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Part IV

Securities and Exchange Commission

17 CFR Parts 228, 229, and 249
Disclosure Required by Sections 406 and 407 of the Sarbanes-Oxley Act of 2002; Final Rule

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 228, 229 and 249

[Release Nos. 33–8177; 34–47235; File No. S7–40–02]

RIN 3235–AI66

Disclosure Required by Sections 406 and 407 of the Sarbanes-Oxley Act of 2002

AGENCY: Securities and Exchange Commission.

ACTION: Final rule; request for comment.

SUMMARY: We are adopting rules and amendments requiring companies, other than registered investment companies, to include two new types of disclosures in their annual reports filed pursuant to the Securities Exchange Act of 1934. First, the rules require a company to disclose whether it has at least one ''audit committee financial expert'' serving on its audit committee, and if so, the name of the expert and whether the expert is independent of management. A company that does not have an audit committee financial expert must disclose this fact and explain why it has no such expert. Second, the rules require a company to disclose whether it has adopted a code of ethics that applies to the company's principal executive officer, principal financial officer, principal accounting officer or controller, or persons performing similar functions. A company disclosing that it has not adopted such a code must disclose this fact and explain why it has not done so. A company also will be required to promptly disclose amendments to, and waivers from, the code of ethics relating to any of those officers. These rules implement the requirements in Sections 406 and 407 of the Sarbanes-Oxley Act of 2002. We also request additional comments regarding the appropriate treatment of foreign private issuers in light of our proposed rules implementing Section 301 of the Act.

DATES: *Effective Date:* March 3, 2003.

Comment Date: Comments regarding treatment of certain foreign private issuers should be received on or before February 18, 2003.

Compliance Dates: Companies must comply with the code of ethics disclosure requirements promulgated under Section 406 of the Sarbanes-Oxley Act in their annual reports for fiscal years ending on or after July 15, 2003. They also must comply with the requirements regarding disclosure of amendments to, and waivers from, their ethics codes on or after the date on which they file their first annual report in which the code of ethics disclosure is required. Companies, other than small business issuers, similarly must comply with the audit committee financial expert disclosure requirements promulgated under Section 407 of the Sarbanes-Oxley Act in their annual reports for fiscal years ending on or after July 15, 2003. Small business issuers must comply with the audit committee financial expert disclosure requirements in their annual reports for fiscal years ending on or after December 15, 2003.

ADDRESSES: To help us process and review your comments more efficiently, comments should be sent by hard copy or e-mail, but not by both methods. Comments sent by hard copy should be submitted in triplicate to Jonathan G. Katz, Secretary, U.S. Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Comments also may be submitted electronically at the following e-mail address: *rule-comments@sec.gov.* All comment letters should refer to File No. S7–40–02; if e-mail is used, this file number should be included in the subject line. Comment letters will be available for inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, DC 20549–0102. Electronically submitted comment letters will be posted on the Commission's Internet Web site (*http://www.sec.gov*).[1]

FOR FURTHER INFORMATION CONTACT: Ray Be, Special Counsel, N. Sean Harrison, Special Counsel, or Kim McManus, Attorney-Advisor, Division of Corporation Finance, at (202) 942–2910, or with respect to accounting issues, Michael Thompson, Professional Accounting Fellow, Office of Chief Accountant, at (202) 942–4400, U.S. Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549.

SUPPLEMENTARY INFORMATION: We are adopting amendments to Form 8–K,[2] Form 10–K,[3] Form 10–KSB,[4] Form 20–F[5] and Form 40–F[6] under the Securities Exchange Act of 1934,[7] Regulation S–B,[8] and Regulation S–K.[9]

[1] We do not edit personal information, such as names or electronic mail addresses, from electronic submissions. You should submit only information that you wish to make available publicly.

[2] 17 CFR 249.308.

[3] 17 CFR 249.310.

[4] 17 CFR 249.310b.

[5] 17 CFR 249.220f.

[6] 17 CFR 249.240f.

[7] 15 U.S.C. 78a *et seq.*

[8] 17 CFR 228.10 *et seq.*

[9] 17 CFR 229.10 *et seq.*

I. Background

The strength of the U.S. financial markets depends on investor confidence. Recent events involving allegations of misdeeds by corporate executives, independent auditors and other market participants have undermined that confidence.[10] In response to this threat to the U.S. financial markets, Congress passed, and the President signed into law, the Sarbanes-Oxley Act of 2002 (the ''Sarbanes-Oxley Act''),[11] which effects sweeping corporate disclosure and financial reporting reform.

This release is one of several that the Commission is required to issue to implement provisions of the Sarbanes-Oxley Act. In this release, we adopt rules to implement the following two provisions of the Sarbanes-Oxley Act:

- Section 407, which directs us to adopt rules: (1) Requiring a company to disclose whether its audit committee includes at least one member who is a financial expert; and (2) defining the term ''financial expert''; and
- Section 406, which directs us to adopt rules requiring a company to disclose whether it has adopted a code of ethics for its senior financial officers, and if not, the reasons therefor, as well as any changes to, or waiver of any provision of, that code of ethics.

We received over 200 comment letters in response to our release proposing requirements to implement Sections 404, 406 and 407 of the Sarbanes-Oxley Act.[12] These comment letters came from corporations, professional associations, accountants, law firms, analysts, consultants, academics, investors and others. In general, the commenters favored the objectives of the proposed new requirements. Investors generally supported the manner in which we proposed to achieve these objectives and, in some cases, urged us to require additional disclosure from companies. Many other commenters, however, thought that we were requiring more disclosure than necessary to fulfill the mandates of the Sarbanes-Oxley Act and suggested modifications to the proposals. We have reviewed and considered all of the comments on the proposals. The adopted rules reflect many of these comments—we discuss our conclusions with respect to each

[10] *See,* for example, John Waggoner and Thomas A. Fogarty, ''Scandals Shred Investors' Faith: Because of Enron, Andersen and Rising Gas Prices, the Public Is More Wary Than Ever of Corporate America,'' USA Today, May 5, 2002, and Louis Aguilar, ''Scandals Jolting Faith of Investors,'' Denver Post, June 27, 2002.

[11] Pub. L. 107–204, 116 Stat. 745 (2002).

[12] Release No. 33–8138 (October 22, 2002) [67 FR 66208] (''Proposing Release'').

topic and related comments in more detail throughout the release. We believe that the new rules and amendments are in the public interest and consistent with the protection of investors.

The Proposing Release also included requirements to implement Section 404 of the Act, relating to internal control reports and auditor attestations of those reports. We will set forth the final rules to implement Section 404 in a separate adopting release to be issued at a later date. The Sarbanes-Oxley Act does not mandate that we issue final rules to implement Section 404 by a specific date. In addition, in the Proposing Release, we proposed to defer effectiveness of those rules so that they would apply only to companies whose fiscal years end on or after September 15, 2003 to allow the Public Company Accounting Oversight Board sufficient time to adopt standards for attestation engagements, and to allow companies and auditors sufficient time to prepare for imposition of the new requirements.

We also will set forth the rules to implement the requirements of Sections 406 and 407 of the Sarbanes-Oxley Act with respect to registered investment companies in a subsequent release. We expect to consider implementing these requirements at the same time that we consider adopting proposed Form N–CSR [13] to be used by registered management investment companies to file certified shareholder reports with the Commission under Section 302 of the Sarbanes-Oxley Act.

II. Discussion

A. Audit Committee Financial Experts

1. Title of the Expert

In the Proposing Release, we solicited comment as to whether we should use the term ''financial expert'' in our rules consistent with its use in Section 407 of the Sarbanes-Oxley Act, or whether a different term such as ''audit committee financial expert'' would be more appropriate. A number of commenters expressed a concern that neither the term ''financial expert'' nor ''audit committee financial expert'' accurately reflects the required experience and expertise of the type of expert contemplated by Section 407 and our proposed rules. Some noted that many of the key characteristics included in our proposed definition of a financial expert relate to the expert's accounting knowledge and experience in an accounting or auditing position. One commenter therefore recommended that we use the term ''audit committee accounting expert.'' Other suggested terms included ''accounting expert,'' ''audit committee member financial lead'' and ''financially proficient director.''

We agree that the term ''financial'' may not completely capture the attributes referenced in Section 407, given the provision's focus on accounting and auditing expertise and the fact that traditional ''financial'' matters extend to capital structure, valuation, cash flows, risk analysis and capital-raising techniques. Furthermore, several recent articles on the proposals have noted that many experienced investors and business leaders with considerable financial expertise would not necessarily qualify as financial experts under the proposed definition.[14] We have decided to use the term ''audit committee financial expert'' in our rules implementing Section 407 instead of the term ''financial expert.'' [15] This term suggests more pointedly that the designated person has characteristics that are particularly relevant to the functions of the audit committee, such as: a thorough understanding of the audit committee's oversight role, expertise in accounting matters as well as understanding of financial statements, and the ability to ask the right questions to determine whether the company's financial statements are complete and accurate. The new rules include a definition of the term ''audit committee financial expert.'' [16]

2. Disclosure of the Number and Names of Audit Committee Financial Experts

A substantial number of commenters opposed our proposal to require a company to disclose the number and names of the persons that the company's board determined to be audit committee financial experts. Some were opposed on the ground that our proposed rules exceeded the mandates of the Sarbanes-Oxley Act.[17] Much of the opposition stemmed from a fear that the designation of an audit committee financial expert may inappropriately suggest that the expert bears greater responsibility, and therefore is subject to a higher degree of liability, for audit committee decisions than other audit committee members. Some commenters thought that identification of the audit committee financial expert in the company's annual report would exacerbate that problem and discourage qualified persons from serving as such experts.

We have modified the proposals that would have required disclosure of the number and names of audit committee financial experts serving on a company's audit committee to more closely track the language used in Section 407 of the Sarbanes-Oxley Act. Under the rules that we are adopting, a company must disclose that its board of directors has determined that the company either:

- Has at least one audit committee financial expert serving on its audit committee; or
- Does not have an audit committee financial expert serving on its audit committee.

A company disclosing that it does not have an audit committee financial expert must explain why it does not have such an expert. We continue to believe that disclosure of the name of the audit committee financial expert is necessary to benefit investors and to carry out the purpose of Section 407. Therefore, under the final rules, if a company discloses that it has an audit committee financial expert, it also must disclose the expert's name. We believe that, in general, omission of the expert's name ultimately would not result in the expert's identity remaining non-public. To the extent that there are liability concerns, we believe that they are best addressed by our inclusion of a safe harbor in our rules, as discussed below.

The final rules permit, but do not require, a company to disclose that it has more than one audit committee financial expert on its audit committee. Therefore, once a company's board determines that a particular audit committee member qualifies as an audit committee financial expert, it may, but is not required to, determine whether additional audit committee members also qualify as experts. Every company subject to the audit committee disclosure requirements would, however, have to determine whether or not it has at least one audit committee financial expert; a company will not

[13] *See* Release No. IC–25723 (Aug. 30, 2002) [67 FR 57298].

[14] *See* Andrew R. Sorkin, ''Back to School, but This One Is for Top Corporate Officials,'' NY Times, Sept. 3, 2002, Cassell Bryan-Low, ''Defining Moment for SEC: Who is a financial expert,'' Wall Street Journal, Dec. 9, 2002, and Geoffrey Colvin, ''Sarbanes & Co. Can't Want This: Under Reform Law, Alan Greenspan Would Not Qualify as a Board's Financial Expert,'' Fortune, Dec. 30, 2002.

