rule 17a-5 requires registered broker-dealers to file specified customer statements with the Commission, at its principal office in Washington, D.C., with the regional office of the Commission for the region in which the broker-dealer has its principal place of business, and with each national securities exchange and national securities association of which it is a member.

¹²⁴ Specifically, the audited financial statements must be sent to customers no later than 105 days after the date of the audited report required by paragraph (d) of Rule 17a-5.

¹²⁵ 17 CFR 240.17Ad-13.

reports on Form N-SAR.¹³⁵ An investment company is eligible for the relief (an "Eligible Fund") if—

- Andersen had been engaged on or after March 14, 2002 as the fund's independent public accountant;
- The Eligible Fund, on or before March 14, 2002, had not obtained a manually signed audit report from Andersen in respect to those financial statements; and
- The Eligible Fund is unable to obtain from Andersen or elects not to have Andersen issue a manually signed audit report with respect to its financial statements.

2. Registration Statement Under the Investment Company Act

For Eligible Funds with a fiscal year ending between January 1, 2002 and April 15, 2002, the 40 Act Order permits them to file a post-effective amendment to their 1940 Act registration statements within six months after their fiscal year end (rather than 120 days) if the fund has timely filed its Form N-SAR as provided in the order. The 40 Act Order thus conforms the 1940 Act registration statement updating requirements to those we are today adopting in 1933 Act Rule 427T.

3. Annual Reports to Shareholders

For Eligible Funds transmitting annual reports to shareholders and that have fiscal years ended between January 1, 2002 and April 15, 2002, the 40 Act Order permits them to mail their annual reports to shareholders with unaudited financial statements that also contain the disclosure reflecting the guidance included in Temporary Note 2T to Article 3 of Regulation S-X. The Eligible Fund must file an amended annual report within 60 days of the original due date containing financial statements audited by another independent public accountant and a discussion of any material changes from the unaudited financial statements filed originally.¹³⁶

Most closed-end funds annually furnish shareholders a proxy statement (or information statement) that must be accompanied or preceded by an annual report. The 40 Act Order's conditions require a closed-end fund, when it amends its annual report to include the audited financial statements, to inform its shareholders through a press release

and by posting the audited financial statements on the company's web site (if it has one) if the company's solicitation or corporate action has not been completed before the time the audited financial statements are filed.

4. Form N-SAR

For Eligible Funds filing annual reports on Form N-SAR with fiscal years ending between December 15, 2001 and April 15, 2002, the 40 Act Order permits them to file their Form N-SAR with unaudited financial information and without the report of independent accountants on internal controls so long as the Eligible Fund files an amendment providing audited financial information and the report of the independent accountants on internal controls within 60 days of the original due date for the filing.

Investment companies for which Andersen has been acting as independent accountant may report a change in accountant under item 77K of Form N-SAR consistent with our statement on change in accountants as described above in Section II.B.10. of this release.

B. Selection of Independent Public Accountant

Section 32(a)(1) and Rule 32a-3 under the Investment Company Act set forth certain periods at the beginning of each fiscal year during which registered management investment companies (mutual funds, closed-end funds and business development companies) must select an independent public accountant.¹³⁷ Some investment companies for which Andersen serves as independent public accountant may need additional time as a result of recent events. The 40 Act Order provides an additional sixty days for an investment company to select an independent public accountant whose financial statements for its last fiscal years was audited by Andersen and whose fiscal year ended on or before April 15, 2002.

Section 32(a) provides that a new accountant may be selected due to the death or resignation of the accountant by a vote of a majority of members of the investment company's board of directors (*i.e.*, without shareholder ratification), but does not address how a fund whose board of directors has terminated the appointment of the accountant may select a new one. The 40 Act Order permits a fund that had selected Andersen as its independent

public accountant on or before March 14, 2002, and thereafter terminated the appointment, to select a new independent public accountant by a majority vote of the independent directors of the fund.

Section 32 requires the directors to select the investment company's independent public accountant at a meeting at which their votes would be cast "in person." In light of the events surrounding Andersen, the 40 Act Order permits companies making selections pursuant to the provisions of the 40 Act Order to cast their votes in a meeting in which directors may participate by any means of communicating that allows all directors participating to communicate with each other simultaneously during the meeting.

C. Verification of Assets in Custody

Various Investment Company Act rules (Rules 17f-1, 17f-2, 6e-2 and 6e-3(T)) regarding custody of securities or similar investments of a management investment company or insurance company separate account require that the securities and other investments be verified by actual examination periodically by an independent public accountant.¹³⁸ Because clients of Andersen may decide to retain a new independent public accountant and may need additional time to complete their verifications, the 40 Act Order allows an additional 60 days to complete these verifications for investment companies with a fiscal year ending between January 1 and April 15, 2002.

D. Balance Sheets of Investment Advisers

Investment Adviser Act Form ADV requires an investment adviser to include on Schedule G of the Form a balance sheet for its most recent fiscal year, audited by an independent accountant, if the adviser has custody of client funds or securities or if the adviser requires prepayment of more than \$500 in fees per client and six or more months in advance.¹³⁹ The 40 Act Order permits an adviser that had engaged Andersen (or a foreign affiliate of Andersen) to examine the balance sheet to be included in Schedule G to use an unaudited balance sheet to satisfy the requirements of Schedule G for 60 days if the adviser—

- Had not, on or before April 14, 2002, obtained a manually signed unaudited report from Andersen (or a foreign affiliate of Andersen);
- Is unable or elects not to have Andersen issue a manually signed audit

¹³⁵ 17 CFR 274.101.

¹³⁶ An investment company that continues to engage Andersen must make the disclosures specified in Temporary Note 3T to Article 3 of Regulation S-X in its annual report to shareholders, although the exact nature of each company's disclosure may vary depending upon the facts and circumstances of each company. See discussion in Section II.A. of this release.

¹³⁷ 15 U.S.C 80a-31 and 17 CFR 270.32a-3. Section 32(a)(1) also applies to face amount certificate companies.

¹³⁸ 17 CFR 270. 17f-1, 17f-2, 6e-2, and 6e-3(T).

¹³⁹ 17 CFR 279.1.

report from Andersen in respect to that balance sheet; and

- Has a fiscal year ending between December 1, 2001 and April 15, 2002.

At the end of the 60-day period the adviser must resume furnishing or offering to furnish a disclosure statement containing an audited balance sheet. The 40 Act Order imposes no additional filing requirements.

E. Exemptive Orders

In the past, the Commission has issued a number of orders under the Investment Company Act and the Investment Advisers Act and the rules thereunder exempting investment companies, investment advisers and others from provisions of these statutes and rules. Some of these orders are conditioned upon the involvement of an independent accountant preparing a report, conducting an audit, reviewing various systems or procedures, monitoring ongoing transactions or providing other services. Persons relying on these orders that have retained the services of Andersen will not be in violation of the applicable provisions of law or rule because of an inability to comply with the conditions or representations as a result of their inability to obtain the services of or elects not to continue to engage Andersen. We have provided persons relying on these orders an additional 60 days to comply with the requirements of their orders.

VIII. Registrants Under the Public Utility Holding Company Act of 1935

The Commission is issuing another order under the Public Utility Holding Company Act of 1935¹⁴⁰ that addresses issues that registered public utility holding companies may face as a result of the circumstances surrounding Andersen.

A. Annual Reports on Form U5S

Public utility holding companies registered under the Public Utility Holding Company Act of 1935 are required to file with the Commission annual reports on Form U5S.¹⁴¹ Form U5S includes requirements that a registered holding company incorporate by reference annual reports filed by any of its system companies under the Exchange Act ("1934 Act Reports") as well as the opinion of its independent accountant with respect to the holding company's consolidated financial statements.

The 35 Act Order permits registered public utility holding companies with a

fiscal year ending between November 30, 2001 and April 15, 2002 that have retained Andersen as their independent accountant to file their annual report on Form U5S with unaudited financial statements. Specifically, the 35 Act Order permits registered public utility holding companies to incorporate by reference 1934 Act Reports that meet the requirements of the 34 Act Order provided they amend their filing to include any amended report filed in accordance with the 34 Act Order as well as the opinion of their independent accountants within 60 days.

B. Computations Required by Certain Rules and Orders

Rules 53 and 58 under the Public Utility Holding Company Act of 1935 establish safe harbors that permit registered public utility holding companies to invest up to a specified amount in various types of non-utility activities without seeking prior Commission approval.¹⁴² In computing the permitted level of investment, registered public utility holding companies relying on the rules are required to use financial information included in their filings on Form 10-Q and Form 10-K. Other registered utility holding companies with orders under Sections 53, 54¹⁴³ and 58 of the Public Utility Holding Company Act of 1935 permitting them to exceed these safe harbors are required to make analogous computations pursuant to the terms of their orders. The 35 Act Order makes clear that with respect to any computation required by Rule 53(a)(1) or Rule 58(a)(1) or any similar computation required by these rules or orders, a registered public utility holding company that is filing annual reports of Form 10-K or quarterly reports on Form 10-Q in reliance on the 34 Act Order may rely on the financial statements included in those filings in performing the required calculations.

IX. Consideration of Comments

We are publishing final rules and temporary final rules, rather than a notice of proposed rulemaking, for reasons stated in the section entitled "Procedural Matters." We will, however, consider any comments concerning whether other temporary or permanent rule changes are needed.

X. Procedural Matters

The Administrative Procedure Act generally requires an agency to publish notice of a proposed rulemaking in the

Federal Register.¹⁴⁴ This requirement does not apply, however, if the agency "for good cause finds * * * that notice and public procedure are impracticable, unnecessary, or contrary to the public interest."¹⁴⁵ The Commission believes that it is appropriate to adopt the rules immediately for two reasons. First, some Andersen clients that end their audit relationship with Andersen may be in the middle of, or about to begin, raising capital publicly but will not have the required audited financial statements available when they are needed. The rules are needed immediately to remove regulatory impediments to their capital-raising plans with minimal market disruption. Second, information needs to be available to the investing public, beginning immediately, about the assurances issuers to whom Andersen issues reports after March 14, 2002 have received from Andersen concerning Andersen's quality control procedures in place during the audit. Accordingly, the Commission for good cause finds that delaying adoption of these rules until after a notice and comment period would be impractical and contrary to the public interest.

The Administrative Procedure Act also generally requires that an agency publish an adopted rule in the **Federal Register** 30 days before it becomes effective.¹⁴⁶ This requirement, however, does not apply if the agency finds good cause for making the rule effective sooner.¹⁴⁷ For the same reasons as it is waiving notice and comment, the Commission finds good cause to make the rules effective immediately.¹⁴⁸

XI. Paperwork Reduction Act

This Paperwork Reduction Act ("PRA") information pertains to both the rules adopted today and the accompanying orders attached to this release as Appendices A-C. Certain provisions of the rules and accompanying orders contain a "collection of information" requirement within the meaning of the Paperwork Reduction Act of 1995.¹⁴⁹ We submitted this requirement to the Office of Management and Budget ("OMB") for review in accordance with 44 U.S.C. 3507(j) and 5 CFR 1320.13. The title for

¹⁴⁴ See 5 U.S.C. 553(b).

¹⁴⁵ *Id.*

¹⁴⁶ See 5 U.S.C. 553(d).

¹⁴⁷ *Id.*

¹⁴⁸ This finding also satisfies the requirements of 5 U.S.C. 808(2), allowing the rules to become immediately effective notwithstanding the requirements of 5 U.S.C. 801 (if agency finds that notice and public procedure are "impractical, unnecessary, or contrary to the public interest," rule "shall take effect at such time as the Federal agency promulgating the rule determines").

¹⁴⁹ 44 U.S.C. 3501 *et seq.*

¹⁴⁰ 15 U.S.C. 79a *et seq.*

¹⁴¹ 17 CFR 259.5s.

¹⁴² 17 CFR 250.53 and 58.

¹⁴³ 17 CFR 250.54.

the collection is Temporary Relief for Certain Entities Audited by Arthur Andersen LLP.

As discussed above, the Commission is adopting rules and issuing orders to mitigate the potential consequences to the markets as a result of Andersen's indictment. In order to minimize any market disruption, the Commission is providing relief with respect to certain filing and other requirements for certain clients of Andersen. The collection of information adopted today is necessary to ensure that the market receives disclosure from clients of Andersen that are taking advantage of this relief. The collection of information will supply investors with information they may not otherwise have and will help prevent confusion.