[15] Throughout this release, we will refer to both ''audit committee financial experts'' and ''financial experts'' as appropriate in a particular context. For example, when discussing statutory provisions, we will continue to refer to financial experts. For purposes of the discussions in this release, the meanings of these terms are identical.

[16] *See* new Item 401(h)(2) of Regulation S–K, Item 401(e)(2) of Regulation S–B, Item 16A(b) of Form 20–F, and paragraph (8)(b) of General Instruction B to Form 40–F.

[17] The Sarbanes-Oxley Act required only that we adopt rules requiring disclosure of whether a company had at least one financial expert on its audit committee, and if not, the reasons why.

satisfy the new disclosure requirements by stating that it has decided not to make a determination or by simply disclosing the qualifications of all of its audit committee members. Furthermore, if the company's board determines that at least one of the audit committee members qualifies as an expert, the company must accurately disclose this fact. It will not be appropriate for a company to disclose that it does not have an audit committee financial expert if its board has determined that such an expert serves on the audit committee.

3. Disclosure of Independence of Audit Committee Financial Experts

We proposed to require a company to disclose whether its audit committee financial expert is independent of management. A number of commenters opposed this disclosure requirement as unnecessary, noting that Section 301 of the Sarbanes-Oxley Act mandates the Commission to direct the self-regulatory organizations to prohibit the listing of any company that does not require all of its audit committee members to be independent. However, not all Exchange Act reporting companies are listed on a national securities exchange or association.[18] We believe that investors in these companies would be interested in knowing whether the audit committee financial expert is independent of management. Therefore, the final rules require a company to disclose whether the person or persons identified as the audit committee financial expert is independent of management.

In the proposing release, we defined ''independent'' by reference to Section 10A(m)(3) of the Exchange Act.[19] Several commenters noted that this reference may cause some confusion because the securities laws include different definitions of the term ''affiliated,'' which is part of the definition used in Section 10A(m)(3).[20] Therefore, to provide clarity, the final rules refer to the definition of ''independent'' used in Item 7(d)(3)(iv) of Schedule 14A.[21] This revision ensures that the term ''independent'' is used consistently in our rules.[22]

4. Definition of ''Audit Committee Financial Expert''

a. Proposed definition of the term ''financial expert''. We proposed to define the term ''financial expert'' to mean a person who has, through education and experience as a public accountant, auditor, principal financial officer, controller or principal accounting officer, of a company that, at the time the person held such position, was required to file reports pursuant to Section 13(a) or 15(d) of the Exchange Act, or experience in one or more positions that involve the performance of similar functions (or that results, in the judgment of the company's board of directors, in the person's having similar expertise and experience),[23] the following attributes:

(1) An understanding of generally accepted accounting principles and financial statements;

(2) Experience applying such generally accepted accounting principles in connection with the accounting for estimates, accruals, and reserves that are generally comparable to the estimates, accruals and reserves, if any, used in the registrant's financial statements;

(3) Experience preparing or auditing financial statements that present accounting issues that are generally comparable to those raised by the registrant's financial statements;

(4) Experience with internal controls and procedures for financial reporting; and

(5) An understanding of audit committee functions.

In addition, the proposed rule would have provided guidance to companies by providing a list of factors to be considered in making that evaluation, including:

- The level of the person's accounting or financial education, including whether the person has earned an advanced degree in finance or accounting;
- Whether the person is a certified public accountant, or the equivalent, in good standing, and the length of time that the person actively has practiced as a certified public accountant, or the equivalent;
- Whether the person is certified or otherwise identified as having accounting or financial experience by a recognized private body that establishes and administers standards in respect of such expertise, whether that person is in good standing with the recognized private body, and the length of time that the person has been actively certified or identified as having this expertise;
- Whether the person has served as a principal financial officer, controller or principal accounting officer of a company that, at the time the person held such position, was required to file reports pursuant to Section 13(a) or 15(d) of the Exchange Act, and if so, for how long;
- The person's specific duties while serving as a public accountant, auditor, principal financial officer, controller, principal accounting officer or position involving the performance of similar functions;
- The person's level of familiarity and experience with all applicable laws and regulations regarding the preparation of financial statements that must be included in reports filed under Section 13(a) or 15(d) of the Exchange Act;
- The level and amount of the person's direct experience reviewing, preparing, auditing or analyzing financial statements that must be included in reports filed under Section 13(a) or 15(d) of the Exchange Act;
- The person's past or current membership on one or more audit committees of companies that, at the time the person held such membership, were required to file reports pursuant to Section 13(a) or 15(d) of the Exchange Act;
- The person's level of familiarity and experience with the use and analysis of

[18] As we note in our recent release proposing rules to implement Section 301 of the Sarbanes-Oxley Act, there are only 7,250 listed companies out of a total of approximately 17,000 reporting companies. *See* Release No. 33–8173 (Jan. 8, 2003).

[19] 15 U.S.C. 78j–1(m)(3).

[20] For example, Section 2(a)(3) of the Investment Company Act of 1940 (15 U.S.C. 80a–2(a)(3)) defines an ''affiliated person'' as, among other things, any person owning with power to vote five percent of the outstanding voting securities of an entity. Rule 405 (17 CFR 230.405) under the Securities Act defines an ''affiliate'' as a person that controls or is controlled by, or is under common control with a specified person.

[21] 17 CFR 240.101. That item currently relies on the definitions of ''independent'' in the listing standards of the New York Stock Exchange, the American Stock Exchange and the NASD. Under Section 10A(m) of the Exchange Act (as amended by Section 301 of the Sarbanes-Oxley Act), we recently proposed rules directing the national securities exchanges and national securities associations to prohibit the listing of any security of an issuer that, among other things, does not have an independent audit committee as that term is used in Section 10A(m)(3). *See* Release No. 33–8173 (Jan. 8, 2003). As a result of those proposals, the current references in Item 7(d)(3)(iv) of Schedule 14A may be amended. *See id.*

[22] For domestic issuers, the audit committee independence standard is found in new Regulation S–K Item 401(h)(1)(ii) (17 CFR 229.401(h)(1)(ii)) and Regulation S–B Item 401(e)(1)(ii) (17 CFR 228.401(e)(1)(ii)). *See* Part II.C, below for further discussion of the audit committee financial expert disclosure requirements for foreign issuers.

[23] The proposed definition would have broadened the types of persons listed in Section 407 of the Sarbanes-Oxley Act as qualified to serve as experts by enabling the board of directors to conclude that a person is a financial expert if, in lieu of having experience as a public accountant, auditor, principal financial officer, principal accounting officer, or controller, or experience in a position involving the performance of similar functions, the person has experience in a position that results, in the judgment of the board of directors, in the person having similar expertise and experience. Under the proposals, if the board made such a determination, the company would have been required to disclose the basis for that determination.

financial statements of public companies; and

• Whether the person has any other relevant qualifications or experience that would assist him or her in understanding and evaluating the registrant's financial statements and other financial information and to make knowledgeable and thorough inquiries whether:

• The financial statements fairly present the financial condition, results of operations and cash flows of the company in accordance with generally accepted accounting principles; and

• The financial statements and other financial information, taken together, fairly present the financial condition, results of operations and cash flows of the company.

b. Comments on Proposed Definition. The proposed definition of the term ''financial expert'' proved to be the most controversial aspect of the proposals—more commenters remarked on it than on any other topic addressed by the proposed rules. Most of the commenters thought that the proposed definition was too restrictive. Several expressed concern that many companies, especially small ones, would have a difficult time attracting an audit committee member who would qualify as an expert under the proposed definition. Some of the corporate commenters were of the view that they already have exemplary audit committees, despite the fact that none of their current members would meet our proposed definition of an expert. A few complained that companies may have to sacrifice the diversity of their boards and nominate directors who satisfy the audit committee financial expert definition even if the company does not believe that these directors are best-suited for the position.

Furthermore, several commenters debated the merits of defining an audit committee financial expert as a person with strong accounting credentials, given that an audit committee member's role is one of oversight, rather than direct involvement in the company's accounting functions, and suggested that the emphasis on technical accounting expertise in the definition was misplaced. A few commenters further argued that it is unnecessary to have a financial expert serving on the audit committee because audit committee members should have the discretion to retain experts with specific financial expertise as they deem necessary or appropriate.

Other commenters asserted that the proposed definition was more restrictive than necessary to satisfy Congressional intent—they noted that Section 407 of the Sarbanes-Oxley Act requires us, in defining the term ''financial expert,'' only to ''consider'' whether a person has, through education and experience as a public accountant, auditor, principal financial officer, comptroller, principal accounting officer, or similar position, the four attributes specified in the Act.[24] These commenters argued that in light of the Congressional directive only to consider the four attributes, our proposed definition did not need to incorporate all of them, or even any of them. Some commenters believed that a single member of the audit committee should not have to possess all of the required financial expert attributes so long as the members of the audit committee collectively possess these attributes. Others suggested various permutations such as requiring the financial expert to have the first and fifth attributes in our proposed definition, but only two of the other three attributes.

Many commenters criticized specific provisions of the proposed financial expert definition as being too narrow. In particular, many commenters asserted that our proposed requirement that an expert have direct experience preparing or auditing financial statements was greatly, and needlessly, restrictive. Other commenters were concerned that the requirement that a person have had experience with financial statements presenting issues generally comparable to those raised by the company's financial statements might have anti-competitive effects if we interpreted this requirement to mean that a financial expert would need previous experience with financial statements of other companies in the same industry.

Several commenters sought clarification regarding the relevant body of generally accepted accounting principles, in particular for financial experts of foreign private issuers. Other commenters expressed concern over the possible lack of potential financial experts that would be knowledgeable about accounting for estimates and reserves in specific industries, such as the insurance and oil industries.

Numerous additional commenters were concerned that the proposed definition was too restrictive regarding the means by which a person could acquire the required expertise to qualify as a financial expert. They suggested that a requirement that an expert have experience as a public accountant, auditor, principal financial officer, controller, principal accounting officer or in a similar position, would severely limit the number of persons qualified to be financial experts. Some believed that there are a substantial number of highly qualified persons who have sufficient knowledge and experience to effectively and competently perform the activities required of a financial expert, but do not have experience in one of the listed positions. They questioned the relevance of the means by which a person acquires the necessary expertise, so long as the person in fact has such expertise.

c. Final Definition of ''Audit Committee Financial Expert''. The final rules define an audit committee financial expert as a person who has the following attributes:

• An understanding of generally accepted accounting principles and financial statements;

• The ability to assess the general application of such principles in connection with the accounting for estimates, accruals and reserves;

• Experience preparing, auditing, analyzing or evaluating financial statements that present a breadth and level of complexity of accounting issues that are generally comparable to the breadth and complexity of issues that can reasonably be expected to be raised by the registrant's financial statements, or experience actively supervising one or more persons engaged in such activities;

• An understanding of internal controls and procedures for financial reporting; and

• An understanding of audit committee functions.[25]

Under the final rules, a person must have acquired such attributes through any one or more of the following:

(1) Education and experience as a principal financial officer, principal accounting officer, controller, public accountant or auditor or experience in one or more positions that involve the performance of similar functions;

(2) Experience actively supervising a principal financial officer, principal accounting officer, controller, public accountant, auditor or person performing similar functions;

[24] The attributes listed in Section 407 of the Sarbanes-Oxley Act include:

(1) An understanding of generally accepted accounting principles and financial statements;

(2) Experience in: (a) The preparation or auditing of financial statements of generally comparable issuers; and (b) the application of such principles in connection with the accounting for estimates, accruals, and reserves;

(3) Experience with internal accounting controls; and

(4) An understanding of audit committee functions.