Temporary Relief for Certain Entities Audited by Arthur Andersen LLP. This collection of information encompasses certain new disclosures required by certain clients of Andersen. In general, public companies for whom Andersen does not complete audits or reviews will be allowed to file unaudited financial statements, rather than audited ones, in order to meet existing periodic reporting, proxy statement, tender offer, and registration requirements, as long as they disclose that the financial statements are unaudited (or not reviewed), provide audited (or reviewed) financial statements at a later date, and explain any material differences between the unaudited and audited financial statements. In some cases, issuers must alert the public through a press release that the audited financial statements are available and post the audited financial statements on their websites (if they have websites). Certain investment advisers may provide clients and prospective clients with unaudited balance sheets, with appropriate disclosure, and provide audited balance sheets at a later date. Clients that wish to file financial statements audited by Andersen must file a letter with affected filings concerning representations received from Andersen regarding Andersen's audit quality controls. In certain cases where Andersen clients were required to submit a consent or a reissued accountants' report from their auditor, but cannot obtain the consent or the reissued accountants' report, those requirements have been waived provided the filing includes appropriate disclosure. Because the rules regarding waiver of consents and reissued accountants' reports are permanent, these aspects of the collection of information also have been submitted to OMB for regular review as a stand-alone collection of information.

This collection of information imposes a minimal and temporary burden on some Andersen clients. It is difficult to estimate with precision the burden imposed by this collection of information requirement. We estimate that there are approximately 2,400 clients of Andersen potentially affected by this collection of information. However, some clients may not be subject to the collection of information because these clients may already have filed financial statements audited by Andersen.

We estimate for purposes of the PRA that approximately 1,979 Andersen clients will make new disclosures associated with one periodic report (two burden hours per filing) and approximately 325 will make new disclosures associated with two such reports; approximately 130 Andersen clients will make new disclosures associated with one registration statement each (three burden hours per filing); approximately 2,304 Andersen clients will make new disclosures associated with one proxy-related filing each (two burden hours per filing); approximately 22 Andersen clients will make new disclosures associated with one tender offer-related filing (two burden hours per filing); approximately 83 Andersen clients will make disclosures associated with investment adviser balance sheet requirements (one hour per disclosure); and approximately 2,400 Andersen clients will make one disclosure relating to Andersen's audit quality controls (one burden hour per filing). We recognize that the assumptions necessarily overcount the potential burden, as they assume all clients will both continue to be audited by Andersen and decide not to have Andersen complete the audit. We make these assumptions because the overall burden estimate is minimal and because we cannot estimate which option Andersen clients will choose. Thus, for PRA purposes, we have estimated that the total number of burden hours associated with this collection of information is 12,783.

Waiver of Auditor Consent and Reissued Accountants' Report. The Commission has also submitted, for regular review pursuant to 44 U.S.C. 3507(d) and 5 CFR 1320.11, as a separate collection of information that will not be temporary, two aspects of the above-described collection of information. First, companies currently need to include in their registration statements the consent of auditors for use of their reports related to the three previous years' audits. For Andersen clients unable to obtain these consents, the rule amendments waive the

obligation to obtain an auditor's consent for years before 2001, provided that the company discloses any limitations on remedies resulting from the lack of consents. Second, certain issuers that change auditors need to obtain from their predecessor auditor a reissued accountants' report for previously audited financial statements. Under the new rules, if the issuer is unable to obtain the accountants' report after reasonable efforts, the issuer may provide a copy of the latest previously issued accountants' report, as long as it discloses that the report is a copy of a report previously issued and that the report has not been reissued by Andersen. This collection of information is necessary to advise potential purchasers of securities and investors of certain information that they would not receive otherwise.

For the purposes of the collection of information entitled "Temporary Relief for Certain Entities Audited by Arthur Andersen LLP," we estimated that the disclosures associated with registration statements would take three hours and that disclosures associated with periodic reports, proxy statements and tender offers would take two hours. One half hour of these estimates is the estimated time required to make disclosures associated with the waiver of consents and one half hour of these estimates is the estimated time required to make disclosures associated with the waiver of the predecessor auditor's reissued report.

We estimate that last year there were approximately 650 registration statements filed by clients of Andersen. For purposes of the PRA, we assume that 650 Andersen clients will file one registration statement annually requiring waivers of the consent and the reissued predecessor auditor's report. Additionally, we estimate that of Andersen's approximately 2,400 clients, approximately 2,304 are public companies that file annual reports, proxy materials and tender offer filings. We estimate that these clients will file 2,629 annual reports (certain issuers with non-ERISA retirement benefit plans may file additional annual reports for those plans), 2,304 proxy-related filings, and 132 tender offer filings. Because we estimate that each disclosure will require one half hour, we estimate that the total number of burden hours associated with this collection of information is 3,182.5.

The Commission has adopted, and OMB has approved, the collection of information entitled "Temporary Relief for Certain Entities Audited by Arthur Andersen LLP" on an emergency basis. The control number for this collection

of information is OMB Control No. 3235-0557. This collection of information will expire on September 30, 2002. As noted above, the Commission has also submitted for regular review pursuant to 44 U.S.C. 3507(d) and 5 CFR 1320.11 the collection of information entitled "Waiver of Auditor Consent and Reissued Accountants' Report."

Pursuant to 44 U.S.C. 3506(c)(2)(B), the Commission solicits comments to: (i) Evaluate whether the proposed collection of information entitled "Waiver of Auditor Consent and Reissued Accountants' Report" is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (ii) evaluate the accuracy of the Commission's estimate of the burden of the proposed collection of information; (iii) determine whether there are ways to enhance the quality, utility, and clarity of the information to be collected; and (iv) evaluate whether there are ways to minimize the burden of the collection of information on those who are to respond, including through the use of automated collection techniques or other forms of information technology.

Persons submitting comments on the collection of information requirement should direct the comments to the Office of Management and Budget, Attention: Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Washington, DC 20503, and should send a copy to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549-0609, with reference to File No. S7-03-02. Requests for materials submitted to OMB by the Commission with regard to this collection of information should be in writing, refer to File No. S7-03-02, and be submitted to the Securities and Exchange Commission, Records Management, Office of Filings and Information Services. OMB is required to make a decision concerning its regular review of the collection of information between 30 and 60 days after publication of this release. Consequently, a comment to OMB is assured of having its full effect if OMB receives it within 30 days of publication.

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. Compliance with the disclosure requirements is mandatory for those taking advantage of the rules and orders. There is no mandatory

retention period for the information disclosed, and responses to the disclosure requirements will not be kept confidential.

XII. Analysis of Costs and Benefits

The Commission is sensitive to the costs and benefits imposed by its rules.¹⁵⁰ The rules we are adopting include a requirement that Andersen clients that continue their audit relationship with Andersen make publicly available certain assurances they receive from Andersen concerning Andersen's quality control procedures in place during the audit (the "assurance letter requirement"). The rules also provide alternative regulatory requirements that will give Andersen clients certain options regarding compliance with the federal securities laws (the "temporary rules").

A. The Assurance Letter Requirement

The assurance letter requirement benefits investors by providing that basic information about Andersen's continued adherence to quality control standards be made publicly available with respect to each Andersen audit during this period of uncertainty and potentially rapid change. The costs of the assurance letter requirement are limited to the minimal costs involved for Andersen to transmit representations to its audit clients and the minimal costs involved for each Andersen audit client to include representations in a letter with certain filings.

B. The Temporary Rules

Before its indictment, Andersen may not have completed its audit or issued audit opinions with respect to many of its clients in registration or about to register securities. Andersen clients that are in that position, but that choose to end their audit relationship with Andersen or are unable to obtain audit services from Andersen to complete their audits (hereafter, the "terminated clients"), will need to engage new independent public accountants. We recognize that many terminated clients may be unable to engage a new auditor that can, in a timely fashion, complete an audit and sign an audit opinion that normally must be included with a registration statement. The purpose of the temporary rules is to minimize disruption to the capital markets and to the terminated clients while those

clients complete certain pending or imminent offerings.

The temporary rules have four primary components:

- The Commission is permitting the terminated clients filing registration statements (other than companies registering initial public offerings) to include unaudited financial statements. Those terminated clients must amend their registration statements to include audited financial statements within 60 days after the date on which the audited financial statements would otherwise be required.

- The Commission is extending from 16 to 18 months the age of audited financial information that a terminated client can include in a prospectus used nine months after the effectiveness of an underlying registration statement.

- The Commission is waiving the requirement for Andersen clients to include in a registration statement the consent of Andersen to use audit reports for prior years for which a consent cannot be obtained; the issuer must include a copy of the latest signed and dated accountants' report issued by Andersen and include certain related disclosure if a reissued accountants' report cannot be obtained.

- Our current rules require issuers that expect to report a loss for the most recent fiscal year, or that had a loss for the last two fiscal years, to file audited financial statements within 45 days of the end of their fiscal year. The Commission is providing relief allowing the affected terminated clients to continue to use their unaudited financial statements for registration statements or any other purpose provided they obtain audited financial statements within 60 days of the original due date.

1. Benefits

The benefit of the temporary rules, like the Orders issued today, is the mitigation of disruption, uncertainty, lost opportunity, and other costs that, however unlikely, might be visited upon the market and the terminated clients. The temporary rules provide the market and the terminated clients with regulatory clarity to help address the disruption in an orderly fashion, and without expending more resources, or forsaking more opportunity, than is necessary.

First, by virtue of addressing and resolving certain questions, the temporary rules mitigate the costs to terminated clients from having to formulate capital-raising plans in an uncertain regulatory environment. It is unavoidable that the terminated clients will need to devote resources to

¹⁵⁰In companion Orders issued today, we are providing relief under the Securities Exchange Act of 1934, the Investment Company Act of 1940, the Investment Advisers Act of 1940, and the Public Utility Holding Company Act. This cost-benefit analysis addresses only the relief provided by these rule amendments.

assessment and planning, but a principal benefit of the temporary rules is to facilitate that assessment and planning process by preemptively addressing questions that would arise concerning regulatory compliance.

Second, the temporary rules will help mitigate any possible disruptions to the capital-raising process. The terminated clients currently in registration, or planning to register securities in the very near term, may be unable to obtain audited financial statements in time to support registration statements. They may also face hardship in obtaining necessary consents from Andersen to include accountants' reports related to financial statements Andersen audited in prior years and obtaining a reissued accountants' report for use in future filings. Capital raising frequently is time-sensitive. By preserving for the terminated clients the option of going forward with their capital-raising plans, albeit subject to whatever market risk accompanies going forward with unaudited financial statements, the temporary rules afford issuers and investors a capital-raising and investment option that would otherwise be postponed and possibly lost altogether.

Third, the temporary rules will benefit certain terminated clients by extending a regulatory deadline that would be difficult, and perhaps impossible, to meet because of the transition to a new auditor. Our current rules require issuers that expect to report a loss for the most recent fiscal year, or that had a loss for the last two fiscal years, to file audited financial statements within 45 days of the end of their fiscal year. The temporary rules provide a reasonable regulatory accommodation for the terminated clients in that position.

2. Costs

As described above, the principal purpose of the temporary rules is to mitigate costs and uncertainties. Because the temporary rules, like the Orders issued today, provide optional compliance alternatives, any costs that they impose will be imposed only on those parties that choose to proceed pursuant to them. The terminated clients that opt to proceed pursuant to the temporary rules may incur costs associated with explaining the effect of filing unaudited financial statements, retransmitting financial statements, and obtaining new signatures for the second filing, with attendant liability.

The temporary rules may also impose certain other types of costs. One cost that may result from the rules is the unquantifiable cost of allowing the

terminated clients to offer securities for a temporary period with unaudited, rather than audited, financial statements. That cost is borne both by investors, who may bear more risk than usual in purchasing the securities, and by the terminated clients, since that increased investor risk may create a less receptive market and a correspondingly higher cost of capital for those issuers.

The temporary rules limit the time during which potential investors in the securities will need to make investment decisions without the benefit of audited financial statements. The temporary rules do not mitigate the risk to those investors who do in fact purchase the securities in the period before the audited financial statements are filed, nor do they mitigate the risk to issuers that investors may be less receptive to their securities during that period.

Some costs may be associated with allowing a withdrawing client to use audited financial information that is up to 18 months old, rather than 16 months old, in a prospectus used nine months after the effectiveness of the underlying registration statement. The increased age of the information may mean that it is perceived by investors to be less reliable.

Costs may also accompany the waiver, for current and former Andersen clients, of the requirement that a registration statement include the consent of Andersen to use Andersen audit opinions for prior years. Because the registration statements will be supported by prior years' audit opinions that are not backed by the auditor's current consent, the temporary rules may generate a cost in that investors may have less confidence in the issuer's reported financial condition for those earlier years. Similar costs may be associated with the inability of issuers to obtain a reissued accountants' report.

The inability of Andersen clients to obtain Andersen's consent is a consequence of Andersen's status and not a consequence of the temporary rules. That inability alone, however, does not make it impossible for Andersen clients to comply with the consent requirement, since they could decide to retain a different auditor to re-audit prior years. Thus, while it is Andersen's status, and not the temporary rules, that may make it impossible to obtain the relevant consents from Andersen, the temporary rules create the possibility that the affected registration statements will be effective without those issuers otherwise complying with the consent requirement. Issuers may select the approach which they perceive to be most cost-effective.

Finally, there are costs associated with extending the deadline for filing audited financial statements by those terminated clients that expect to report a loss for a recently completed fiscal year or have reported losses for the past two fiscal years. As discussed above, the use of unaudited financial statements can result in unquantifiable costs to investors and issuers. The filing deadline serves a regulatory purpose that will be impeded temporarily because of the delay.

XIII. Regulatory Flexibility Act

The Regulatory Flexibility Act¹⁵¹ does not apply to the rules we are adopting today. The Regulatory Flexibility Act only requires agencies to prepare analyses for rulemaking when the Administrative Procedure Act requires general notice of proposed rulemaking.¹⁵² As noted above, the Commission is not required to solicit public comment because the Commission is using the expedited rulemaking procedures under section 553(b) of the Administrative Procedure Act.

XIV. Effects on Competition, Efficiency and Capital Formation

Section 2(b) of the Securities Act and Section 3(f) of the Exchange Act require the Commission, when engaging in rulemaking that requires it to consider or determine whether an action is necessary or appropriate in the public interest, to consider whether the action will promote efficiency, competition, and capital formation. Section 23(a)(2) of the Exchange Act requires the Commission, in adopting rules under the Exchange Act, to consider the anticompetitive effects of any rules it adopts.

A. The Assurance Letter Requirement

We have considered what impact the assurance letter requirement will have on efficiency, competition, and capital formation. The requirement may promote efficiency to some degree by making available to markets information that it would not otherwise be available, at a de minimis cost to those that must supply the information. The assurance letter requirement will neither promote nor impede capital formation or competition, but will only help ensure the availability of relevant information to markets and investors.

B. The Temporary Rules

The temporary rules neither promote nor impede competition. The temporary

¹⁵¹ 5 U.S.C. 601–612.

¹⁵² 5 U.S.C. 603(a).

rules give the terminated clients the option of proceeding with capital formation as intended before the announcement of Andersen's indictment. Absent the relief we are providing today, some terminated clients might be forced to postpone public offerings of securities until they engage a new auditor and obtain audited financial statements. By affording those terminated clients the option of proceeding, temporarily, with unaudited financial statements, the temporary rules reduce that obstacle to capital formation.

Some terminated clients have made, or will make, financial and economic decisions to raise capital based on their individual needs and will pursue plans toward that end. Absent the relief we are providing today, the temporary adjustments that the terminated clients would need to make to financial and other operations due to the postponement of those plans would likely entail overall inefficiencies in their capital-raising efforts. By giving those terminated clients the option to proceed, the temporary rules provide them with an alternative that would reduce or eliminate those inefficiencies.

We have considered whether the temporary rules promote competition. The temporary rules will neither promote nor impede competition. The terminated clients may have made plans for, and based expectations on, raising capital within a certain time frame. Absent the relief we are providing today, capital raising could be delayed. From this perspective, the temporary rules may well mitigate that possible effect.

We have also considered whether the temporary rules would impede competition by giving terminated clients a competitive advantage relative to other issuers. It might be suggested that other issuers would like to have the option of filing a registration statement with unaudited financial statements and only supplying audited financial statements sixty days later. We cannot conclude that the temporary rules create a competitive advantage for the terminated clients or otherwise impede competition. The terminated clients will be seeking capital without supplying investors with audited financial statements, while competing issuers seeking capital in the same markets will supply audited financial statements. This does not constitute a competitive advantage for the terminated clients. The temporary rules do not pose an impediment to competition or materially impede the competitive position of any issuer.

XV. Statutory Bases

The amendments contained in this release are being adopted under the authority set forth in Sections 2, 4, 6, 7, 8, 10, 19 and 28 of the Securities Act, as amended, Sections 3, 4, 10, 12, 13, 14, 15, 23 and 36 of the Exchange Act, as amended, and Sections 304, 305, 307, 308, 310, 314 and 319 of the Trust Indenture Act of 1939, as amended.

List of Subjects

17 CFR Part 210

Accountants, Accounting.

17 CFR Part 228

Reporting and recordkeeping requirements, Securities, Small business.

17 CFR Parts 229 and 249

Reporting and recordkeeping requirements, Securities.

17 CFR Part 230

Investment companies, Reporting and recordkeeping requirements, Securities.

17 CFR Part 240

Reporting and recordkeeping requirements, Securities.

17 CFR Part 260

Reporting and recordkeeping requirements, Securities, Trusts and trustees.

Text of the Amendments

For the reasons set out in the preamble, 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. By amending § 210.2-02 by adding paragraph (e) to read as follows:

§ 210.2-02 Accountants' reports.

* * * * *

(e) Paragraph (e) of this section applies only to registrants that are

providing financial statements in a filing for a period with respect to which Arthur Andersen LLP or a foreign affiliate of Arthur Andersen LLP ("Andersen") issued an accountants' report. Notwithstanding any other Commission rule or regulation, a registrant that cannot obtain an accountants' report that meets the technical requirements of paragraph (a) of this section after reasonable efforts may include in the document a copy of the latest signed and dated accountants' report issued by Andersen for such period in satisfaction of that requirement, if prominent disclosure that the report is a copy of the previously issued Andersen accountants' report and that the report has not been reissued by Andersen is set forth on such copy.

3. By adding Temporary Note 1T, Temporary Note 2T and Temporary Note 3T after the introductory note under the undesignated heading "General Instructions as to Financial Statements" preceding § 210.3-01 to read as follows:

GENERAL INSTRUCTIONS AS TO FINANCIAL STATEMENTS

* * * * *

Temporary Note 1T: Notwithstanding any other Commission rule or regulation, every registrant meeting the eligibility requirements in paragraph (a) of this note that files a registration statement on Forms S-1, S-2, S-3, S-4, S-6, S-8, S-11, N-1, N-1A, N-2, N-3, N-4, N-5 or N-14 (§§ 239.11, 239.12, 239.13, 239.25, 239.16, 239.16b, 239.18, 239.15, 239.15A, 239.14, 239.17a, 239.17b, 239.24 or 239.23 of this chapter), or an amendment thereto, that requires audited financial statements for the most recent fiscal year end may file unaudited financial statements in satisfaction of that requirement under the conditions listed in paragraph (b) of this note. In the case of a registered investment company that files a new registration statement on Form S-6 other than an insurance company separate account, however, the relief provided by this note shall not extend to financial statements of the registered investment company itself.

(a) *Eligibility requirements.* An issuer:

(1) That at the time of filing a registration statement is subject to the periodic reporting requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. §§ 78m(a) or 78o(d)) or, in the case of a registered investment company, has previously filed a registration statement under the Securities Act of 1933 (15 U.S.C. § 77a *et seq.*) that has been declared effective by the Commission;

(2) Whose registration statement will include financial statements:

(i) Of an entity that has a fiscal year ending between and including:

(A) November 30, 2001 and April 15, 2002, if the entity meets all of the conditions in Rule 3-01(c) of Regulation S-X (§ 210.3-01(c)) (or Item 310(g) of Regulation S-B

(§ 228.310(g) of this chapter) if the entity is a small business issuer) (or if the entity is a depositor for a registered unit investment trust and the entity is not subject to the periodic reporting requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. §§ 78m(a) or 78o(d))) and is not a registered investment company;

(B) December 29, 2001 and April 15, 2002, if the entity does not meet all of the conditions in Rule 3-01(c) of Regulation S-X (§ 210.3-01(c)) (or Item 310(g) of Regulation S-B (§ 228.310(g) of this chapter) if the entity is a small business issuer) and is not a registered investment company; or

(C) January 1, 2002 and April 15, 2002 in the case of a registered investment company;

(ii) As to the examination of which Arthur Andersen LLP (or a foreign affiliate of Arthur Andersen LLP) had been engaged as the independent public accountant on or after March 14, 2002;

(3) That, on or before March 14, 2002, had not obtained a manually signed audit report from Arthur Andersen LLP (or a foreign affiliate of Arthur Andersen LLP) in respect of those financial statements;

(4) That is unable to obtain from Arthur Andersen LLP (or a foreign affiliate of Arthur Andersen LLP) or elects not to have Arthur Andersen LLP (or a foreign affiliate of Arthur Andersen LLP) issue a manually signed audit report in respect of those financial statements; and

(5) That is not a "blank check company" as defined in § 230.419(a)(2) of this chapter.

(b) *Conditions.*

(1) The issuer's registration statement responds to all items required by the applicable registration form, but with unaudited financial statements that meet the timeliness requirements of Rule 3-01 of Regulation S-X (§ 210.3-01) or, for a registered investment company, Rules 3-12 and 3-18 of Regulation S-X (§§ 210.3-12 and 210.3-18) for those financial statements as to the examination of which Arthur Andersen LLP (or a foreign affiliate of Arthur Andersen LLP) had been engaged as the independent public accountant.

(2) The issuer provides in the registration statement disclosure reflecting the guidance in Temporary Note 2T to Article 3 of Regulation S-X (§§ 210.3-01-3-20).

(3) If the registration statement is not yet effective and it will become effective on or after the date specified in paragraph (b)(4) of this section, the issuer must file a pre-effective amendment or an amendment to a document incorporated by reference, as appropriate, before effectiveness. If the registration statement is effective, the issuer must file either a post-effective amendment or an amendment to a document incorporated by reference, as appropriate, not later than the date specified in paragraph (b)(4) of this note; provided that this filing or amendment need not be made if the offering or offerings have been completed (and any prospectus delivery period under Section 4(3) of the Securities Act of 1933 (15 U.S.C. § 77d(3)) and the rules thereunder has expired) prior to the date specified in paragraph (b)(4) of this note. The filing or amendment shall present:

(i) The financial statements audited by an independent public accountant other than

Arthur Andersen LLP (or a foreign affiliate of Arthur Andersen LLP);

(ii) If Arthur Andersen LLP (or a foreign affiliate of Arthur Andersen LLP) had been engaged as the independent public accountant to examine the issuer's financial statements, selected financial data required by Item 301 of Regulation S-K (§ 229.301 of this chapter) based on the audited financial statements; (iii) A discussion of any material changes from the unaudited financial statements filed originally; and

(iv) Any other section of the registration statement or documents incorporated by reference that should be updated or revised to reflect the changes in the financial statements so filed by amendment.

(4) For purposes of paragraph (b)(3) of this note:

(i) If the issuer (other than a registered investment company) meets all of the conditions in Rule 3-01(c) of Regulation S-X (§ 210.3-01(c)), the date shall be the earlier of:

(A) 60 days from the date the audited financial statements were required to be included in the registration statement; and

(B) The date on which an amended Form 10-K or 10-KSB (§ 249.310 or 249.310b of this chapter) containing audited financial statements is filed in accordance with Release No. 34-45589 (March 18, 2002) (which may be viewed on the Commission's website at www.sec.gov);

(ii) If the issuer (other than a registered investment company) does not meet all of the conditions in Rule 3-01(c) of Regulation S-X (§ 210.3-01(c)), the date shall be the earlier of:

(A) 106 days from the date the audited financial statements were required to be included in the registration statement; and

(B) The date on which an amended Form 10-K or 10-KSB containing audited financial statements is filed in accordance with Release No. 34-45589 (March 18, 2002) (which may be viewed on the Commission's website at www.sec.gov); and

(iii) If the issuer is a registered investment company, the date shall be the earlier of:

(A) 6 months after the close of the fiscal year of the issuer; and

(B) The date on which an amended annual report to shareholders containing audited financial statements is filed in accordance with Release No. IC-25463 (March 18, 2002) (which may be viewed on the Commission's website at www.sec.gov).

(c) This temporary note will expire on December 31, 2002.

Temporary Note 2T: (a) This temporary note applies to any issuer that provides unaudited financial statements in a filing in reliance on Release No. 34-45589 (March 18, 2002) or Release Nos. IA-2017 and IC-25463 (March 18, 2002) (each of which may be viewed on the Commission's website at www.sec.gov) or a temporary rule adopted in Release 33-8070 (March 18, 2002) published on March 22, 2002, in the **Federal Register**. The guidance provided by this note is intended to assist issuers in meeting their disclosure obligations under the federal securities laws. The exact content of each issuer's disclosure may vary depending on the facts and circumstances applicable to

each of Arthur Andersen LLP's (or a foreign affiliate of Arthur Andersen LLP's) former public company audit clients. To the extent this note requires disclosure on the cover page of a filing, if the subject filing does not have a cover page, present this information as a preface to the disclosure presented in response to the form.

(b) The issuers for which this temporary note applies must provide on the cover page of their filings a prominent statement that the filing includes unaudited financial statements in lieu of audited financial statements because the issuer was unable to obtain from Arthur Andersen LLP (or a foreign affiliate of Arthur Andersen LLP) or elected not to have Arthur Andersen LLP (or a foreign affiliate of Arthur Andersen LLP) issue a manually signed audit report in respect of those financial statements and a cross-reference to additional information contained in the filing.