[25] *See* new Item 401(h)(2) of Regulation S–K, Item 401(e)(2) of Regulation S–B, Item 16A(b) of Form 20–F and paragraph (8)(b) of General Instruction B to Form 40–F.

(3) Experience overseeing or assessing the performance of companies or public accountants with respect to the preparation, auditing or evaluation of financial statements; or

(4) Other relevant experience.[26]

d. Discussion of Significant Modifications to the Proposed Definition of ''Financial Expert''. We have made several changes to our proposed definition of a financial expert. As already discussed, we have decided to use the term audit committee financial expert rather than financial expert in the final rules. We also have reorganized the components of the definition to make it easier to read and to emphasize, by including them in the first part of the definition, the attributes that an audit committee financial expert must possess. The second part of the definition discusses the means by which a person must acquire the necessary attributes. We also have eliminated the proposed instruction listing several factors that a company's board of directors should consider in evaluating the education and experience of an audit committee financial expert candidate.

Proposed attributes of a financial expert. i. The financial expert must have an understanding of generally accepted accounting principles and financial statements. We are adopting this attribute substantially as proposed. However, in response to comments, we have added an instruction to clarify that, with respect to foreign private issuers, the audit committee financial expert's understanding must be of the generally accepted accounting principles used by the foreign private issuer in preparing its primary financial statements filed with the Commission.[27] Our rules require foreign private issuers that do not prepare their primary financial statements in accordance with U.S. generally accepted accounting principles to include a reconciliation to those principles in the financial statements that they file with the Commission. Although an understanding of reconciliation to U.S. generally accepted accounting principles would be helpful, we believe that the proper focus of audit committee financial expertise is on the principles used to prepare the primary financial statement. We also are sensitive to the fact that requiring an audit committee financial expert to possess expertise relating to U.S. generally accepted accounting principles could burden foreign private issuers who use home country accounting principles or international accounting standards to prepare their primary financial statements.

ii. The financial expert must have experience applying such generally accepted accounting principles in connection with the accounting for estimates, accruals and reserves that are generally comparable to the estimates, accruals and reserves, if any, used in the registrant's financial statements. Several commenters were concerned that potential audit committee financial experts would not have experience with the unique and complex accounting for estimates, accruals and reserves in certain industries, such as the insurance industry, unless they have had direct previous experience in these industries. The commenters further noted that there could be a very limited pool of audit committee financial expert candidates available with such experience that would not have ties to a competitor within the same industry. In light of these comments, we have revised this attribute by eliminating the clause ''that are generally comparable to the estimates, accruals and reserves, if any, used in the registrant's financial statements.'' We also have revised this attribute to state that the audit committee financial expert must have the ability to assess the general application of generally accepted accounting principles in connection with the accounting for estimates, accruals and reserves, rather than stating that the expert must have experience applying these principles.[28] We believe that this description of the attribute better satisfies the intent of the statute and better reflects the role to be played by audit committees. We recognize that the pool of persons possessing the highly specialized technical knowledge that some thought the proposals necessitated may be so small that a substantial percentage of companies in certain industries would be compelled to disclose that they could not retain an expert without recruiting a person associated with a competitor. We do not intend for the new requirements to lead to such a result. An audit committee financial expert must be able to assess the general application of generally accepted accounting principles in connection with accounting for estimates, accruals and reserves. This general attribute provides the necessary background for an audit committee when addressing more detailed industry-specific standards or other particular topics. Experience with such detailed standards or topics is not a necessary attribute of audit committee financial expertise.

iii. The financial expert must have experience preparing or auditing financial statements that present accounting issues that are generally comparable to those raised by the registrant's financial statements. The majority of commenters who thought that the proposed definition of ''financial expert'' was too restrictive focused on this attribute. We are convinced by the weight of the comments that the proposed requirement that an expert have direct experience preparing or auditing financial statements could impose an undue burden on some companies, especially small companies, that desire to have an audit committee financial expert. We also are persuaded by commenters' arguments that persons who have experience performing in-depth analysis and evaluation of financial statements should not be precluded from being able to qualify as audit committee financial experts if they possess the other four necessary attributes of an expert. We therefore have broadened this attribute by requiring an audit committee financial expert to have experience ''preparing, auditing, analyzing or evaluating'' financial statements.[29]

We believe that our revisions properly capture the clear intent of the statute that an audit committee financial expert must have experience actually working directly and closely with financial statements in a way that provides familiarity with the contents of financial statements and the processes behind them. We also believe that our revisions appropriately broaden the group of persons who are eligible to be audit committee financial experts. We recognize that many people actively engaged in industries such as investment banking and venture capital investment have had significant direct and close exposure to, and experience with, financial statements and related processes. Similarly, professional financial analysts closely scrutinize financial statements on a regular basis. Indeed, all of these types of individuals

[26] *See* new Item 401(h)(3) of Regulation S–K, Item 401(e)(3) of Regulation S–B, Item 16A(c) of Form 20–F and paragraph (8)(c) of General Instruction B to Form 40–F.

[27] *See* new Instruction 3 to Item 401(h) of Regulation S–K, Item 401(e) of Regulation S–B, Instruction 3 to Item 16A of Form 20–F, and Note 3 to paragraph (8) of General Instruction B to Form 40–F.

[28] *See* new Item 401(h)(2)(ii) of Regulation S–K, Item 401(e)(2)(ii) of Regulation S–B, Item 16A(b)(2) of Form 20–F and paragraph (8)(b)(2) of General Instruction B to Form 40–F.

[29] *See* new Item 401(h)(2)(iii) of Regulation S–K, Item 401(e)(2)(iii) on Regulation S–B, Item 16A(b)(3) of Form 20–F and paragraph (8)(b)(3) of General Instruction B to Form 40–F.

often hold positions that require them to inspect financial statements with a healthy dose of skepticism. They therefore would be well prepared to diligently and zealously question management and the company's auditor about the company's financial statements. Effective audit committee members must have both the ability and the determination to ask the right questions. Therefore, we have broadened this attribute to include persons with experience performing extensive financial statement analysis or evaluation.

We also are convinced by commenters that a potential audit committee financial expert should be considered to possess this attribute by virtue of his or her experience actively supervising a person who prepares, audits, analyzes or evaluates financial statements. The term ''active supervision'' means more than the mere existence of a traditional hierarchical reporting relationship between supervisor and those being supervised. Rather, we mean that a person engaged in active supervision participates in, and contributes to, the process of addressing, albeit at a supervisory level, the same general types of issues regarding preparation, auditing, analysis or evaluation of financial statements as those addressed by the person or persons being supervised. We also mean that the supervisor should have experience that has contributed to the general expertise necessary to prepare, audit, analyze or evaluate financial statements that is at least comparable to the general expertise of those being supervised. A principle executive officer should not be presumed to qualify. A principal executive officer with considerable operations involvement, but little financial or accounting involvement, likely would not be exercising the necessary active supervision. Active participation in, and contribution to, the process, albeit at a supervisory level, of addressing financial and accounting issues that demonstrates a general expertise in the area would be necessary.

Finally, we are retaining, with clarification, the requirement that an audit committee financial expert have experience with financial statements that present accounting issues that are ''generally comparable'' to those raised by the registrant's financial statements. We do not intend for this phrase to imply that a person must have previous experience in the same industry as the company that is evaluating the person as a potential audit committee financial expert, or that the person's experience must have been with a company subject to the Exchange Act reporting requirements. We therefore have modified the requirement to focus on the breadth and level of complexity of the accounting issues with which the person has had experience. We think that a company's board of directors will make the necessary assessment based on particular facts and circumstances. In making its assessment, the board should focus on a variety of factors such as the size of the company with which the person has experience, the scope of that company's operations and the complexity of its financial statements and accounting. We do not believe that familiarity with particular financial reporting or accounting issues, or any other narrow area of experience should be dispositive.

iv. A financial expert must have experience with internal controls and procedures for financial reporting. We are substituting the term ''understanding'' for the term ''experience.'' [30] In our view, it is necessary that the audit committee financial expert understand the purpose, and be able to evaluate the effectiveness, of a company's internal controls and procedures for financial reporting. It is important that the audit committee financial expert understand why the internal controls and procedures for financial reporting exist, how they were developed, and how they operate. Previous experience establishing or evaluating a company's internal controls and procedures for financial reporting can, of course, contribute to a person's understanding of these matters, but the attribute as rephrased properly focuses on the understanding rather than the experience.

v. A financial expert must have an understanding of audit committee functions. We are adopting this attribute as proposed.[31]

Means of obtaining expertise. We have revised the audit committee financial expert definition to state that a person must have acquired the five necessary attributes through any one or more of the following:

(1) Education and experience as a principal financial officer, principal accounting officer, controller, public accountant or auditor or experience in one or more positions that involve the performance of similar functions;

(2) Experience actively supervising a principal financial officer, principal accounting officer, controller, public accountant, auditor or person performing similar functions;

(3) Experience overseeing or assessing the performance of companies or public accountants with respect to the preparation, auditing or evaluation of financial statements; or

(4) Other relevant experience.[32]

In response to commenters' remarks, we have eliminated the proposed requirement that an audit committee financial expert must have gained the relevant experience with a company that, at the time the person held such position, was required to file reports pursuant to Section 13(a) or 15(d) of the Exchange Act. Many private companies are contractually required to prepare audited financial statements that comply with generally accepted accounting principles. In addition, a potential expert may have gained relevant experience at a foreign company that is publicly traded in its home market but that is not registered under the Exchange Act.

We have added a provision in response to comments that experience overseeing or assessing the performance of companies or public accountants with respect to the preparation, auditing or evaluation of financial statements can provide a person with in-depth knowledge and experience of accounting and financial issues. For example, certain individuals serving in governmental, self-regulatory and private-sector bodies overseeing the banking, insurance and securities industries work on issues related to financial statements on a regular basis. We believe that such experience can constitute a very useful background for an audit committee financial expert.

In addition, we have revised the last provision of this part of the proposed definition. The original proposal stated that a person who had not served in one of the specified positions alternatively could have acquired the relevant attributes and experience in a position that results, in the judgment of the board of directors, in the person's having similar expertise and experience. The final rules state simply that a person may acquire the necessary attributes of an audit committee financial expert through other relevant experience, and no longer require the company to disclose the basis for the board's determination that a person has

[30] *See* new Item 401(h)(2)(iv) of Regulation S–K, Item 401(e)(2)(iv) on Regulation S–B, Item 16A(b)(4) of Form 20–F and paragraph (8)(b)(4) of General Instruction B to Form 40–F.

[31] *See* new Item 401(h)(2)(v) of Regulation S–K, Item 401(e)(2)(v) on Regulation S–B, Item 16A(b)(5) of Form 20–F and paragraph (8)(b)(5) of General Instruction B to Form 40–F.

[32] *See* new Item 401(h)(3) of Regulation S–K, Item 401(e)(3) on Regulation S–B, Item 16A(c) of Form 20–F and paragraph (8)(c) of General Instruction B to Form 40–F.