(c) The issuer for which this temporary note applies also shall provide the prominent statement referred to in paragraph (b) of this note in the filing immediately before the financial statements and shall also disclose:

(1) A statement as to when and how the issuer intends to provide the audited financial statements; and

(2) A statement that no auditor has opined that the unaudited financial statements present fairly, in all material respects, the financial position, the results of operations, cash flows and the changes in shareholders' equity of the company (and, in the case of a registered investment company, the financial highlights) for each of the periods reported in accordance with generally accepted accounting principles.

(d) Further, any audit report previously issued by Arthur Andersen LLP (or a foreign affiliate of Arthur Andersen LLP) that is required to be included in a filing should be included as required.

(e) This temporary note will expire on December 31, 2002.

Temporary Note 3T: (a) This temporary note applies to any issuer that provides audited financial statements with an accountant's report issued by Arthur Andersen LLP (or a foreign affiliate of Arthur Andersen LLP ("Andersen")) after March 14, 2002 in a filing. The exact content of each issuer's disclosure may vary depending on the facts and circumstances applicable to each of Andersen's public company audit clients.

(b) The issuers for which this temporary note applies must include as an exhibit (under Exhibit 99) to their filing a letter by the issuer addressed to the Commission that states that Andersen has represented to the issuer that the audit was subject to Andersen's quality control system for the U.S. accounting and auditing practice to provide reasonable assurance that the engagement was conducted in compliance with professional standards and that there was appropriate continuity of Andersen personnel working on audits, availability of national office consultation and availability of personnel at foreign affiliates of Andersen to conduct the relevant portions of the audit.

(c) This temporary note will expire on December 31, 2002.

PART 228—INTEGRATED DISCLOSURE SYSTEM FOR SMALL BUSINESS ISSUERS

4. The authority citation for Part 228 is revised to read as follows:

Authority: 15 U.S.C. 77e, 77f, 77g, 77h, 77j, 77k, 77s, 77z-2, 77z-3, 77aa(25), 77aa(26), 77ddd, 77eee, 77ggg, 77hhh, 77jjj, 77nnn, 77sss, 78l, 78m, 78n, 78o, 78u-5, 78w, 78ll, 78mm, 80a-8, 80a-29, 80a-30, 80a-37 and 80b-11.

5. By adding § 228.304T to read as follows:

§ 228.304T (Item 304T) Item 304T of Regulation S-B.

Note: This is a special temporary section that applies to issuers for which Arthur Andersen LLP (or a foreign affiliate of Arthur Andersen LLP) had been engaged as the independent public accountant to examine the issuer's financial statements, or for which Arthur Andersen LLP (or a foreign affiliate of Arthur Andersen LLP) had been engaged to examine a significant subsidiary's financial statements and on which the principal public accountant expressed reliance in its report, on or after March 14, 2002.

(a) *General rule.* Those issuers for which this Item 304T applies must comply with the requirements of § 228.304, except as indicated in paragraph (b) of this Item 304T.

(b) *Special disclosure standards for issuers to whom this Item 304T applies.* An issuer for which this Item 304T applies may comply with § 228.304(a)(3) in the following manner:

(1) If Arthur Andersen LLP (or the foreign affiliate of Arthur Andersen LLP, if applicable) has already provided the issuer with a letter addressed to the Commission stating whether it agrees with the statements made by the issuer in response to § 228.304, and, if that letter indicates that it does not agree, stating the respects in which it does not agree, the issuer shall file that letter as an exhibit to the report or registration statement containing this disclosure; or

(2) If the issuer has not yet received that letter and cannot obtain it after reasonable efforts, compliance with § 228.304(a)(3) is not required.

(c) This temporary section will expire on December 31, 2002.

6. By amending § 228.310 by adding Temporary Note 1T and Temporary Note 2T after the introductory notes to read as follows:

§ 228.310 (Item 310) Financial Statements.

Notes * * *

Temporary Note 1T: Notwithstanding any other Commission rule or regulation, every registrant meeting the eligibility requirements in paragraph (a) of this note that files a registration statement on Forms

SB-1, SB-2, S-3, S-4 or S-8 (§§ 239.9, 239.10, 239.13, 239.25 or 239.16b), or an amendment thereto, that requires audited financial statements for the most recent fiscal year end may file unaudited financial statements in satisfaction of that requirement under the conditions listed in paragraph (b) of this note.

(a) *Eligibility requirements.* An issuer:

(1) That at the time of filing a registration statement is subject to the periodic reporting requirements of Section 13(a) or 15(d) of the Exchange Act (15 U.S.C. §§ 78m(a) or 78o(d));

(2) Whose registration statement will include financial statements:

(i) Of an entity that has a fiscal year ending between and including:

(A) November 30, 2001 and April 15, 2002, if the entity meets all of the conditions in Item 310(g) of Regulation S-B (§ 228.310(g)); or

(B) December 29, 2001 and April 15, 2002, if the entity does not meet all of the conditions in Item 310(g) of Regulation S-B (§ 228.310(g));

(ii) As to the examination of which Arthur Andersen LLP (or a foreign affiliate of Arthur Andersen LLP) had been engaged as the independent public accountant on or after March 14, 2002;

(3) That, on or before March 14, 2002, had not obtained a manually signed audit report from Arthur Andersen LLP (or a foreign affiliate of Arthur Andersen LLP) in respect of those financial statements;

(4) That is unable to obtain from Arthur Andersen LLP (or a foreign affiliate of Arthur Andersen LLP) or elects not to have Arthur Andersen LLP (or a foreign affiliate of Arthur Andersen LLP) issue a manually signed audit report in respect of those financial statements; and

(5) That is not a "blank check company" as defined in § 230.419(a)(2) of this chapter.

(b) *Conditions.*

(1) The issuer's registration statement responds to all items required by the appropriate registration form, but with unaudited financial statements that meet the timeliness requirements of Item 310(g) of Regulation S-B (§ 228.310(g)) for those financial statements as to the examination of which Arthur Andersen LLP (or a foreign affiliate of Arthur Andersen LLP) had been engaged as the independent public accountant.

(2) The issuer provides in the registration statement disclosure reflecting the guidance in Temporary Note 2T to Article 3 of Regulation S-X (§§ 210.3-01-3-20 of this chapter).

(3) If the registration statement is not yet effective and it will become effective on or after the date specified in paragraph (b)(4) of this section, the issuer must file a pre-effective amendment or an amendment to a document incorporated by reference, as appropriate, before effectiveness. If the registration statement is effective, the issuer must file either a post-effective amendment or an amendment to a document incorporated by reference, as appropriate, not later than the date specified in paragraph (b)(4) of this note; provided that this filing or amendment need not be made if the offering or offerings have been completed (and any

prospectus delivery period under Section 4(3) of the Securities Act of 1933 (15 U.S.C. § 77d(3)) and the rules thereunder has expired) prior to the date specified in paragraph (b)(4) of this note. The filing or amendment shall present:

(i) The financial statements audited by an independent public accountant other than Arthur Andersen LLP (or a foreign affiliate of Arthur Andersen LLP);

(ii) A discussion of any material changes from the unaudited financial statements filed originally; and

(iii) Any other section of the registration statement or documents incorporated by reference that should be updated or revised to reflect the changes in the financial statements so filed by amendment.

(4) For purposes of paragraph (b)(3) of this note:

(i) If the issuer meets all of the conditions of Item 310(g)(2) of Regulation S-B (§ 228.310(g)(2)), the date shall be the earlier of:

(A) 60 days from the date the audited financial statements were required to be included in the registration statement; and

(B) The date on which an amended Form 10-K or 10-KSB containing audited financial statements is filed in accordance with Release No. 34-45589 (March 18, 2002) (which may be viewed on the Commission's website at www.sec.gov); and

(ii) If the issuer does not meet all of the conditions of Item 310(g)(2) of Regulation S-B (§ 228.310(g)(2)), the date shall be the earlier of:

(A) 106 days from the date the audited financial statements were required to be included in the registration statement; and

(B) The date on which an amended Form 10-K or 10-KSB (§ 249.310 or 249.310b of this chapter) containing audited financial statements is filed in accordance with Release No. 34-45589 (March 18, 2002) (which may be viewed on the Commission's website at www.sec.gov).

(c) This temporary note will expire on December 31, 2002.

Temporary Note 2T: (a) This temporary note applies to any issuer that provides audited financial statements with an accountant's report issued by Arthur Andersen LLP or a foreign affiliate of Arthur Andersen LLP ("Andersen") after March 14, 2002 in a filing. The exact content of each issuer's disclosure may vary depending on the facts and circumstances applicable to each of Andersen's public company audit clients.

(b) The issuers for which this temporary note applies must include as an exhibit (under Exhibit 99) to their filing a letter by the issuer addressed to the Commission that states that Andersen has represented to the issuer that the audit was subject to Andersen's quality control system for the U.S. accounting and auditing practice to provide reasonable assurance that the engagement was conducted in compliance with professional standards and that there was appropriate continuity of Andersen personnel working on audits, availability of national office consultation and availability of personnel at foreign affiliates of Andersen to conduct the relevant portions of the audit.

(c) This temporary note will expire on December 31, 2002.

* * * * *

7. By adding § 228.601T to read as follows:

§ 228.601T (Item 601T) Item 601T of Regulation S–B.

Any issuer that may rely upon the alternative disclosure requirement of § 228.304T shall comply with § 228.601(b)(16) in the following manner:

(a) If Arthur Andersen LLP (or a foreign affiliate of Arthur Andersen LLP) has already provided the issuer with a letter addressed to the Commission stating whether it agrees or disagrees with the statements made by the registrant in response to § 228.304(c), the issuer must comply with § 228.601(b)(16).

(b) If Arthur Andersen LLP (or a foreign affiliate of Arthur Andersen LLP) has not provided the issuer with this letter and the issuer cannot obtain it after reasonable efforts, the issuer need not comply with § 228.601(b)(16).

(c) This temporary section will expire on December 31, 2002.

PART 229—STANDARD INSTRUCTIONS FOR FILING FORMS UNDER SECURITIES ACT OF 1933, SECURITIES EXCHANGE ACT OF 1934 AND ENERGY POLICY AND CONSERVATION ACT OF 1975—REGULATION S–K

8. The authority citation for Part 229 is revised to read as follows:

Authority: 15 U.S.C. 77e, 77f, 77g, 77h, 77j, 77k, 77s, 77z–2, 77z–3, 77aa(25), 77aa(26), 77ddd, 77eee, 77ggg, 77hhh, 77iii, 77jjj, 77nnn, 77sss, 78c, 78i, 78j, 78l, 78m, 78n, 78o, 78u–5, 78w, 78ll(d), 78mm, 79e, 79n, 79t, 80a–8, 80a–29, 80a–30, 80a–31(c), 80a–37, 80a–38(a) and 80b–11, unless otherwise noted.

9. By adding § 229.304T to read as follows:

§ 229.304T (Item 304T) Item 304T of Regulation S–K.

Note: This is a special temporary section that applies to issuers for which Arthur Andersen LLP (or a foreign affiliate of Arthur Andersen LLP) had been engaged as the independent public accountant to examine the issuer's financial statements, or for which Arthur Andersen LLP (or a foreign affiliate of Arthur Andersen LLP) had been engaged to examine a significant subsidiary's financial statements and on which the principal public accountant expressed reliance in its report, on or after March 14, 2002.

(a) *General rule.* Those issuers for which this Item 304T applies must comply with the requirements of

§ 229.304, except as indicated in paragraph (b) of this Item 304T.

(b) *Special disclosure standards for issuers to whom this Item 304T applies.* An issuer for which this Item 304T applies may comply with § 229.304(a)(3) in the following manner:

(1) If Arthur Andersen LLP (or the foreign affiliate of Arthur Andersen LLP, if applicable) has already provided the issuer with a letter addressed to the Commission stating whether it agrees with the statements made by the issuer in response to § 229.304, and, if that letter indicates that it does not agree, stating the respects in which it does not agree, the issuer shall file that letter as an exhibit to the report or registration statement containing this disclosure; or

(2) If the issuer has not yet received that letter and cannot obtain it after reasonable efforts, compliance with § 229.304(a)(3) is not required.

(c) This temporary section will expire on December 31, 2002.

10. By adding § 229.601T to read as follows:

§ 229.601T (Item 601T) Item 601T of Regulation S–K.

Any issuer that may rely upon the alternative disclosure requirement of § 229.304T shall comply with § 229.601(b)(16) in the following manner:

(a) If Arthur Andersen LLP (or a foreign affiliate of Arthur Andersen LLP) has already provided the issuer with a letter addressed to the Commission stating whether it agrees or disagrees with the statements made by the issuer in response to § 229.304(c), the issuer must comply with § 229.601(b)(16).

(b) If Arthur Andersen LLP (or a foreign affiliate of Arthur Andersen LLP) has not provided the issuer with this letter and the issuer cannot obtain it after reasonable efforts, the issuer need not comply with § 229.601(b)(16).

(c) This temporary section will expire on December 31, 2002.

PART 230—GENERAL RULES AND REGULATIONS, SECURITIES ACT OF 1933

11. The general authority citation for Part 230 is revised to read as follows:

Authority: 15 U.S.C. 77b, 77c, 77d, 77f, 77g, 77h, 77j, 77r, 77s, 77sss, 77z–3, 78c, 78d, 78l, 78m, 78n, 78o, 78t, 78w, 77ll(d), 78mm, 79t, 80a–8, 80a–24, 80a–28, 80a–29, 80a–30 and 80a–37, unless otherwise noted.

* * * * *

12. By adding § 230.401a to read as follows:

§ 230.401a Requirements as to proper form.

With regard to issuers eligible to rely on Release No. 34–45589 (March 18, 2002) (which may be viewed on the Commission's website at www.sec.gov), the filing of reports in accordance with the provisions of that Release shall result in those reports being "timely filed" for purposes of all form eligibility standards in registration statement forms under the Securities Act of 1933 (15 U.S.C. 77a *et seq.*).

13. By adding § 230.427T to read as follows:

§ 230.427T Information in prospectuses more than nine months after the effective date of the related registration statement.

(a) Notwithstanding the language in Section 10(a)(3) of the Act (15 U.S.C. § 77j(a)(3)), until December 16, 2002, for a registrant that meets the eligibility requirements in paragraph (a)(1) of this section, the audited financial information in a prospectus used more than nine months after the effective date of the registration statement of which that prospectus is a part must be as of a date not more than eighteen months prior to such use; provided that the conditions specified in paragraph (a)(2) of this section are satisfied.

(1) *Eligibility requirements.* A registrant meets the eligibility requirements of this paragraph (a) of this section if:

(i) The registrant has an effective registration statement under the Act that is required to include financial statements for any entity that has a fiscal year ending between and including November 30, 2001 (or, in the case of a registered investment company, January 1, 2002) and April 15, 2002;

(ii) Arthur Andersen LLP (or a foreign affiliate of Arthur Andersen LLP) had been engaged, on or after March 14, 2002, as the independent public accountant to examine those financial statements for that fiscal year;

(iii) On or before March 14, 2002, the registrant had not obtained a manually signed audit report from Arthur Andersen LLP (or a foreign affiliate of Arthur Andersen LLP) in respect of those financial statements for that fiscal year;

(iv) The registrant is unable to obtain from Arthur Andersen LLP (or a foreign affiliate of Arthur Andersen LLP) or elects not to have Arthur Andersen LLP (or a foreign affiliate of Arthur Andersen LLP) issue a manually signed audit report in respect of those financial statements; and

(v) The registrant is not a "blank check company" as defined in § 230.419(a)(2) of this chapter.

(2) *Conditions.*

(i) A prospectus that is used more than nine months after the effective date of the registration statement of which that prospectus is a part includes unaudited financial information that is as of a date not more than sixteen months prior to such use; provided that the registrant provides in the prospectus disclosure reflecting the guidance in Temporary Note 2T to Article 3 of Regulation S-X (§§ 210.3-01—3-20 of this chapter).

(ii) The audited financial information referred to in paragraph (a)(1)(i) of this section in a prospectus used more than nine months after the effective date of the registration statement of which that prospectus is a part must be audited by an independent public accountant other than Arthur Andersen LLP (or a foreign affiliate of Arthur Andersen LLP) and the prospectus must include:

(A) A discussion of any material changes from the unaudited financial information; and

(B) Updated or revised information in any other section of the prospectus or documents incorporated by reference that should be updated or revised to reflect the changes in the audited financial information.

(b) This temporary section will expire on December 31, 2002.

14. By amending § 230.428 by adding Instruction 2T to the Instructions following paragraph (b)(2)(iv) to read as follows:

§ 230.428 Documents constituting a section 10(a) prospectus for Form S-8 registration statement; requirements relating to offerings of securities registered on Form S-8.

* * * * *

(b) * * *

(2) * * *

(iv) * * *

Instructions.

* * * * *

2T. With regard to issuers that are eligible to rely on and are electing to comply with Release No. 34-45589 (March 18, 2002) (which may be viewed on the Commission's website at www.sec.gov) or a temporary rule adopted in Release 33-8070 (March 18, 2002) published on March 22, 2002, in the **Federal Register**, until September 13, 2002 (or December 16, 2002 with respect to foreign private issuers), if the latest fiscal year has ended within 180 days (or 250 days with respect to foreign private issuers) prior to the delivery of documents containing the information specified by Part I of Form S-8 (§ 239.16b of this chapter), the issuer may deliver a document containing financial statements for the fiscal year preceding the latest fiscal year, provided that within the

180 or 250 day period a document containing financial statements for the latest fiscal year is furnished to each employee. This temporary instruction will expire on December 31, 2002.

* * * * *

15. By adding § 230.437a to read as follows:

§ 230.437a Written consents.

(a) This section applies only to registrants that:

(1) Are not a "blank check company" as defined in § 230.419(a)(2); and

(2) Are filing a registration statement containing financial statements in which Arthur Andersen LLP (or a foreign affiliate of Arthur Andersen LLP) had been acting as the independent public accountant.

(b) Notwithstanding any other Commission rule or regulation, every registrant eligible to rely on this section may dispense with the requirement for the registrant to file the written consent of Arthur Andersen LLP (or a foreign affiliate of Arthur Andersen LLP) as required by Section 7 of the Act (15 U.S.C. 77g) where:

(1) The registrant has not already obtained the written consent that would be required if not for this section;

(2) The registrant is not able to obtain the written consent after reasonable efforts; and

(3) The registrant discloses clearly any limitations on recovery by investors posed by the lack of consent.

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

16. The authority citation for Part 240 continues to read in part as follows:

Authority: 15 U.S.C. 77c, 77d, 77g, 77j, 77s, 77z-2, 77z-3, 77eee, 77ggg, 77nnn, 77sss, 77ttt, 78c, 78d, 78e, 78f, 78g, 78i, 78j, 78j-1, 78k, 78k-1, 78l, 78m, 78n, 78o, 78p, 78q, 78s, 78u-5, 78w, 78x, 78ll, 78mm, 79q, 79t, 80a-20, 80a-23, 80a-29, 80a-37, 80b-3, 80b-4 and 80b-11, unless otherwise noted.

* * * * *

17. By adding § 240.12b-37 to read as follows:

§ 240.12b-37 Satisfaction of filing requirements.

With regard to issuers eligible to rely on Release No. 34-45589 (March 18, 2002) or Release No. IC-25463 (March 18, 2002) (each of which may be viewed on the Commission's website at www.sec.gov), filings made in accordance with the provisions of those Releases shall satisfy the issuer's requirement to make such a filing under Section 13(a), 14 or 15(d) of the Act (15 U.S.C. 77m(a), 78n or 78o(d)), as

applicable, and the Commission's rules and regulations thereunder.

PART 249—FORMS, SECURITIES EXCHANGE ACT OF 1934

18. The authority citation for Part 249 continues to read in part as follows:

Authority: 15 U.S.C. 78a *et seq.*, unless otherwise noted.

* * * * *

19. By amending Form 20-F (referenced in § 249.220f) by adding General Instruction A-T1. and General Instruction A-T2. after General Instruction A. to read as follows:

Note: Form 20-F does not, and this amendment will not, appear in the Code of Federal Regulations.

United States

Securities and Exchange Commission

Washington, D.C. 20549

Form 20-F

* * * * *

General Instructions

A. * * *

* * * * *

A-T1. Temporary Instructions Relating to Certain Financial Statements.

Notwithstanding any other Commission rule or regulation, every foreign private issuer meeting the eligibility requirements in paragraph (a) of this instruction that files a registration statement on Forms F-1, F-2, F-3, F-4 or S-8, or an amendment thereto, that requires audited financial statements for the most recent fiscal year end may file unaudited financial statements in satisfaction of that requirement under the conditions listed in paragraph (b) of this instruction.

(a) *Eligibility Requirements.* A foreign private issuer:

(1) That at the time of filing a registration statement is subject to the periodic reporting requirements of Section 13(a) or 15(d) of the Exchange Act;

(2) Whose registration statement will include audited financial statements of an entity that has a fiscal year ending between and including November 30, 2001 and April 15, 2002 as to the examination of which Arthur Andersen LLP or a foreign affiliate of Arthur Andersen LLP had been engaged as the independent public accountant on or after March 14, 2002, unless the foreign private issuer fits within Instruction 2 to Item 8 of Form 20-F, in which case the fiscal year can be between August 31, 2001 and April 15, 2002;

(3) That, on or before March 14, 2002, had not obtained a manually signed audit report from Arthur Andersen LLP (or a foreign affiliate of Arthur Andersen LLP) in respect of those financial statements;

(4) That is unable to obtain from Arthur Andersen LLP (or a foreign affiliate of Arthur Andersen LLP) or elects not to have Arthur Andersen LLP (or a foreign affiliate of Arthur Andersen LLP) issue a manually signed audit

report in respect of those financial statements; and

(5) That is not a "blank check company" as defined in Securities Act Rule 419(a)(2) (§ 230.419(a)(2) of this chapter).

(b) *Conditions.*

(1) The foreign private issuer's registration statement responds to all items required by the appropriate registration form, but with unaudited financial statements that meet the required timeliness requirements for those financial statements as to the examination of which Arthur Andersen LLP or a foreign affiliate of Arthur Andersen LLP has been engaged as the independent public accountant (including an unaudited reconciliation to U.S. generally accepted accounting principles (GAAP) pursuant to Item 17(c) of Form 20-F if the foreign private issuer prepares its financial statements on a basis of accounting other than U.S. GAAP).

(2) The foreign private issuer provides in the registration statement disclosure reflecting the guidance in Temporary Note 2-T of Article 3 of Regulation S-X (17 CFR 210.3-01 "3-20).

(3) If the registration statement is not yet effective and it will become effective on or after the date specified in paragraph (b)(4) of this instruction, the foreign private issuer must file a pre-effective amendment or an amendment to a document incorporated by reference, as appropriate, before effectiveness. If the registration statement is effective, the foreign private issuer must file either a post-effective amendment to the registration statement or an amendment to a document incorporated by reference, as appropriate, not later than the date specified in paragraph (b)(4) of this instruction; provided that this filing or amendment need not be made if the offering or offerings have been completed (and any prospectus delivery period under Section 4(3) of the Securities Act of 1933 (15 U.S.C. 77d(3)) and the rules thereunder has expired) prior to the date specified in paragraph (b)(4) of this instruction. The filing or amendment shall present:

(i) The financial statements audited by an independent public accountant other than Arthur Andersen LLP (or a foreign affiliate of Arthur Andersen LLP);

(ii) If Arthur Andersen LLP (or a foreign affiliate of Arthur Andersen LLP) had been engaged as the independent public accountant to examine the registrant's financial statements, selected financial data required by Item 3(a) of Form 20-F based on the audited financial statements;

(iii) A discussion of any material changes from the unaudited financial statements filed originally; and

(iv) Any other section of the registration statement or Form 20-F that should be updated or revised to reflect the changes in the financial statements so filed by amendment.

(4) For purposes of paragraph (b)(3) of this instruction, the date shall be the earlier of:

(i) 60 days from the date the audited financial statements were required to be included in the registration statement; and

(ii) The date on which an amended Form 20-F containing audited financial statements is filed in accordance with Release No. 34-

45589 (March 18, 2002) (which may be viewed on the Commission's website at www.sec.gov).

(c) This temporary instruction will expire on December 31, 2002.

A-2.2. Temporary Instructions Relating to Certain Financial Statements

(a) This temporary note applies to any foreign private issuer that provides audited financial statements with an accountant's report issued by Arthur Andersen LLP or a foreign affiliate of Arthur Andersen LLP ("Andersen") after March 14, 2002 in a filing. The exact content of each foreign private issuer's disclosure may vary depending on the facts and circumstances applicable to each of Andersen's public company audit clients.

(b) The foreign private issuers for which this temporary note applies must include as an exhibit (under Exhibit 99) to their filing a letter by the foreign private issuer addressed to the Commission that states that Andersen has represented to the foreign private issuer that the audit was subject to Andersen's quality control system for the U.S. accounting and auditing practice to provide reasonable assurance that the engagement was conducted in compliance with professional standards and that there was appropriate continuity of Andersen personnel working on audits, availability of national office consultation and availability of personnel at foreign affiliates of Andersen to conduct the relevant portions of the audit.

(c) This temporary note will expire on December 31, 2002.

* * * * *

PART 260—GENERAL RULES AND REGULATIONS, TRUST INDENTURE ACT OF 1939

20. The authority citation for Part 260 continues to read as follows:

Authority: 15 U.S.C. 77eee, 77ggg, 77nnn, 77sss, 78ll(d), 80b-3, 80b-4, and 80b-11.