''similar expertise and experience.'' We also have eliminated the reference to the judgment of the board with respect to this provision because, as explicitly stated in the audit committee financial expert disclosure requirement, the board must make all determinations as to whether a person qualifies as an expert. Therefore, this reference is redundant.

This revision permitting a person to have ''other relevant experience'' recognizes that an audit committee financial expert can acquire the requisite attributes of an expert in many different ways. We do believe that this expertise should be the product of experience and not, for example, merely education. Under the final rules, if a person qualifies as an expert by virtue of possessing ''other relevant experience,'' the company's disclosure must briefly list that person's experience.[33]

Proposed factors to be considered in evaluating the education and experience of a financial expert. The proposed definition of ''financial expert'' included a non-exclusive list of qualitative factors for a company's board to consider in assessing audit committee financial expert candidates. These factors focused on the breadth and level of a potential audit committee financial expert's experience, understanding and involvement in relevant activities, including the person's length of experience in relevant positions, and the types of duties held by such person in those positions. We believe that the board should consider all the available facts and circumstances, including but certainly not limited to, qualitative factors of the type that we had identified, in its determination. Some commenters were concerned that some boards would use the list as a mechanical checklist rather than as guidance to be used in considering a person's knowledge and experience as a whole. In light of these comments, the definition does not include this list.

The fact that a person previously has served on an audit committee does not, by itself, justify the board of directors in ''grandfathering'' that person as an audit committee financial expert under the definition. Similarly, the fact that a person has experience as a public accountant or auditor, or a principal financial officer, controller or principal accounting officer or experience in a similar position does not, by itself, justify the board of directors in deeming the person to be an audit committee financial expert. In addition to determining that a person possesses an appropriate degree of knowledge and experience, the board must ensure that it names an audit committee financial expert who embodies the highest standards of personal and professional integrity. In this regard, a board should consider any disciplinary actions to which a potential expert is, or has been, subject in determining whether that person would be a suitable audit committee financial expert.

Requirement that an audit committee financial expert possess all five required attributes. We are not convinced by comments stating that an audit committee financial expert should not have to possess all of the attributes included in our definition. Although Congress did not explicitly require us to incorporate all of the attributes listed in Section 407 of the Sarbanes-Oxley Act, it also did not limit us to consideration of those attributes. Congress obviously considered each of the listed attributes to be important. A definition of ''audit committee financial expert'' that leaves the meaning of the term entirely to the judgment of the board of directors would be highly subjective and could constitute an abrogation of our responsibilities under Section 407.

The Sarbanes-Oxley Act clearly was intended to enhance corporate responsibility by effecting significant change; its purpose was not to perpetuate the status quo. Therefore, while many companies likely will be able to determine that they already have an audit committee financial expert serving on their audit committees, we believe that the fact that some companies will not be able to draw this conclusion unless they are able to attract a new director with the requisite qualifications is consistent with the Act.

Moreover, the Sarbanes-Oxley Act did not contemplate that a company could disclose that it has an audit committee financial expert by virtue of the fact that the audit committee members collectively possess all of the attributes of an expert; the statute directs us to issue rules to require a company to disclose whether or its audit committee is comprised of ''at least one member'' who is a financial expert. Due to the statute's use of this specific language, there is no doubt that Congress had in mind individual experts and did not contemplate a ''collective'' expert. We note, however, that it would be appropriate under the final rules for a company disclosing that it does not have an audit committee financial expert to explain the aspects of the definition that various members of the committee satisfy.

5. Safe Harbor From Liability for Audit Committee Financial Experts

Several commenters urged us to clarify that the designation or identification of an audit committee financial expert will not increase or decrease his or her duties, obligations or potential liability as an audit committee member. A few recommended a formal safe harbor from liability for audit committee financial experts. Unlike the provisions of the Act that impose substantive requirements,[34] the requirements contemplated by Section 407 are entirely disclosure-based. We find no support in the Sarbanes-Oxley Act or in related legislative history that Congress intended to change the duties, obligations or liability of any audit committee member, including the audit committee financial expert, through this provision.

In the proposing release, we stated that we did not believe that the mere designation of the audit committee financial expert would impose a higher degree of individual responsibility or obligation on that person. Nor did we intend for the designation to decrease the duties and obligations of other audit committee members or the board of directors.

We continue to believe that it would adversely affect the operation of the audit committee and its vital role in our financial reporting and public disclosure system, and systems of corporate governance more generally, if courts were to conclude that the designation and public identification of an audit committee financial expert affected such person's duties, obligations or liability as an audit committee member or board member. We find that it would be adverse to the interests of investors and to the operation of markets and therefore would not be in the public interest, if the designation and identification affected the duties, obligations or liabilities to which any member of the company's audit committee or board is subject. To codify this position, we are including a safe harbor in the new audit committee disclosure item to clarify that:

- A person who is determined to be an audit committee financial expert will not be deemed an ''expert'' for any purpose, including without limitation

[33] *See* new Instruction 2 to Item 401(h) of Regulation S–K, Item 401(e) of Regulation S–B and Item 16A of Form 20–F and Note 2 to paragraph (8) of General Instruction B to Form 40–F.

[34] For example, the Sarbanes-Oxley Act requires the Commission to direct the self-regulatory organizations by rule to mandate the independence of all audit committee members of companies listed on national securities exchanges and associations. *See* Section 301 of the Sarbanes-Oxley Act. As another example, Section 402 of the Sarbanes-Oxley Act prohibits certain loans made by companies to their directors and executive officers.

for purposes of Section 11 of the Securities Act,[35] as a result of being designated or identified as an audit committee financial expert pursuant to the new disclosure item;

- The designation or identification of a person as an audit committee financial expert pursuant to the new disclosure item does not impose on such person any duties, obligations or liability that are greater than the duties, obligations and liability imposed on such person as a member of the audit committee and board of directors in the absence of such designation or identification; and
- The designation or identification of a person as an audit committee financial expert pursuant to the new disclosure item does not affect the duties, obligations or liability of any other member of the audit committee or board of directors.[36]

This safe harbor clarifies that any information in a registration statement reviewed by the audit committee financial expert is not ''expertised'' unless such person is acting in the capacity of some other type of traditionally recognized expert. Similarly, because the audit committee financial expert is not an expert for purposes of Section 11,[37] he or she is not subject to a higher level of due diligence with respect to any portion of the registration statement as a result of his or her designation or identification as an audit committee financial expert.

In adopting this safe harbor, we wish to emphasize that all directors bear significant responsibility. State law generally imposes a fiduciary duty upon directors to protect the interests of a company's shareholders. This duty requires a director to inform himself or herself of relevant facts and to use a ''critical eye'' in assessing information prior to acting on a matter.[38] Our new rule provides that whether a person is, or is not, an audit committee financial expert does not alter his or her duties, obligations or liabilities. We believe this should be the case under federal and state law.

6. Determination of a Person's Status as an Audit Committee Financial Expert

The Sarbanes-Oxley Act does not explicitly state who at the company should determine whether a person qualifies as an audit committee financial expert. We believe that the board of directors in its entirety, as the most broad-based body within the company, is best-equipped to make the determination. We think that it is appropriate that any such determination will be subject to relevant state law principles such as the business judgment rule.

7. Location of Audit Committee Financial Expert Disclosure

The Sarbanes-Oxley Act expressly states that companies must include the financial expert disclosure in their periodic reports required pursuant to Section 13(a) or 15(d) of the Exchange Act. The final rules that we are adopting require companies to include the new disclosure in their annual reports on Forms 10–K, 10–KSB, 20–F or 40–F. The requirement to provide the new audit committee disclosure item is included in Part III of Forms 10–K and 10–KSB, enabling a domestic company that voluntarily chooses to include this disclosure in its proxy or information statement to incorporate this information by reference into its Form 10–K or 10–KSB if it files the proxy or information statement with the Commission no later than 120 days after the end of the fiscal year covered by the Form 10–K or 10–KSB.[39]

Although some commenters recommended that we require companies to include the audit committee financial expert disclosure in their proxy and information statements, registration statements and quarterly reports, as well as in their annual reports, we are not convinced that the benefits to investors would exceed the costs to companies of requiring this disclosure in additional documents or on a more frequent basis.

8. Change in Item Number

We proposed to designate the audit committee financial expert disclosure requirement as new Item 309 of Regulations S–K and S–B.[40] However, existing Item 401 seems to be a more logical location for this requirement. Item 401 currently requires, among other things, a brief description of the business experience of each director. Therefore, we are designating the new disclosure item as Item 401(h) of Regulation S–K and Item 401(e) of Regulation S–B. The new item specifies that a company may choose to include the audit committee financial expert disclosure in its proxy or information statement if the company incorporates such information into its annual report as permitted by the instructions to Forms 10–K and 10–KSB.[41]

B. Code of Ethics

1. Code of Ethics Disclosure Requirements

a. Proposed Disclosure Requirements. Section 406 of the Sarbanes-Oxley Act directs us to issue rules requiring a company that is subject to the reporting requirements of Section 13(a) or 15(d) of the Exchange Act to disclose whether or not the company has adopted a code of ethics for its senior financial officers that applies to the company's principal financial officer and controller or principal accounting officer, or persons performing similar functions. The Act further directs us to require companies that have not adopted such a code of ethics to explain why they have not done so. In addition to requiring the disclosure mandated by Section 406, we proposed rules to require disclosure as to whether the company has a code of ethics that applies to its principal executive officer.

b. Commenters' Remarks. Some of the commenters thought that the required disclosure should be limited to a statement indicating whether the company has a code of ethics that applies to its senior financial officers, and if not, why not. Others stated that it was appropriate to expand the requirements of the Sarbanes-Oxley Act to also require a company to disclose whether it has a code of ethics that applies to its principal executive officer. A few commenters thought that we should extend the requirement even further to require a company to state whether it has a code of ethics that applies to other individuals, such as directors, all executive officers, and the company's employees generally.

[35] 15 U.S.C. 77k.

[36] *See* new Item 401(h)(4) of Regulation S–K, Item 401(e)(4) of Regulation S–B, Item 16A(d) of Form 20–F and paragraph (8)(d) of General Instruction B to Form 40–F. Although other audit committee members may look to the audit committee financial expert as a resource on certain issues that arise, audit committee members should work together to perform the committee's responsibilities. The safe harbor provides that other audit committee members may not abdicate their responsibilities.

[37] Section 11 of the Securities Act imposes liability for material misstatements and omissions in a registration statement, but provides a defense to liability for those who perform adequate due diligence. The level of due diligence required depends on the position held by a defendant and the type of information at issue. *Escott* v. *BarChris Construction Corp.,* 283 F. Supp. 643 (S.D.N.Y. 1968). The type of information can be categorized as either ''expertised,'' which means information that is prepared or certified by an expert who is named in the registration statement, or ''non-expertised.'' Similarly, a defendant can be characterized either as an ''expert'' or a ''non-expert.''

[38] *See,* for example, *Smith* v. *Van Gorkom,* 488 A.2d 858 (Del. 1985).

[39] *See* General Instruction E(3) to Form 10–KSB [17 CFR 249.310b] and General Instruction G(3) to Form 10–K [17 CFR 249.310].

[40] We had proposed to add new items to Forms 20–F and 40–F as well. Those item numbers have not changed.

[41] *See* new Instruction 1 to Item 401(h) of Regulation S–K and Item 401(e) of Regulation S–B.