21. By adding § 260.19a-1 to read as follows:

§ 260.19a-1 Compliance with Section 314(a)(1) of the Trust Indenture Act for certain eligible indenture obligors.

(a) This section is applicable only to an "eligible indenture obligor" as defined in paragraph (b) of this section.

(b) For purposes of paragraph (c) of this section, an "eligible indenture obligor" is any obligor that:

(1) Is required to file reports with the Commission pursuant to Section 13 or Section 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. §§ 78m or 78o(d)) (the "Exchange Act"); and

(2) May rely on any of the provisions of Release No. 34-45589 (March 18, 2002) (which may be viewed on the Commission's website at www.sec.gov) with regard to the filing of reports with the Commission pursuant to Section 13 or Section 15(d) of the Exchange Act (14 U.S.C. 78m or 78o(d)).

(c) An "eligible indenture obligor" that files with the indenture trustee those Exchange Act reports filed with the Commission in accordance with the Release referred to in paragraph (b)(2) of this section has met its duty under Section 314(a)(1) of the Act (15 U.S.C. 77nn(a)(1)) to "file with the indenture trustee all reports required to be filed with the Commission pursuant to Section 13 or Section 15(d) of the Securities Exchange Act of 1934."

By the Commission.

Dated: March 18, 2002.

Margaret H. McFarland,
Deputy Secretary.

Note: Appendices A, B and C to the preamble will not appear in the Code of Federal Regulations.

Appendix A

United States of America Before the Securities and Exchange Commission

Securities Exchange Act of 1934

Release No. 34-45589/March 18, 2002

Order Under Section 36 of the Securities Exchange Act of 1934 Granting Exemptions From Certain Provisions of the Act and Rules Thereunder

To assure a continuing and orderly flow of information to investors and the U.S. capital markets and to minimize any potential disruptions that may occur in light of the circumstances surrounding Arthur Andersen LLP ("Andersen"), the Commission finds that the exemptions set forth below are necessary and appropriate in the public interest and consistent with the protection of investors.¹

I. Accordingly, *it is ordered*, pursuant to Section 36 of the Securities Exchange Act of 1934 (the "Exchange Act"), that any one or more of the provisions of Section I. of this order shall apply to any issuer:

- Whose report, registration statement, amendment or other documents referenced in this order will include financial statements the examination or review of which Andersen (or a foreign affiliate of Andersen) had been engaged, on or after March 14, 2002, as the independent public accountant;

- That, on or before March 14, 2002, had not obtained a manually signed audit report from Andersen (or a foreign affiliate of Andersen) in respect of those financial statements (or a review report in the case of interim financial statements);

- That is unable to obtain from Andersen (or a foreign affiliate of Andersen) or elects not to have Andersen (or a foreign affiliate of Andersen) issue a manually signed audit report in respect of those financial statements (or a review in the case of interim financial statements); and

¹ The Commission is also publishing today a separate release modifying, in a manner appropriate for the protection of investors, the requirements for including audited financial statements in registration statements under the Securities Act of 1933 and filings required by the Trust Indenture Act of 1939. See Release No. 33-8070 (March 18, 2002).

• That is not a “blank check company” as defined in Rule 419(a)(2) under the Securities Act of 1933.

The review referenced above is a review in accordance with Rule 10–01(d) of Regulation S–X (or Item 310(b) of Regulation S–B for small business issuers, as defined in Item 10(a)(1) of Regulation S–B).

1. *Annual Reports on Form 10–K/Form 10–KSB.* Notwithstanding any other Commission rule or regulation, an issuer that has a fiscal year ending between and including November 30, 2001 and April 15, 2002 that is required to file an annual report on Form 10–K or Form 10–KSB may file its annual report for that fiscal year under the conditions below.

Conditions.

(a) The issuer timely files its annual report on Form 10–K or Form 10–KSB within the period specified in the appropriate form (including any additional period for filing the report if the issuer relies on Exchange Act Rule 12b–25) responding to all items required by the appropriate form, but with unaudited financial statements for those financial statements as to the examination of which Andersen (or a foreign affiliate of Andersen) had been engaged as the independent public accountant;

(b) The issuer provides the disclosure reflecting the guidance included in Temporary Note 2T to Article 3 of Regulation S–X in the report; and

(c) The issuer files an amendment to the report within 60 days of the original due date of the report (excluding any additional period for filing the original report if the issuer relied on Exchange Act Rule 12b–25 for the filing of that report), that presents:

(1) The financial statements audited by an independent public accountant other than Andersen (or a foreign affiliate of Andersen);

(2) If the original filing was on Form 10–K and Andersen (or a foreign affiliate of Andersen) had been engaged as the independent public accountant to examine the issuer’s financial statements, selected financial data required by Item 6 of Form 10–K based on the audited financial statements;

(3) A discussion of any material changes from the unaudited financial statements filed originally; and

(4) Any other section of the annual report that should be amended, including without limitation, Management’s Discussion and Analysis of Financial Condition and Results of Operations, to reflect any changes in the financial statements so filed by amendment.

2. *Quarterly Reports on Form 10–Q/Form 10–QSB.* Notwithstanding any other Commission rule or regulation, an issuer that has a fiscal quarter ending between and including January 26, 2002 and June 15, 2002 that is required to file quarterly reports on Form 10–Q or Form 10–QSB may file its quarterly report for those fiscal quarters under the conditions listed below.

Conditions.

(a) The issuer timely files its quarterly report on Form 10–Q or Form 10–QSB within the period specified in the appropriate form (including any additional period for filing the report if the issuer relies on Exchange Act Rule 12b–25) responding to all items required by the appropriate form, but with

interim financial statements that have not been reviewed by an independent public accountant in accordance with Rule 10–01(d) of Regulation S–X (or Item 310(b) of Regulation S–B for issuers filing on Form 10–QSB);

(b) The issuer provides disclosure in the report similar to that reflected in the guidance included in Temporary Note 2T to Article 3 of Regulation S–X, as applicable;

(c) If upon completion of the review by an independent public accountant in accordance with Rule 10–01(d) of Regulation S–X (or Item 310(b) of Regulation S–B for issuers filing on Form 10–QSB) there is a change to the interim financial statements, the issuer must file an amendment to the report upon completion of the review presenting:

(1) The interim financial statements reviewed by an independent public accountant other than Andersen (or a foreign affiliate of Andersen);

(2) A discussion of any material changes from the unreviewed financial statements filed originally; and

(3) Any other section of the quarterly report that should be amended, including without limitation, Management’s Discussion and Analysis of Financial Condition and Results of Operations, to reflect any changes in the financial statements so filed by amendment; and

(d) If upon completion of the review there is not a change to the interim financial statements, the issuer must state in its quarterly report for the immediately succeeding fiscal quarter that the interim financial statements for the previous quarter had subsequently been reviewed by an independent public accountant other than Andersen (or a foreign affiliate of Andersen), but no report of that independent public accountant need be presented.

3. *Annual Reports on Form 20–F.*

Notwithstanding any other Commission rule or regulation, a foreign private issuer that has a fiscal year ending between and including August 31, 2001 and April 15, 2002 that is required to file an annual report on Form 20–F may file its annual report on Form 20–F for that fiscal year under the conditions listed below.

Conditions.

(a) The foreign private issuer timely files its annual report on Form 20–F within the period specified in Form 20–F (including any additional period for filing the report if the foreign private issuer relies on Exchange Act Rule 12b–25) responding to all items required by Form 20–F, but with unaudited financial statements for those financial statements as to the examination of which Andersen (or a foreign affiliate of Andersen) had been engaged as the independent public accountant (including an unaudited reconciliation to U.S. generally accepted accounting principles (GAAP) pursuant to Item 17(c) of Form 20–F if the foreign private issuer prepares its financial statements on a basis of accounting other than U.S. GAAP);

(b) The foreign private issuer provides disclosure reflecting the guidance included in Temporary Note 2T to Article 3 of Regulation S–X in the report; and

(c) The foreign private issuer files an amendment to the report within 60 days of the original due date of the report (excluding any additional period for filing the original report if the issuer relied on Exchange Act Rule 12b–25 for the filing of that report), that presents:

(1) The financial statements audited by an independent public accountant other than Andersen (or a foreign affiliate of Andersen);

(2) If Andersen (or a foreign affiliate of Andersen) had been engaged as the independent public accountant to examine the foreign private issuer’s financial statements, selected financial data required by Item 3.A. of Form 20–F (including any reconciliation of that data to U.S. GAAP and Regulation S–K if required by Instruction 2 to Item 3.A. of Form 20–F) based on the audited financial statements;

(3) A discussion of any material changes from the unaudited financial statements or unaudited reconciliation filed originally; and

(4) Any other section of the annual report that should be amended, including without limitation, the Operating and Financial Review and Prospects required by Item 5 of Form 20–F, to reflect any changes in the financial statements so filed by amendment.

4. *Rule 12b–25.* Notwithstanding any other Commission rule or regulation, an issuer that files a Notification of Late Filing on Form 12b–25 for its annual report on Form 10–K or Form 10–KSB for its fiscal year ending between and including November 30, 2001 and April 15, 2002, its annual report on Form 20–F for its fiscal year ending between and including August 31, 2001 and April 15, 2002, its annual report on Form N–SAR for its fiscal year ending between and including December 15, 2001 and April 15, 2002 or its quarterly report on Form 10–Q or Form 10–QSB for its fiscal quarter ending between and including January 26, 2002 and June 15, 2002 need not attach as an exhibit a statement by Andersen (or a foreign affiliate of Andersen) as required by Exchange Act Rule 12b–25(c) if such statement cannot be obtained by the issuer after reasonable efforts.

5. *Schedules 14A and 14C.*

Notwithstanding any other Commission rule or regulation, every issuer that files either a Schedule 14A or Schedule 14C that requires audited financial statements of an entity with a fiscal year ending between and including:

(i) November 30, 2001 and April 15, 2002, if the entity meets all of the conditions in Rule 3–01(c) of Regulation S–X (or Item 310(g) of Regulation S–B if the entity is a small business issuer), (ii) December 29, 2001 and April 15, 2002, if the entity does not meet all of the conditions in Rule 3–01(c) of Regulation S–X (or Item 310(g) of Regulation S–B if the entity is a small business issuer), or (iii) January 1, 2002 and April 15, 2002, if the entity is a registered investment company, may file unaudited financial statements in satisfaction of that requirement under the conditions listed below.

Conditions.

(a) The issuer sends its proxy statement or information statement on or before September 13, 2002 (or, in the case of an issuer that is a registered investment company, on or before August 13, 2002);

(b) The issuer’s proxy statement or information statement responds to all items

required by Schedule 14A or Schedule 14C (taking into account paragraph I.6. below), but with unaudited financial statements for those financial statements as to the examination of which Andersen (or a foreign affiliate of Andersen) had been engaged as the independent public accountant;

(c) The issuer provides in the proxy statement or information statement disclosure reflecting the guidance included in Temporary Note 2T to Article 3 of Regulation S-X;

(d) The issuer must file either revised materials or amended documents incorporated by reference, as appropriate, not later than the date specified in paragraph I.5.(e) below, provided that this filing or amendment need not be made if the solicitation or corporate action has been completed by that date. Such filing or amended document shall present:

(1) The financial statements audited by an independent public accountant other than Andersen (or a foreign affiliate of Andersen);

(2) If Andersen (or a foreign affiliate of Andersen) had been engaged as the independent public accountant for the issuer's financial statements, selected financial data required by Item 301 of Regulation S-K based on the audited financial statements if this information would otherwise have been required in the proxy statement or information statement;

(3) A discussion of any material changes from the unaudited financial statements filed originally; and

(4) Any other section of the revised materials or filings incorporated by reference that should be updated or revised to reflect any changes in the financial statements contained in the revised materials or amended documents; and

(e) For purposes of paragraph I.5.(d) above:

(1) If the issuer meets all of the conditions in Rule 3-01(c) of Regulation S-X (or Item 310(g)(2) of Regulation S-B for small business issuers, as defined in Item 10(a)(1) of Regulation S-B), the date shall be the earlier of (i) 60 days from the date the audited financial statements were required to be included in the proxy statement or information statement and (ii) the date on which an amended Form 10-K or 10-KSB containing audited financial statements is filed in accordance with this Order;

(2) If the issuer does not meet all of the conditions in Rule 3-01(c) of Regulation S-X (or Item 310(g)(2) of Regulation S-B for small business issuers, as defined in Item 10(a)(1) of Regulation S-B), the date shall be the earlier of (i) 106 days from the date the audited financial statements were required to be included in the proxy statement or information statement and (ii) the date on which an amended Form 10-K or 10-KSB containing audited financial statements is filed in accordance with this Order; and

(3) If the issuer is a registered investment company, the date shall be the earlier of (i) 60 days from the date the audited financial statements were required to be in the proxy statement or information statement and (ii) the date on which an amended annual report to shareholders containing audited financial information is filed in accordance with Release No. IC-25463 (March 18, 2002).