After considering the comments, we continue to think that it is appropriate and consistent with the purposes of the Sarbanes-Oxley Act to extend the scope of our rules under Section 406 to include a company's principal executive officer, as proposed. It seems reasonable to expect that a company would hold its chief executive officer, an official superior to the company's senior financial officers, to at least the same standards of ethical conduct to which it holds its senior financial officers. Some commenters who are investors confirmed that they not only have an interest in knowing whether a company holds its senior financial officers to certain ethical standards, but whether the company holds its principal executive officer to ethical standards as well.

c. Final Disclosure Requirements. The final rules require a company to disclose whether it has adopted a code of ethics that applies to the registrant's principal executive officer, principal financial officer, principal accounting officer or controller, or persons performing similar functions. If the company has not adopted such a code of ethics, it must explain why it has not done so.[42]

2. Definition of the Term ''Code of Ethics''

a. Proposed Definition. We proposed to define the term ''code of ethics'' to mean written standards that are reasonably designed to deter wrongdoing and to promote: [43]

(1) Honest and ethical conduct, including the ethical handling of actual or apparent conflicts of interest between personal and professional relationships;

(2) Avoidance of conflicts of interest, including disclosure to an appropriate person or persons identified in the code of any material transaction or relationship that reasonably could be expected to give rise to such a conflict;

(3) Full, fair, accurate, timely, and understandable disclosure in reports and documents that a company files with, or submits to, the Commission and in other public communications made by the company;

(4) Compliance with applicable governmental laws, rules and regulations; [44]

(5) The prompt internal reporting to an appropriate person or persons identified in the code of violations of the code; and

(6) Accountability for adherence to the code.

The second, fifth and sixth prongs of this proposed definition were broader than the requirements specified by Section 406 of the Sarbanes-Oxley Act, but were intended to supplement the requirements contained in the Act.

b. Commenters' Remarks. We received several comments on the proposed definition of a code of ethics. Some commenters recommended that we make the code of ethics cover more issues or general topics than proposed. Some of these recommendations identified very specific topics that the code of ethics should address. These topics included matters such as: personal participation in initial public offerings, the reporting of any items of value received as a result of the officer's position with the company, and change of control transactions.

c. Final Definition of ''Code of Ethics''. The final rule defines the term ''code of ethics'' as written standards that are reasonably designed to deter wrongdoing and to promote:

- Honest and ethical conduct, including the ethical handling of actual or apparent conflicts of interest between personal and professional relationships;
- Full, fair, accurate, timely, and understandable disclosure in reports and documents that a registrant files with, or submits to, the Commission and in other public communications made by the registrant;
- Compliance with applicable governmental laws, rules and regulations;
- The prompt internal reporting to an appropriate person or persons identified in the code of violations of the code; [45] and
- Accountability for adherence to the code.[46]

We eliminated the component of the definition requiring the code to promote the avoidance of conflicts of interest, including disclosure to an appropriate person or persons identified in the code of any material transaction or relationship that reasonably could be expected to give rise to such a conflict, because the conduct addressed by this component already is addressed by the first prong of the proposed definition, requiring honest and ethical conduct and the ethical handling of actual and apparent conflicts of interest.

We are not adopting commenters' suggestions that we set forth additional ethical principles that the code of ethics should address. We continue to believe that ethics codes do, and should, vary from company to company and that decisions as to the specific provisions of the code, compliance procedures and disciplinary measures for ethical breaches are best left to the company. Such an approach is consistent with our disclosure-based regulatory scheme. Therefore, the rules do not specify every detail that the company must address in its code of ethics, or prescribe any specific language that the code of ethics must include. They further do not specify the procedures that the company should develop, or the types of sanctions that the company should impose, to ensure compliance with its code of ethics. We strongly encourage companies to adopt codes that are broader and more comprehensive than necessary to meet the new disclosure requirements.

We have added an instruction to the code of ethics disclosure item indicating that a company may have separate codes of ethics for different types of officers. The instruction also clarifies that the provisions of the company's code of ethics that address the elements listed in the definition and apply to those officers may be part of a broader code that addresses additional issues and applies to additional persons, such as all executive officers and directors of the company.[47]

3. Filing of Ethics Code as an Exhibit

We proposed to require a company to file a copy of its ethics code as an exhibit to its annual report. We received several comment letters stating that the rules should not include this requirement. A common ground for objection was that some codes are extremely lengthy and therefore would be difficult to file electronically on our

[42] *See* new Items 406(a) of Regulation S–K, and S–B, Item 16B(a) of Form 20–F and paragraph (9)(a) of General Instruction B to Form 40–F.

[43] The Sarbanes-Oxley Act Section 406(c) definition of the term ''code of ethics'' does not include the phrase ''to deter wrongdoing'' that we have incorporated into proposed Item 406 of Regulations S–K and S–B, but we think that it is appropriate to expand the definition in this manner. Although codes of ethics typically are designed to promote high standards of ethical conduct, they also generally seek to instruct those to whom they apply as to improper or illegal conduct or activity and to prohibit such conduct or activity.

[44] We proposed to add ''laws'' to this prong of the proposed definition. The Sarbanes-Oxley Act Sectin 406(c) definition refers only to compliance with applicable governmental rules and regulations.

[45] Although the company retains discretion to determine the identity of the appropriate person or persons, such person should not be involved in the matter giving rise to the violation. Furthermore, we believe the person identified in the code should have sufficient status within the company to engender respect for the code and the authority to adequately deal with the persons subject to the code regardless of their stature in the company.

[46] *See* new Items 406(b) of Regulations S–K, and S–B, Item 16B(b) of Form 20–F and paragraph (9)(b) of General Instruction B to Form 40–F.

[47] *See* Instruction 1 to Items 406 of Regulations S–K and S–B, Instruction 2 to Item 16B of Form 20–F and Note 2 to paragraph (9) of General Instruction B to Form 40–F.

EDGAR system. Some also asserted that ethics codes may contain a significant amount of detailed information that would not be of particular interest to investors.

We are not entirely persuaded by the commenters that we should not require a company disclosing that it has a code of ethics that applies to its principal executive officer and senior financial officers to make those provisions of the code available. However, more flexibility seems appropriate in light of the fact that many companies already post their codes on their websites. We therefore are adopting rules that will allow companies to choose between three alternative methods of making their ethics codes publicly available. First, a company may file a copy of its code of ethics that applies to the registrant's principal executive officer, principal financial officer, principal accounting officer or controller, or persons performing similar functions and addresses the specified elements as an exhibit to its annual report.[48] Alternatively, a company may post the text of its code of ethics, or relevant portion thereof, on its Internet website, provided however, that a company choosing this option also must disclose its Internet address and intention to provide disclosure in this manner in its annual report on Form 10-K, 10-KSB, 20-F or 40-F.[49] As another alternative, a company may provide an undertaking in its annual report on one of these forms to provide a copy of its code of ethics to any person without charge upon request.[50]

If a company is complying with this disclosure item in its annual report, inclusion of the company's website address in the annual report will not, by itself, include or incorporate by reference the information on the company's website into the annual report, unless the company otherwise acts to incorporate the information by reference.[51] Also, we understand that a company may have multiple websites that it uses for various purposes, such as investor relations, product information and business-to-business activities. We intend the requirement to disclose the company's website address to mean the website the company normally uses for its investor relations functions.

4. Location of the Code of Ethics Disclosure

A company will have to include the new code of ethics disclosure in its annual report filed on Form 10–K, 10–KSB, 20–F or 40–F.

5. Form 8–K or Internet Disclosure Regarding Changes to, or Waivers From, the Code of Ethics

Section 406(b) of the Sarbanes-Oxley Act directs us to require a company to make ''immediate disclosure'' on Form 8–K or via Internet dissemination of any change to, or waiver from, the company's code of ethics for its senior financial officers. Consistent with this mandate, and in keeping with our decision to also require a company to disclose whether its principal executive officer is subject to a code of ethics, we are adding an item to the list of Form 8–K triggering events to require disclosure of:

- The nature of any amendment to the company's code of ethics that applies to its principal executive officer, principal financial officer, principal accounting officer or controller, or persons performing similar functions; [52] and
- The nature of any waiver, including an implicit waiver, from a provision of the code of ethics granted by the company to one of these specified officers, the name of the person to whom the company granted the waiver and the date of the waiver.[53]

Only amendments or waivers relating to the specified elements of the code of ethics and the specified officers must be disclosed. This clarification is intended to allow and encourage companies to retain broad-based business codes. For example, if a company has a code of ethics that applies to its directors, as well as its principal executive officer and senior financial officers, an amendment to a provision affecting only directors would not require Form 8–K or Internet disclosure.

A company choosing to provide the required disclosure on Form 8–K must do so within five business days after it amends its ethics code or grants a waiver.[54] As an alternative to reporting this information on Form 8–K, a company may use its Internet Web site as a method of disseminating this disclosure, but only if it previously has disclosed in its most recently filed annual report on Form 10–K or 10–KSB: [55]

- Its intention to disclose these events on its Internet website, and
- Its Internet website address.[56]

The commenters were mixed in their reaction to our proposal to permit Internet disclosure of changes and waivers of the code of ethics in lieu of a Form 8–K filing. Some commenters did not believe that Internet disclosure would provide sufficiently broad dissemination. Others believed that such disclosure would be sufficient. The final rules retain the Internet disclosure option because the language in Section 406(b) of the Sarbanes-Oxley Act clearly indicates that Congress intended companies to have this option.

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[48] See new Item 601(b)(14) of Regulations S–K and S–B. Although Section 406 of the Sarbanes-Oxley Act does not state that our rules must require a company to file a copy of the code of ethics as an exhibit to its annual report, some investors likely will be interested in examining the actual code itself, given that codes are likely to vary significantly from one company to another.

[49] See new Item 406(c)(2) of Regulations S–K and S–B, Item 16B(c)(2) of Form 20–F and paragraph (9)(c)(2) of General Instruction B to Form 40–F. We note that the NYSE has filed with the Commission a proposed rule change under Section 19(b)(1) of the Exchange Act[15 U.S.C. 78s(b)(1)] that, if adopted, would require listed companies to adopt codes of ethics and post them on their internet websites. See SR–NYSE–2002–33 (pending before the Commission). Therefore, this alternative would be consistent with the proposals of the NYSE, minimizing unnecessary duplication.

[50] *See* new Item 406(c)(3) of the Regulations S–K and S–B, Item 16B(c)(3) of Form 20–F and paragraph (9)(c)(3) of General Instruction B to Form 40–F.

[51] In Release No. 33–7856 (Apr. 28, 2000)[65 FR 25843], we provided interpretive guidance on the effect of including a Web site address in other situations. We are not changing that guidance for those other situations.

[52] The new rule includes an instruction clarifying that a company need not disclose technical, administrative or other non-substantive amendments to the code of ethics. See Instruction 1 to new Item 10 of Form 8–K, Instruction 6 to Item 16B of Form 20–F, and Note 6 to paragraph (9) of General Instruction B to Form 40–F.

[53] *See* new Form 8–K Item 10. In Release No. 33–8106 (June 17, 2002)[67 FR 42914], we proposed to reorganize and renumber the Form 8–K items as part of our Form 8–K proposals. In anticipation of such change, we had proposed to designate this item as Item 5.05. Because we are adopting it before we consider adoption of the reorganization of Form 8–K, we are designating this new item as Item 10 under the existing Form 8–K numbering system.