6. *Audit Committee Disclosures in Certain Schedules 14A and 14C.* Notwithstanding any other Commission rule or regulation, every issuer that has a fiscal year ending between and including November 30, 2001 and April 15, 2002 that files either a Schedule 14A or Schedule 14C may omit any disclosure required by Item 7(d)(3)(i) and Item 9(e) of Schedule 14A or Item 7(d)(3)(i) and Item 9(e) of Schedule 14A pursuant to Item 1 of Schedule 14C under the conditions listed below.

(a) The issuer sends its proxy statement or information statement on or before September 13, 2002 (or, in the case of an issuer that is a registered investment company, on or before August 13, 2002).

(b) The issuer's proxy statement or information statement responds to all items required by Schedule 14A or Schedule 14C (taking into account paragraph I.5. above, if applicable) other than Items 7(d)(3)(i) and Item 9(e) of Schedule 14A or Item 7(d)(3)(i) and Item 9(e) of Schedule 14A pursuant to Item 1 of Schedule 14C for Schedule 14C.

(c) The issuer has not filed audited financial statements nor amended its Form 10-K or Form 10-KSB pursuant to paragraph I.1. above prior to sending its proxy statement or information statement to shareholders.

(d) The issuer includes information in its amended Form 10-K or Form 10-KSB (or, in the case of a registered investment company, in its amended annual report to shareholders) that responds to Items 7(d)(3)(i) and Item 9(e) of Schedule 14A, if this information would otherwise have been required in the Schedule 14A or Schedule 14C.

7. *Rule 14a-3.* Notwithstanding any other Commission rule or regulation, every issuer that has a fiscal year ending between and including November 30, 2001 and April 15, 2002 that files either a Schedule 14A that relates to an annual meeting of security holders (or a special meeting in lieu of an annual meeting of security holders), or written consent in lieu of such meeting, at which directors are to be elected shall satisfy the requirements in Rule 14a-3 for audited financial statements in the annual report to security holders for that fiscal year under the conditions listed below.

Conditions.

(a) The proxy statement or information statement is sent on or before September 13, 2002;

(b) The issuer's proxy statement responds to all items required by Schedule 14A (taking into account paragraphs I.5. and I.6. above, if applicable);

(c) The issuer's annual report to security holders responds to all items required in the report, but with unaudited financial statements for those financial statements as to the examination of which Andersen (or a foreign affiliate of Andersen) had been engaged as the independent public accountant;

(d) The issuer provides in the annual report to security holders disclosure reflecting the guidance included in Temporary Note 2T to Article 3 of Regulation S-X; and

(e) The issuer announces in a press release, at the time it files its Form 10-K or Form 10-

KSB (or an amendment thereto) that includes the financial statements audited by an independent public accountant other than Andersen (or a foreign affiliate of Andersen), that these financial statements are available and may be found in that filing on the Commission's website at www.sec.gov and on the issuer's website, citing the address, if the issuer has a website; provided that this announcement need not be made if the issuer's solicitation or corporate action has been completed prior to the time these audited financial statements are filed.

8. *Rule 14c-3.* Notwithstanding any other Commission rule or regulation, every issuer that has a fiscal year ending between and including November 30, 2001 and April 15, 2002 that files a Schedule 14C that relates to an annual meeting of security holders (or a special meeting in lieu of an annual meeting of security holders), or written consent in lieu of such meeting, at which directors are to be elected shall satisfy the requirements in Rule 14c-3 for audited financial statements in the annual report to security holders for that fiscal year under the conditions listed below.

Conditions.

(a) The proxy statement or information statement is sent on or before September 13, 2002;

(b) The issuer's information statement responds to all items required by Schedule 14C (taking into account paragraphs I.5. and I.6. above, if applicable);

(c) The issuer's annual report to security holders responds to all items required in the report, but with unaudited financial statements for those financial statements as to the examination of which Andersen (or a foreign affiliate of Andersen) had been engaged as the independent public accountant;

(d) The issuer provides in the annual report to security holders disclosure reflecting the guidance included in Temporary Note 2T to Article 3 of Regulation S-X; and

(e) The issuer announces in a press release, at the time it files its Form 10-K or Form 10-KSB (or an amendment thereto) that includes the financial statements audited by an independent public accountant other than Andersen (or a foreign affiliate of Andersen), that these financial statements are available and may be found in that filing on the Commission's website at www.sec.gov and on the issuer's website, citing the address, if the issuer has a website; provided that this announcement need not be made if the issuer's solicitation or corporate action has been completed prior to the time these audited financial statements are filed.

9. *Schedules TO.* Notwithstanding any other Commission rule or regulation, every issuer whose Schedule TO requires audited financial statements of an entity with a fiscal year ending between and including November 30, 2001 and April 15, 2002 may file the Schedule TO with unaudited financial statements in satisfaction of that requirement under the conditions listed below.

Conditions.

(a) The issuer files its Schedule TO on or before September 13, 2002;

(b) The offering materials respond to all items required by Schedule TO, but with unaudited financial statements for those financial statements as to the examination of which Andersen (or a foreign affiliate of Andersen) had been engaged as the independent public accountant;

(c) The issuer provides in the offering materials disclosure reflecting the guidance included in Temporary Note 2T to Article 3 of Regulation S-X; and

(d) The issuer must either file revised materials or amend documents incorporated by reference to provide the financial statements audited by an independent public accountant other than Andersen (or a foreign affiliate of Andersen) not later than the earlier of (i) 60 days from the date the audited financial statements were required to be included in the Schedule TO and (ii) the date on which an amended Form 10-K or 10-KSB (or, in the case of a registered investment company, annual report to shareholders) containing audited financial statements is filed in accordance with this Order; provided that such filing or amendment shall not be required if the tender offer has been completed by such date. The revised materials or the periodic report which satisfies this requirement through incorporation by reference, must present:

(1) Those audited financial statements;

(2) If Andersen (or a foreign affiliate of Andersen) had been engaged originally as the independent public accountant for the issuer's financial statements, selected financial data required by Item 301 of Regulation S-K based on the audited financial statements;

(3) A discussion of any material changes from the unaudited financial statements filed originally; and

(4) Any other section of the revised materials or filings incorporated by reference that should be updated or revised to reflect any changes in the financial statements contained in the revised materials or amended documents.

II. *It is further ordered*, pursuant to Section 36 of the Exchange Act, that:

1. *Employee Benefit Plan Annual Reports on Form 11-K*. Notwithstanding any other Commission rule or regulation, employee stock purchase, savings and similar plans meeting the requirements in paragraph II.1.(a) below that are required to file annual reports on Form 11-K may file their annual report on Form 11-K for their fiscal year ending between and including November 30, 2001 and April 15, 2002 under the conditions listed in paragraph II.1.(b) below.

(a) *Eligibility Requirements*. This paragraph II.1. applies to an employee stock purchase, savings or similar plan:

(1) That is subject to Section 15(d) of the Exchange Act;

(2) That is not subject to the Employee Retirement Income Security Act of 1974;

(3) That has a fiscal year ending between and including November 30, 2001 and April 15, 2002;

(4) Whose report for such period will include financial statements as to the examination of which Andersen (or a foreign affiliate of Andersen) had been engaged as

the independent public accountant on or after March 14, 2002;

(5) That, on or before March 14, 2002, had not obtained a manually signed audit report from Andersen (or a foreign affiliate of Andersen) in respect of those financial statements;

(6) That is unable to obtain from Andersen (or a foreign affiliate of Andersen) or elects not to have Andersen (or a foreign affiliate of Andersen) issue a manually signed audit report in respect of those financial statements; and

(7) Where the issuer of the stock or other securities offered to employees through their participation in the plan is not a "blank check company" as defined in Rule 419(a)(2) under the Securities Act of 1933.

(b) *Conditions*.

(1) The plan timely files its annual report on Form 11-K within the period specified in Form 11-K (including any additional period for filing the report if the plan relies on Exchange Act Rule 12b-25) responding to all items required by Form 11-K, but with unaudited plan financial statements for those financial statements as to the examination of which Andersen (or a foreign affiliate of Andersen) had been engaged as the independent public accountant;

(2) The plan provides the disclosure reflecting the guidance included in Temporary Note 2T to Article 3 of Regulation S-X in the report;

(3) The plan files an amendment to the report within 60 days of the original due date for filing (excluding any additional period for filing the original report if the issuer relied on Exchange Act Rule 12b-25 for the filing of that report), that presents:

(i) The financial statements audited by an independent public accountant other than Andersen (or a foreign affiliate of Andersen);

(ii) A discussion of any material changes from the unaudited financial statements filed originally; and

(iii) Any other section of the annual report that should be amended to reflect any changes in the financial statements so filed by amendment.

(4) Notwithstanding paragraphs II.1.(b)(1)-(3) above, if the plan elects to use the alternative filing procedure in Exchange Act Rule 15d-21:

(i) Unaudited plan financial statements as to the examination of which Andersen (or a foreign affiliate of Andersen) had been engaged as the independent public accountant must be filed in the annual report on Form 10-K, Form 10-KSB or U5S of the issuer, or an amendment thereto, within 120 days after the end of the fiscal year of the plan;

(ii) The issuer provides the disclosure reflecting the guidance included in Temporary Note 2T to Article 3 of Regulation S-X in the report with respect to the plan;

(iii) An amendment must be filed to such report within 180 days after the end of the fiscal year of the plan, presenting:

(A) The audited financial statements that would have been required for the plan where Andersen (or a foreign affiliate of Andersen) had been engaged as the independent public accountant;

(B) A discussion of any material changes from the unaudited financial statements filed originally; and

(C) Any other section of the annual report related to the plan that should be amended including without limitation Management's Discussion and Analysis of Financial Condition and Results of Operations, to reflect any changes in the financial statements so filed by amendment; and

(iv) Notwithstanding paragraphs II.1.(b)(4)(i)-(iii) above, a plan whose fiscal year ends within 62 days prior to the end of the fiscal year of the issuer may elect to file the audited plan financial statements as a part of the issuer's next annual report pursuant to Exchange Act Rule 15d-21(b).

2. *Rule 12b-25*. Notwithstanding any other Commission rule or regulation, every plan meeting the eligibility requirements in paragraph II.1.(a) above that files a Notification of Late Filing on Form 12b-25 for its annual report on Form 11-K for its fiscal year ending between and including November 30, 2001 and April 15, 2002 need not attach as an exhibit a statement by Andersen (or a foreign affiliate of Andersen) as required by Exchange Act Rule 12b-25(c) if such statement cannot be obtained by the issuer after reasonable efforts.

III. *It is further ordered*, pursuant to Section 36 of the Exchange Act, that:

1. *Rule 17a-5*. A registered broker-dealer with a contractual commitment from Andersen (or a foreign affiliate of Andersen) to conduct the broker-dealer's annual audit pursuant to Exchange Act Rule 17a-5(d) as of a date between and including January 14, 2002 and April 15, 2002, and for which the manually signed audit report has not been received on or before March 14, 2002, may (i) file its audited financial statements within 60 days after the date the statements would otherwise have been required to have been filed under Exchange Act Rule 17a-5(d)(5); and (ii) comply with the requirements of Exchange Act Rule 17a-5(c)(2) by furnishing unaudited statements to customers and other persons set forth in Exchange Act Rule 17a-5(c)(1) within 105 days after the date as of which audited statements were to have been prepared. The unaudited statements shall contain the information specified in Exchange Act Rule 17a-5(c)(2)(i) and (c)(2)(ii).

2. *Rule 17Ad-13*. A registered transfer agent with a contractual commitment from Andersen (or a foreign affiliate of Andersen) to prepare a report concerning the transfer agent's system of internal accounting control and related procedures for the transfer of record ownership and the safeguarding of related securities and funds pursuant to Exchange Act Rule 17Ad-13(a), and for which the manually signed report has not been received on or before March 14, 2002, may file the report pursuant to such paragraph within 60 days after the date the report otherwise would have been required to have been filed.

By the Commission.

Jonathan G. Katz,
Secretary.

Appendix B

United States of America Before the Securities and Exchange Commission

Investment Company Act of 1940

Release No. IC-25463/March 18, 2002

Investment Advisers Act of 1940

Release No. IA-2017/March 18, 2002

Order Under Sections 6(b), 6(c), and 38(a) of the Investment Company Act of 1940 and Sections 206A and 211(a) of the Investment Advisers Act of 1940 Granting Exemptions From Certain Provisions of the Acts and Rules Thereunder

To assure a continuing and orderly flow of information to investors and the U.S. capital markets and to minimize any potential disruptions that may occur in light of the circumstances surrounding Arthur Andersen LLP ("Andersen"), the Commission finds that the exemptions set forth below:

- Are necessary and appropriate to the exercise of the powers conferred on it by the Investment Company Act of 1940 (Company Act) and Investment Advisers Act of 1940 (Advisers Act); and
- Are necessary and appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policies and provisions of the Company Act and Advisers Act.¹

The necessity for immediate action of the Commission does not permit prior notice of the Commission's action.