[54] We initially proposed a two business day filing period to be consistent with the accelerated Form 8–K filing deadlines that we proposed in Release No. 33–8106. Because we have not yet adopted those proposals, the five business day period will serve as an interim deadline for an Item 10 Form 8–K. The five business day period is the shorter of the two existing Form 8–K deadlines. When we address the Form 8–K proposals, we will consider whether to shorten the Item 10 deadline to two business days.

[55] *See* new Item 406(b) of Regulations S–K and S–B. Because investors may not expect these disclosures to be made on the company's Web site in lieu of a Form 8–K filing, we are requiring a company to provide investors with advance notice that it may choose to use this option to avoid confusion.

[56] If a company elects to disclose this information on its Web site, it must do so within the same five-business day period as required for a Form 8–K that includes this type of disclosure. In addition, a company electing to provide disclosure in this manner must make the disclosure available on its Web site for at least 12 months after it initially posts the disclosure. Although a company may remove information from its Web site after the 12-month posting period, the company must retain this disclosure for a period of not less than five years and make it available to the Commission or its staff upon request. New Item 10(c) of Form 8–K.

Several commenters remarked on the proposal to require a company to disclose ethics waivers. A number of these suggested that we provide guidance as to the meaning of the terms ''waiver'' and ''implicit waiver.'' In response, the final rules define the term ''waiver'' as the approval by the company of a material departure from a provision of the code of ethics.[57] They define the term ''implicit waiver'' as the registrant's failure to take action within a reasonable period of time regarding a material departure from a provision of the code of ethics that has been made known to an executive officer, as defined in Rule 3b–7,[58] of the registrant.[59]

C. Foreign Private Issuers and Request for Comments

We included foreign private issuers within the scope of the proposed rules implementing both Sections 406 and 407 of the Sarbanes-Oxley Act. Some commenters requested that we exempt foreign private issuers from the application of these rules on the ground that the rules would overlap or conflict with the audit committee requirements and corporate governance code of ethics provisions in the issuers' home jurisdictions. Other commenters stated that, for the sake of simplicity, any rule requiring a company, whether foreign or domestic, to disclose whether its audit committee financial expert is independent should reflect the standard of independence set forth in the rules that we will adopt to implement Section 301 of the Sarbanes-Oxley Act.

We have determined to include foreign private issuers within the scope of the final rules implementing Sections 406 and 407. Their inclusion comports both with the plain language of the above statutory sections, which applies broadly to issuers, as well as with the overarching purpose of the Sarbanes-Oxley Act, which is to restore investor confidence in U.S. financial markets, regardless of the origin of the market participants.

Accordingly, like a domestic issuer, a foreign private issuer will have to disclose whether it has an audit committee financial expert in its Exchange Act annual report. Because foreign private issuers are not subject to Regulation S–K, however, we have amended Forms 20–F and 40–F to require the audit committee financial expert disclosure.[60]

We agree with the commenters that urged us to adopt an independence standard for the required audit committee financial expert disclosure that will be the same as that embodied in the rules to be adopted under Section 301 of the Sarbanes-Oxley Act. Accordingly, we intend to revise the Section 407 rules to reflect the independence standard eventually adopted and set forth in the rules implementing Section 301.[61]

In the interim, we believe that it is not appropriate or necessary at this time to require foreign private issuers to disclose whether their audit committee financial experts are independent.[62] Unlike domestic issuers, foreign private issuers currently are not required to disclose whether their audit committee members are independent.[63] Imposing the independence disclosure requirement immediately may compel a foreign private issuer to disclose that its expert is not independent under our definition even though there has been no prior context in which that issuer has been required to consider our definition of the term. In addition, immediate imposition of our current definition of ''independent'' would require foreign private issuers to familiarize themselves with rules which we expect to revise within one annual reporting period. Such imposition may be unfair to foreign private issuers. Therefore, the final rules do not require a foreign private issuer to disclose whether its audit committee financial expert is independent. However, we reiterate that in conjunction with the adoption of our rules under Section 301, which will apply to foreign private issuers, we intend to amend Forms 20–F and 40–F to require such disclosure.

In the release implementing Section 301, we propose a special accommodation for certain audit committee requirements for foreign private issuers with a board of auditors or statutory auditors under home country legal or listing provisions, subject to certain conditions. Specifically, foreign private issuers with boards of auditors or similar bodies or statutory auditors meeting the requirements of our proposals would be exempt from the requirements regarding the independence of audit committee members. We request comment on whether the disclosure requirements related to audit committee financial experts should apply to such issuers. To the extent they should apply to such issuers, should the requirements apply to the board of auditors or similar body? Should we apply different standards or disclosure requirements for such issuers? For example, should audit committee financial experts of such issuers be subject to the same disclosure requirement regarding independence as other foreign private issuers? One of the proposed requirements for the listing exemption would be that home country legal or listing provisions set forth standards for the independence of such board or body. Should we permit these issuers to use those independence standards for their independence disclosure?

Like a domestic issuer, under the adopted Section 406 rules, a foreign private issuer will have to provide the new code of ethics disclosure in its Exchange Act annual report. However, in contrast to a domestic issuer, a foreign private issuer will not have to provide in a current report ''immediate disclosure'' of any change to, or waiver from, the company's code of ethics for its senior financial officers and principal executive officer. Instead, we are adopting as proposed the requirement that a foreign private issuer disclose any such change or waiver that has occurred during the past fiscal year in its Exchange Act annual report.[64] This differing treatment reflects the fact that, unlike domestic Exchange Act reporting companies, reporting foreign private issuers do not have any specific interim or current disclosure requirements mandated by the Commission.[65]

The adopted revisions to Forms 20–F and 40–F do state, however, that a foreign private issuer may disclose any change to or waiver from the code of ethics obligations of its senior officers

[57] *See* Instruction 3.a. to new Item 10 of Form 8–K.

[58] 17 CFR 240.3b–7.

[59] *See* Instruction 3.b. to new Item 10 of Form 8–K.

[60] *See* new Item 16A of Form 20–F and new paragraph (8) to General Instruction B of Form 40–F.

[61] *See* proposed Exchange Act Rule 10A–3 set forth in Release No. 33–8173 (Jan. 8, 2003).

[62] A domestic company must disclose whether its audit committee financial expert is independent under the existing dfinition of independence in Item 7 of Schedule 14A. Upon the expected revision of that item, a domestic company must disclose whether its audit committee financial expert is independent under the new definition of independence.

[63] Foreign private issuers generally are exempt from the requirements of Regulation 14A, including Item 7(d) of Schedule 14A which requires disclosure of whether audit committee members are independent. *See* 17 CFR 240.3a12–3(b).

[64] *See* Release No. 33–8138, the text before and after n. 84.

[65] Instead, a foreign private issuer must file under cover of Form 6–K copies of all information that it: Makes or is required to make public under the laws of its jurisdiction of incorporation, domicile or organization; files or is required to file under the rules of any stock exchange; or distributes or is required to distribute to its security holders. *See* General Instruction B to Form 6–K.

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

D. Asset-Backed Issuers

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

E. Transition Periods

We received numerous comments urging us to adopt transition periods for compliance. Commenters noted that some companies desiring audit committee financial experts and codes of ethics that meet the definitions included in the new rules may need some time to adjust. Several commenters asserted that no special transition periods were necessary because the new rules only require disclosure. They noted that a company that has no audit committee financial expert or code of ethics would not be at risk of non-compliance with our rules as long as it makes appropriate disclosure. However, we recognize that a company that does not have an audit committee financial expert or a code of ethics that complies with these new definitions may be harmed by having to disclose these facts even if the company intends to obtain such expert or code. Therefore, we have decided to provide a limited transition period. Companies must comply with the code of ethics disclosure requirements promulgated under Section 406 of the Sarbanes-Oxley Act in their annual reports for fiscal years ending on or after July 15, 2003. They also must comply with the requirements regarding disclosure of amendments to, and waivers from, their ethics codes on or after the date on which they file their first annual report in which disclosure of their code of ethics is required. Companies, other than small business issuers, similarly must comply with the audit committee financial expert disclosure requirements promulgated under Section 407 of the Sarbanes-Oxley Act in their annual reports for fiscal years ending on or after July 15, 2003. Recognizing that smaller businesses may have the greatest difficulty attracting qualified audit committee financial experts, small business issuers must comply with the audit committee financial expert disclosure requirements in their annual reports for fiscal years ending on or after December 15, 2003.

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

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

III. Paperwork Reduction Act

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

The titles for the collection of information are ''Form 10–K,'' ''Form 10–KSB,'' ''Form 20–F,'' ''Form 40–F'' and ''Form 8–K.'' An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

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

[68] 17 CFR 243.100–103.

A. Summary of Amendments

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

- Whether it has at least one ''audit committee financial expert'' serving on its audit committee, and if so, the name of the expert and whether the expert is independent of management. A company that does not have an audit committee financial expert must disclose this fact and explain why it has no such expert.
- Whether it has adopted a code of ethics that applies to the company's principal executive officer, principal financial officer, principal accounting officer, controller, or persons performing similar functions. A company disclosing that it has not adopted such a code must disclose this fact and explain why it has not done so. A company also will be required to promptly disclose amendments to, and waivers from, the code of ethics relating to any of those officers.

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

B. Summary of Comment Letters and Revisions to Proposals

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

codes of ethics available to the public and to ensure that interested investors will be able to obtain a copy of the code of ethics if the company does not otherwise make the code publicly accessible. At the same time, we assume that companies will choose the least burdensome means of providing the information.

Although we have made several other modifications to the proposals, they will not affect our estimates of the burden imposed on companies by the new disclosure requirements. These modifications clarify the definitions of certain terms, such as ''audit committee financial expert'' and ''code of ethics,'' used in the new disclosure items. Although the revision to the audit committee financial expert definition may increase the number of persons who would qualify as an audit committee financial expert, it will not affect the amount of disclosure necessary under the disclosure items. The change to the code of ethics definition similarly will not affect the amount of disclosure required under the new rules. Therefore, we do not believe that these changes affect our previous estimates of the burden on registrants associated with these new disclosure items.

C. Burden Estimates

All Form 10–K, 10–KSB, 20–F and 40–F respondents will be subject to the new audit committee financial expert and code of ethics disclosure requirements. In the Proposing Release, we estimated that the total burden imposed by the new disclosure items that we are adopting would be one burden hour per year per registrant, of which 75%, or ¾ hour, would be borne by the company internally and 25%, or ¼ hour, would be borne externally by outside counsel retained by the company at a cost of $300 per hour.[69] We also estimated in the Proposing Release that preparation of a Form 8–K to report changes to, or waivers from, provisions of the code of ethics would impose a burden of 5 hours per form. We estimated that a company will file such a report once every three years. This results in an estimate of 1⅔ hours per company per year, of which 75%, or 1¼ hours would be borne by the company internally and 25%, or 5/12 of an hour, would be reflected as an outside counsel cost of $300 per hour.

The new disclosures required when a company elects to post its code of ethics on its Web site or to undertake to provide copies to persons upon request will result in an additional one or two sentences in the company's annual report. We estimate that this disclosure will add a burden of 6 minutes, or 0.1 hour, per year per company choosing the posting or undertaking option. We do not have data to accurately estimate the number of companies that will make such elections. However, we believe that a significant number of companies currently make their ethics codes available to the public on their Web sites. Therefore, we estimate that 75% of companies subject to the requirements will choose to disclose this information on their Web sites. We further estimate that 10% of companies will choose to undertake to offer copies of its code of ethics upon request.