Accordingly, IT IS ORDERED, pursuant to Sections 6(b), 6(c), and 38(a) of the Company Act and Sections 206A and 211(a) of the Advisers Act:

I. Selection of Auditors by Investment Companies

1.(a) A registered management investment company, registered face amount certificate company or a business development company:

(i) Whose financial statements for its last fiscal year were audited by Andersen, had not selected its independent public accountant on or before March 14, 2002, and whose fiscal year ends on or before April 15, 2002, is exempt from the requirement of Section 32(a) of the Company Act and Rule 32a-3 thereunder that such company select its independent public accountant within the time periods specified by Section 32(a) or rule 32a-3, provided that it selects its independent public accountant other than Andersen no later than 60 days after it otherwise would have been required to select the independent public accountant; or

(ii) That had selected Andersen as its independent accountant on or before March 14, 2002, and terminates the appointment may, notwithstanding any provision of Section 32(a), select another independent

public accountant by vote of a majority of those members of the board of directors who are not interested persons of the registered investment company.

(b) A registered management investment company, registered face amount certificate company or a business development company that selects an independent public accountant pursuant to paragraph I.1.(a) of this Order is exempt from the provisions of Section 32(a) that require that the selection be made by a vote of a majority of those members of the board of directors who are not interested persons, cast in person at a meeting called for that purpose, provided that such votes are instead cast at a meeting in which directors may participate by any means of communicating that allows all directors participating to communicate with each other simultaneously during the meeting.

II. Custody of Investment Company Assets

1. *Self-Custody.* A registered management investment company or business development company having a fiscal year ending between and including January 1, 2002 and April 15, 2002, and which has engaged Andersen for the purpose of verifying assets pursuant to Rule 17f-2, 6e-2 or 6e-3(T) under the Company Act and elects to terminate such engagement is exempt from the requirement of those rules that an independent public accountant conduct an actual examination of such assets at least three times during the company's fiscal year, provided the examinations required by the rules are conducted by an independent public accountant other than Andersen no later than 60 days from the date they were required to be conducted.

2. *Custody with a Member of a National Securities Exchange.* A registered management investment company or business development company having a fiscal year ending between and including January 1, 2002 and April 15, 2002 that has engaged Andersen for the purpose of verifying assets held with a member of a national securities exchange pursuant to Rule 17f-1 under the Company Act and elects to terminate such engagement is exempt from the requirement that an independent public accountant conduct an examination of such assets at the end of the annual fiscal period, semiannual fiscal period and at a time chosen by the accountant, provided that:

(a) The actual examinations are conducted by an independent public accountant other than Andersen no later than 60 days after the date they were required to be conducted; and

(b) In the case of a semiannual or annual verification, the assets are verified as of the end of the annual or semiannual fiscal period.

III. Reports and Registration Statements by Investment Companies

1. The relief provided in Section III of this order shall apply to a registered investment company:

(a) Whose report, registration statement, or amendments referenced in this order will include financial statements or are based on financial statements the examination of which Andersen had been engaged, on or

after March 14, 2002, as the independent public accountant;

(b) That, on or before March 14, 2002, had not obtained a manually signed audit report from Andersen in respect of those financial statements; and

(c) That is unable to obtain from Andersen or elects not to have Andersen issue a manually signed audit report in respect of those financial statements.

2. *Annual Reports on Form N-SAR.* A registered management investment company or a unit investment trust having a fiscal year ending between and including December 15, 2001 and April 15, 2002 is exempt from the requirement of Rule 30a-1 under the Company Act to file an annual report to the Commission on Form N-SAR containing financial information based upon audited financial information and without a report of independent accountants on internal controls, provided that such company or trust:

(a) Files Form N-SAR within 60 days of the end of its fiscal year (or 75 days in the case of a company or trust relying on Rule 12b-25 under the Securities Exchange Act of 1934 ("Exchange Act")) responding to all items required by the form, but with financial information based upon unaudited financial statements, and includes disclosure in an exhibit to the form explaining that financial information in the report is based upon unaudited financial statements because the company or trust was unable to receive services from Andersen or chose not to have Andersen complete those audits; and

(b) Files an amendment to its Form N-SAR no later than 60 days from the date it was required to file Form N-SAR (excluding any additional time period for filing the additional report if the company or trust relied upon Rule 12b-25 under the Exchange Act for the filing of that report) that contains (i) financial information based upon financial statements audited by an independent public accountant other than Andersen, (ii) a report of independent accountants on internal controls issued by an independent public accountant other than Andersen, and (iii) an exhibit that provides a discussion of any material changes from the financial information based upon the unaudited financial statements filed originally and identifies the items of the company's or trust's Form N-SAR that were revised as a result of the amendment.

3. *Annual Reports to Shareholders.* A registered management investment company or a unit investment trust having a fiscal year ending between and including January 1, 2002 and April 15, 2002, is exempt from the requirement of Rule 30e-1 under the Company Act (and registration forms to which the Rule refers) to transmit to each shareholder of record an annual report containing audited financial statements, provided that the company or trust:

(a) Transmits to its shareholders within 60 days after the close of its fiscal year (and files with the Commission no later than 10 days thereafter) an annual report responding to all items required by the appropriate form, but with (i) unaudited financial statements, and (ii) disclosure reflecting the guidance included in Temporary Note 2T to Article 3 of Regulation S-X;

¹ The Commission is also publishing today a separate release modifying, in a manner appropriate for the protection of investors, the requirements for including audited financial statements in registration statements under the Securities Act of 1933 and filings required by the Trust Indenture Act of 1939. See Investment Company Act Release No. 25464 (March 18, 2002).

(b) Files with the Commission no later than 60 days from the date it was required to file the annual shareholder report an amendment to its shareholder report containing (i) the financial statements audited by an independent public accountant other than Andersen, (ii) a discussion of any material changes from the unaudited financial statements filed originally, and (iii) changes to any other section to reflect any changes in the financial statements filed by amendment; and

(c) In the case of a closed-end management company, announces, at the time it files its amendment that includes financial statements audited by an independent public accountant other than Andersen, that these financial statements are available and may be found in that filing on the Commission's website at *www.sec.gov* and on the company's website, citing the address, if the company has a website; provided that this announcement need not be made if the company's solicitation or corporate action has been completed prior to the time that these audited financial statements are filed.

4. *Amendments to Investment Company Act Registration Statements.* A registered management investment company that has (i) a fiscal year ending between and including January 1, 2002 and April 15, 2002, and (ii) timely filed a report on Form N-SAR as provided in paragraph III.2. of this order, is exempt from the requirement of Rule 8b-16 under the Company Act to amend its registration statement within 120 days of the end of its fiscal year, provided that the company files the amendment not later than six months after the end of the fiscal year.

IV. Balance Sheet Requirement for Certain Investment Advisers

A registered investment adviser that (i) is required by Item 14 of Part II of Form ADV under the Advisers Act to furnish a balance sheet audited by an independent public accountant, (ii) had engaged Andersen (or a foreign affiliate of Andersen) as an independent public accountant to examine the balance sheet to be included in Form ADV; (iii) had not, on or before March 14, 2002, obtained a manually signed audit report from Andersen (or a foreign affiliate of Andersen); (iv) is unable to or elects not to have Andersen issue a manually signed audit report from Andersen in respect of that balance sheet; and (v) has a fiscal year ending between and including December 1, 2001 and April 15, 2002, is exempt from the requirement of Rule 204-3 of the Advisers Act to furnish (in the case of a prospective client) or offer (in the case of a client) Part II of Form ADV (or a written disclosure statement) that contains an audited balance sheet, provided that:

1. The adviser furnishes or offers to furnish to prospective clients and clients on a timely basis Part II of Form ADV (or a written disclosure statement containing at least the information required by Part II) responding to all items required by Form ADV, but with an unaudited balance sheet, and discloses prominently on Schedule G (or the written disclosure statement) that an audited balance sheet is unavailable because the adviser was unable to receive services from Andersen or

chose not to have Andersen complete those audits; and

2. The adviser amends its Part II (or written disclosure statement) to include a balance sheet examined by an independent public accountant other than Andersen no later than 60 days from the date it was required to update its Part II (which amendment is not required to be submitted to the Commission).

V. Exemptive Orders

An investment company, investment adviser, employees' securities company or other person relying on a Commission exemptive order issued under the Company Act or the Advisers Act that requires (either as a result of a representation made by the applicant or condition of the order) the involvement of an independent public accountant or independent representative (who may be an independent public accountant), that, on or after March 14, 2002, had engaged but is no longer able to obtain such services from Andersen or elects not to continue to engage Andersen shall not be deemed to have violated the terms or conditions of the order provided:

1. In the case of a report that must be furnished periodically or an audit that must be conducted annually, the report is furnished or audit is conducted by an independent public accountant other than Andersen no later than 60 days after the report was otherwise required to be furnished or the audit was otherwise required to be conducted; and

2. In the case of ongoing transactions that must be reviewed by the independent public accountant (or independent representative), the transactions are effected without the review, provided that the company or adviser engages an independent public accountant (or independent representative) other than Andersen no later than May 15, 2002, and that new engagement requires the independent public accountant (or independent representative) to review the transactions effected during the interim period.

By the Commission.

Jonathan G. Katz,
Secretary.

Appendix C

United States of America Before the Securities and Exchange Commission

Public Utility Holding Company Act of 1935

Release No. 35-27502/March 18, 2002

Order Under Sections 20(a) and 20(d) of the Public Utility Holding Company Act of 1935 Granting Exemptions From Certain Provisions of the Act and Rules Thereunder

To assure a continuing and orderly flow of information to investors and the U.S. capital markets and to minimize any potential disruptions that may occur in light of the circumstances surrounding Arthur Andersen LLP ("Andersen"), the Commission finds that the exemptions set forth below are necessary and appropriate to the exercise of the powers conferred on it by the Public Utility Holding Company of 1935.¹

¹ The Commission is also publishing today a separate release modifying, in a manner appropriate

The necessity for immediate action of the Commission does not permit prior notice of the Commission's action.

Accordingly, *it is ordered*, pursuant to sections 20(a) and 20(d) of the Public Utility Holding Company Act of 1935:

I. Annual Reports on Form U5S

(1) Notwithstanding any other Commission rule or regulation, every registered public utility holding company that is required to file an annual report on Form U5S and

(a) That has a fiscal year ending from November 30, 2001 to April 15, 2002, and

(b) That meets the requirements of Section I of Securities Exchange Act of 1934 Release No. 45589 (March 18, 2002) ("1934 Act Order")

may file its annual report on Form U5S for its fiscal year ending from November 30, 2001 to April 15, 2002 under the conditions listed in paragraph (2) below. Reports filed pursuant to this order shall be deemed to have satisfied the registered public utility holding company's requirement to file an annual report for such period under section 14 of the Public Utility Holding Company Act and the Commission's rules and regulations thereunder.

(2) Conditions:

(a) The registered public utility holding company files its annual report on Form U5S within the required period, responding to all items required by the form except for any item requiring that (i) the registered public utility holding company provide material including audited financial statements as to the examination of which Andersen had been engaged as the independent public accountant or (ii) the registered public utility holding company provide an opinion of an independent public accountant that would have been provided by Andersen;

(b) With respect to any annual report required to be incorporated by reference in Exhibit A to Form U5S, the registered public utility holding company incorporates by reference an annual report that complies with paragraphs I.1.(a) and I.1.(b) of the 1934 Act Order;

(c) With respect to any amendment to an annual report required by paragraph I.1.(c) of the 1934 Act Order, the registered public utility holding company files the amendment as an amendment to its Form U5S filing on the same day and amends any other section of its Form U5S filing that should be updated as a result; and

(d) With respect to "the opinion of the independent accountants" required by Exhibit F to Form U5S, the registered public utility holding company files as an amendment to its Form U5S filing the opinion within 60 days of the original due date of the Form.

II. Computations Required by Certain Rules and Orders

With respect to any computation required by rule 53(a)(1) or rule 58(a)(1) or any similar

for the protection of investors, the requirements for including audited financial statements in registration statements under the Securities Act of 1933 and filings required by the Trust Indenture Act of 1939. See Release No. 33-8070 (March 18, 2002).

computation required by a Commission order issued under sections 53, 54 or 58 of the Public Utility Holding Company Act of 1935, a registered public utility holding company which is filing annual reports on Form 10-

K or quarterly reports on Form 10-Q in reliance on the exemptions provided in the 1934 Act Order may rely on the financial statements included in those filings in performing the required computations.

By the Commission.

Jonathan G. Katz,
Secretary.

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