Compliance with the revised disclosure requirements is mandatory. Responses to the disclosure requirements will not be kept confidential.

IV. Costs and Benefits

The Sarbanes-Oxley Act requires us to adopt the new audit committee financial expert and code of ethics disclosure requirements. These changes will affect all companies reporting under Section 13(a) and 15(d) of the Exchange Act, including foreign private issuers and small business issuers. We recognize that these requirements will result in costs as well as benefits and that they will have an effect on the economy.

A. Benefits

One of the main goals of the Sarbanes-Oxley Act is to improve investor confidence in the financial markets. These rules are intended to achieve the Act's goals by providing greater transparency as to whether an audit committee financial expert serves on a company's audit committee and whether the company's principal executive officer and senior financial officers are subject to ethical standards. By increasing transparency regarding key aspects of corporate activities and conduct, the proposals are designed to improve the quality of information available to investors. Greater transparency should assist the market to properly value securities, which in turn should lead to more efficient allocation of capital resources.

The new rules require a company to disclose the name of the audit committee financial expert serving on the audit committee and whether that person is independent of management if the company discloses that it has a financial expert. Investors should benefit from this disclosure by being able to consider it when reviewing currently required disclosure about all directors' past business experience and making voting decisions.[70] The new rules also require a company to make copies of its code of ethics available to investors. This requirement will allow investors to better understand the ethical principles that guide executives of companies in which they invest.

B. Costs

The new disclosure items require companies to make disclosure about two matters. First, a company must disclose whether it has at least one ''audit committee financial expert'' serving on its audit committee, and if so, the name of the expert and whether the expert is independent of management. A company that does not have an audit committee financial expert must disclose this fact and explain why it has no such expert. Second, a company must disclose whether it has adopted a code of ethics that applies to the company's principal executive officer and senior financial officers. A company disclosing that it has not adopted such a code must disclose this fact and explain why it has not done so. A company also will be required to promptly disclose amendments to, and waivers from, the code of ethics relating to any of those officers. This information will be readily available to the company. For purposes of the Paperwork Reduction Act, we estimated these burdens to be $7,760,000.

As stated above, in limited instances, the new rules require more disclosure than mandated by the Sarbanes-Oxley Act. For example, we expect that companies will incur added costs to disclose the name of the audit committee financial expert, to disclose whether that person is independent and to file or otherwise make available copies of their codes of ethics to investors. Companies electing to disclose changes in, and waivers from, their codes of ethics via their websites in lieu of publicly filing such disclosure on Form 8-K must disclose this election in their annual reports.

The added burden associated with the requirements to name the audit committee financial expert and disclose whether the audit committee financial expert is independent should be minimal.[71] We have added a safe harbor provision to clarify that we do not intend to increase or decrease the current level of liability of audit

[69] Estimates regarding burden within the company, for third party services, and for professional costs were obtained by contacting a number of law firms and other persons regularly involved in completing the forms.

[70] *See* Item 401 of Regulations S–K and S–B (17 CFR 229.401 and 228.401).

[71] This added burden is included in the Paperwork Reduction Act estimate discussed above.

committee members, or the audit committee member determined to be the expert, by requiring disclosure as to whether an audit committee financial expert serves on the audit committee. We also do not think that the requirement to name the audit committee financial expert should affect the expert's potential liability as an audit committee member.

Several commenters noted that a company may incur costs if it has to disclose that it does not have an audit committee financial expert on its audit committee. For example, a negative market reaction to this type of disclosure could hamper a company's ability to raise capital. In response to commenters' remarks, we have broadened the definition of the term ''audit committee financial expert'' so that more individuals will be able to qualify under the definition. For example, the final rules allow persons with experience preparing, auditing, analyzing or evaluating financial statements, or active supervision over those activities, to qualify. The proposals only permitted those with experience preparing or auditing financial statements to qualify as experts. Similarly, we have broadened the permissible means by which a person may acquire the requisite expertise. For example, we have added a clause that would permit a person to have acquired the attributes through experience overseeing or assessing the performance of companies or public accountants with respect to the preparation, auditing or evaluation of financial statements. We have also added a clause that allows a person to acquire the attributes through other relevant experience. While more companies will be able to disclose that they have an audit committee financial expert under the revised definition, we believe that definition still is consistent with the Act's objective to require an Exchange Act reporting company to disclose whether it has a person with a high level of financial expertise on its audit committee.

With respect to the code of ethics provisions, a number of commenters stated that the benefits of filing copies of the code of ethics do not justify the anticipated costs. They argued that some companies have long codes which would be expensive to file. Moreover, many details in those codes may not be material to investors. They argued that it should be sufficient for a company to disclose whether it has a code satisfying the definition of the term ''code of ethics'' in our rule. Recognizing that a number of companies currently post copies of their code of ethics on their websites, we have revised the rule to provide two alternatives to the filing requirement. A company may either post its code of ethics on its website if it discloses that it intends to do so in its annual report or undertake in its annual report to provide investors with a copy of its code of ethics upon request. These alternatives should allow issuers to choose the most cost efficient method to meet the new requirements. We believe that these additional requirements benefit investors, impose minimal burden on companies, and are consistent with the objectives of the Sarbanes-Oxley Act.

V. Effect on Efficiency, Competition and Capital Formation

Section 23(a)(2)[72] of the Exchange Act requires us, when adopting rules under the Exchange Act, to consider the impact that any new rule would have on competition. In addition, Section 23(a)(2) prohibits us from adopting any rule that would impose a burden on competition not necessary or appropriate in furtherance of the purposes of the Exchange Act.

Section 2(b)[73] of the Securities Act and Section 3(f)[74] of the Exchange Act require us, when engaging in rulemaking where we are required to consider or determine whether an action is necessary or appropriate in the public interest, to consider, in addition to the protection of investors, whether the action will promote efficiency, competition, and capital formation. The purpose of the amendments is to increase transparency of certain aspects of a company's corporate governance. This should improve the ability of investors to make informed investment and voting decisions. Informed investor decisions generally promote market efficiency and capital formation. As noted above, however, the new disclosure items could have certain indirect consequences, which could adversely impact a company's ability to raise capital. The possibility of these effects and their magnitude if they were to occur are difficult to quantify.

Much of the new disclosure required by the final rules discussed in this release is explicitly mandated by the Sarbanes-Oxley Act. The new disclosure items are intended to increase transparency as to whether an audit committee financial expert serves on a company's audit committee and whether the company has a code of ethics that applies to its principal executive officer and senior financial officers. We anticipate that these disclosures will enhance the proper functioning of the capital markets by giving investors greater insight into certain aspects of a company's corporate governance activities. These enhancements should, in turn, increase the competitiveness of companies participating in the U.S. capital markets. However, because only companies subject to the reporting requirements of Sections 13 and 15 of the Exchange Act must make the disclosures, competitors not subject to those reporting requirements potentially could gain an informational advantage.

We requested comment on whether the proposed amendments, if adopted, would impose a burden on competition or, conversely, promote efficiency, competition and capital formation. A number of commenters expressed concern that the definition of the term ''audit committee financial expert'' may have anti-competitive effects. Specifically, they were concerned that the definition was so narrow that it might cause some companies, desiring to have an expert on their board, to recruit persons associated with a competitor. In response to these comments, we have clarified that this provision does not require the audit committee financial expert to have experience with issuers in the same industry as the company, or that the person's experience must have been with a company subject to the Exchange Act reporting requirements. Rather, we have included this provision to focus on the level of sophistication of the accounting issues with which the person has had experience. We think that a company's board of directors will have to make the sophistication assessment based on particular facts and circumstances.

Other commenters expressed concern that the definition was so narrow that many companies would have trouble finding audit committee financial experts. They also feared that disclosure of the fact that a company does not have an audit committee financial expert could trigger an adverse market reaction. We have attempted to expand the definition of ''audit committee financial expert'' without sacrificing the quality of knowledge and experience required of such an expert. We believe that the revised definition, though expanded, is consistent with the purposes of the Act.

Commenters also expressed concern that requiring disclosure of the names of audit committee financial experts would further hamper their efforts to find qualified persons willing to serve on their audit committees as experts by

[72] 15 U.S.C. 78w(a)(2).

[73] 15 U.S.C. 77b(b).

[74] 15 U.S.C. 78c(f).

exposing such persons to increased liability. In response to these comments, we have created a safe harbor from liability for audit committee financial experts. This safe harbor states that an audit committee financial expert is not deemed an expert for any purpose, including for purposes of Section 11 of the Securities Act, which imposes, in private actions, a liability standard that is more strict than typically imposed by the anti-fraud provisions of the Securities Act and the Exchange Act. In addition, the safe harbor states that a person's potential liability as a director does not change as a result of being designated an audit committee financial expert. That person will be subject to the same duties, obligations and liability to which he or she would have been subject, absent such designation. The safe harbor also clarifies that the designation of an audit committee financial expert does not affect the duties, obligations and liability of other directors and audit committee members.

VI. Final Regulatory Flexibility Analysis

This Final Regulatory Flexibility Analysis has been prepared in accordance with 5 U.S.C. 603. It relates to revisions to Exchange Act Form 8–K, Form 10–K, Form 10–KSB, Form 20–F, Form 40–F, Regulation S–K and Regulation S–B.

A. Need for, and Objectives of, the Amendments

We are adopting these disclosure requirements to comply with the mandate of, and fulfill the purposes underlying the provisions of, the Sarbanes-Oxley Act of 2002. The new disclosure items are intended to enhance investor confidence in the fairness and integrity of the securities markets by increasing transparency as to whether a company has an audit committee financial expert on its audit committee and whether a company has adopted a code of ethics that applies to its principal executive officer and senior financial officers. We believe that these rules will help investors to understand and assess certain aspects of a company's corporate governance.

B. Significant Issues Raised by Public Comment

The Initial Regulatory Flexibility Analysis, or IRFA, appeared in the Proposing Release. We requested comment on any aspect of the IRFA, including the number of small entities that would be affected by the proposals, the nature of the impact, how to quantify the number of small entities that would be affected and how to quantify the impact of the proposals.

A number of commenters expressed concern that small business issuers, including small entities, would be particularly disadvantaged by the proposed definition of ''audit committee financial expert,'' which they thought was too restrictive. Commenters believed that such entities may be more likely to be unable to attract qualified persons to serve on their audit committees and that a higher percentage of small companies than large companies would be compelled to state that they had no audit committee financial expert. They suggested that this problem would be exacerbated for companies whose operations are primarily conducted in relatively small geographic regions in which such expertise may not be available.

C. Small Entities Subject to the New Disclosure Requirements

The new disclosure items affect issuers that are small entities. Exchange Act Rule 0–10(a)[75] defines an issuer, other than an investment company, to be a ''small business'' or ''small organization'' if it had total assets of $5 million or less on the last day of its most recent fiscal year. We estimate that there are approximately 2,500 issuers, other than investment companies, that may be considered small entities. The new disclosure items apply to any small entity that is subject to Exchange Act reporting requirements.

D. Projected Reporting, Recordkeeping, and Other Compliance Requirements

The new disclosure items require companies to disclose information as to whether an audit committee financial expert serves on the company's audit committee and whether the company has adopted a code of ethics that applies to its principal executive officer and senior financial officers. All small entities that are subject to the reporting requirements of Section 13(a) or 15(d) of the Exchange Act are subject to these disclosure requirements. Because reporting companies already file the forms being amended, no additional professional skills beyond those currently possessed by these filers are necessary to prepare the new disclosure. We expect that these new disclosure items will increase costs incurred by small entities by requiring them to compile and report new information. In addition, to the extent that some small entities may have difficulty attracting qualified audit committee financial experts, disclosure that they have no audit committee financial expert may have a negative impact on the market price of their securities. We have calculated for purposes of the Paperwork Reduction Act that each company, including a small entity, would be subject to an added annual reporting burden of approximately 2.1 hours and an estimated annual average cost of approximately $206 for disclosure assistance from outside counsel as a result of the amendments. These burden estimates reflect only the burden and cost of the required collection of information. They do not reflect any potential burden or cost associated with recruitment of a qualified audit committee financial expert or creation of a code of ethics, neither of which is required by our rules.

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

The Regulatory Flexibility Act directs the Commission to consider significant alternatives that would accomplish the stated objective, while minimizing any significant adverse impact on small entities. In connection with the new disclosure items, we considered the following alternatives: (a) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (b) the clarification, consolidation, or simplification of the reporting requirements for small entities; (c) the use of performance rather than design standards; and (d) an exemption from coverage of the requirements, or any part thereof, for small entities.

We believe that different compliance or reporting requirements for small entities would interfere with the primary goal of increasing transparency of corporate governance. Although we generally believe that an exemption for small entities from coverage of the new disclosure requirements is not appropriate and would be inconsistent with the policies underlying the Sarbanes-Oxley Act, we have provided a deferred compliance date for small business issuers, including those that constitute small entities, with respect to the required audit committee financial expert disclosures.[76] Under the adopted

[75] 17 CFR 240.0–10(a).

[76] Item 10 of Regulation S–B (17 CFR 228.10) defines a small business issuer as a company that has revenues of less than $25 million, is a U.S. or Canadian issuer, is not an investment company, and has a public float of less than $25 million. Also, if it is a majority owned subsidiary, the parent corporation also must be a small business issuer. Rule 0–10 of the Exchange Act (17 CFR 240.10) defines a small entity for purposes of the Regulatory

rules, small business issuers need not make such disclosure until they file their annual reports for fiscal years ending December 15, 2003 or later. This deferral provides a small business issuer that does not currently have an audit committee member that would qualify as an audit committee financial expert under the new definition with more time to identify and recruit one. We note in this regard that our rules do not require any company to have an audit committee financial expert serving on its audit committee; they only require disclosure of whether such an expert serves on the company's audit committee.

As explained in this release, we also have significantly expanded the definition of the term ''audit committee financial expert'' for all companies. Several commenters noted that small businesses, in particular, would have difficulty attracting qualified persons. By expanding the definition, the rules increase the pool of available experts and ease the burden for all companies, including small entities, interested in recruiting qualified persons.

Also, we have revised our proposed requirement that all companies, including small entities, must file a copy of their code of ethics as an exhibit to their annual reports. As stated in the release, the adopted rules provide three different alternatives for a company to make its code of ethics publicly available. This revision allows companies to choose the least burdensome alternative.

We believe that the new disclosure requirements are clear and straightforward. The new rules require only brief disclosure. Therefore, it does not seem necessary to develop separate requirements for small entities. Similarly, we believe that applying a different definition of ''audit committee financial expert'' in a rule applicable only to small entities would not be appropriate. The final rules clarify that factors such as the complexity of a company's business and the accounting issues involved in a company's financial statements affect the level of experience and understanding that an audit committee financial expert should have. Because small entities tend to have less complex businesses and accounting issues than large companies, the definition provides significant flexibility to small entities. We have used design rather than performance standards in connection with the new disclosure items because we want this disclosure to appear in a specific type of disclosure filing so that investors will know where to find the information. We do not believe that performance standards for small entities would be consistent with the purpose of the new rules.

VII. Statutory Basis

We are adopting amendments to Securities Exchange Act Form 10–K, Form 10–KSB, Form 20–F, Form 40–F, Form 8–K, Regulation S–B and Regulation S–K pursuant to Sections 5, 6, 7, 10, 17, 19 and 28 of the Securities Act, as amended, Sections 12, 13, 15, 23 and 36 of the Securities Exchange Act, as amended, and Sections 3(a), 406 and 407 of the Sarbanes-Oxley Act of 2002.

Text of the Proposed Amendments

List of Subjects

17 CFR Part 228

Reporting and recordkeeping requirements, Securities, Small businesses.

17 CFR Parts 229 and 249

Reporting and recordkeeping requirements, Securities.

For the reasons set out above, we amend title 17, chapter II of the Code of Federal Regulations as follows:

PART 228—INTEGRATED DISCLOSURE SYSTEM FOR SMALL BUSINESS ISSUERS

1. The authority citation for Part 228 is amended by adding the following citations in numerical order 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, 78*l*, 78m, 78n, 78o, 78u–5, 78w, 78*ll*, 78mm, 80a–8, 80a–29, 80a–30, 80a–37 and 80b–11.

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Section 228.401 is also issued under secs. 3(a) and 407, Pub. L. 107–204, 116 Stat. 745.

Section 228.406 is also issued under secs. 3(a) and 406, Pub. L. 107–204, 116 Stat. 745.

Section 228.601 is also issued under secs. 3(a) and 406, Pub. L. 107–204, 116 Stat. 745.

2. Amend § 228.401 by adding paragraph (e) to read as follows:

§ 228.401 (Item 401) Directors, Executive Officers, Promoters and Control Persons.

* * * * *

(e) *Audit committee financial expert.* (1)(i) Disclose that the small business issuer's board of directors has determined that the small business issuer either:

(A) Has at least one audit committee financial expert serving on its audit committee; or

(B) Does not have an audit committee financial expert serving on its audit committee.

(ii) If the small business issuer provides the disclosure required by paragraph (e)(1)(i)(A) of this Item, it must disclose the name of the audit committee financial expert and whether that person is *independent,* as that term is used in Item 7(d)(3)(iv) of Schedule 14A (240.14a–101 of this chapter) under the Exchange Act.

(iii) If the small business issuer provides the disclosure required by paragraph (e)(1)(i)(B) of this Item, it must explain why it does not have an audit committee financial expert.

Instruction to paragraph (e)(1) of Item 401. If the small business issuer's board of directors has determined that the small business issuer has more than one audit committee financial expert serving on its audit committee, the small business issuer may, but is not required to, disclose the names of those additional persons. A small business issuer choosing to identify such persons must indicate whether they are independent pursuant to Item 401(e)(1)(ii).

(2) For purposes of this Item, an *audit committee financial expert* means a person who has the following attributes:

(i) An understanding of generally accepted accounting principles and financial statements;

(ii) The ability to assess the general application of such principles in connection with the accounting for estimates, accruals and reserves;

(iii) Experience preparing, auditing, analyzing or evaluating financial statements that present a breadth and level of complexity of accounting issues that are generally comparable to the breadth and complexity of issues that can reasonably be expected to be raised by the small business issuer's financial statements, or experience actively supervising one or more persons engaged in such activities;

(iv) An understanding of internal controls and procedures for financial reporting; and

(v) An understanding of audit committee functions.

(3) A person shall have acquired such attributes through:

(i) Education and experience as a principal financial officer, principal accounting officer, controller, public accountant or auditor or experience in one or more positions that involve the performance of similar functions;

(ii) Experience actively supervising a principal financial officer, principal accounting officer, controller, public accountant, auditor or person performing similar functions;

(iii) Experience overseeing or assessing the performance of companies

Flexibility Act as a company that, on the last day of its most recent fiscal year, had total assets of $5 million or less.

or public accountants with respect to the preparation, auditing or evaluation of financial statements; or

(iv) Other relevant experience.

(4) *Safe Harbor.* (i) A person who is determined to be an audit committee financial expert will not be deemed an *expert* for any purpose, including without limitation for purposes of section 11 of the Securities Act of 1933 (15 U.S.C. 77k), as a result of being designated or identified as an audit committee financial expert pursuant to this Item 401.

(ii) The designation or identification of a person as an audit committee financial expert pursuant to this Item 401 does not impose on such person any duties, obligations or liability that are greater than the duties, obligations and liability imposed on such person as a member of the audit committee and board of directors in the absence of such designation or identification.

(iii) The designation or identification of a person as an audit committee financial expert pursuant to this Item 401 does not affect the duties, obligations or liability of any other member of the audit committee or board of directors.

Instructions to Item 401(e). 1. The small business issuer need not provide the disclosure required by this Item 401(e) in a proxy or information statement unless that small business issuer is electing to incorporate this information by reference from the proxy or information statement into its annual report pursuant to general instruction E(3) to Form 10–KSB.

2. If a person qualifies as an audit committee financial expert by means of having held a position described in paragraph (e)(3)(iv) of this Item, the small business issuer shall provide a brief listing of that person's relevant experience. Such disclosure may be made by reference to disclosures required under paragraph (a)(4) of this Item 401 (§ 229.401(a)(4) or this chapter).

3. In the case of a foreign private issuer with a two-tier board of directors, for purposes of this Item 401(e), the term *board of directors* means the supervisory or non-management board. Also, in the case of a foreign private issuer, the term *generally accepted accounting principles* in paragraph (e)(2)(i) of this Item means the body of generally accepted accounting principles used by that issuer in its primary financial statements filed with the Commission.

4. A small business issuer that is an Asset-Backed Issuer (as defined in § 240.13a–14(g) and § 240.15d–14(g) of this chapter) is not required to disclose the information required by this Item 401(e).

5. Following the effective date of the first registration statement filed under the Securities Act (15 U.S.C. 77a *et seq.*) or Securities Exchange Act (15 U.S.C. 78a *et seq.*) by a small business issuer, the small business issuer or successor issuer need not make the disclosures required by this Item in its first annual report filed pursuant to Section 13(a) or 15(d) (15 U.S.C. 78m(a) or 78o(d)) of the Exchange Act after effectiveness.

3. Add § 228.406 to read as follows:

§ 228.406 (Item 406) Code of ethics.

(a) Disclose whether the small business issuer has adopted a code of ethics that applies to the small business issuer's principal executive officer, principal financial officer, principal accounting officer or controller, or persons performing similar functions. If the small business issuer has not adopted such a code of ethics, explain why it has not done so.

(b) For purposes of this Item 406, the term *code of ethics* means written standards that are reasonably designed to deter wrongdoing and to promote:

(1) Honest and ethical conduct, including the ethical handling of actual or apparent conflicts of interest between personal and professional relationships;

(2) Full, fair, accurate, timely, and understandable disclosure in reports and documents that a small business issuer files with, or submits to, the Commission and in other public communications made by the small business issuer;

(3) Compliance with applicable governmental laws, rules and regulations;

(4) The prompt internal reporting of violations of the code to an appropriate person or persons identified in the code; and

(5) Accountability for adherence to the code.

(c) The small business issuer must:

(1) File with the Commission a copy of its code of ethics that applies to the small business issuer's principal executive officer, principal financial officer, principal accounting officer or controller, or persons performing similar functions, as an exhibit to its annual report;

(2) Post the text of such code of ethics on its Internet website and disclose, in its annual report, its Internet address and the fact that it has posted such code of ethics on its Internet website; or

(3) Undertake in its annual report filed with the Commission to provide to any person without charge, upon request, a copy of such code of ethics and explain the manner in which such request may be made.

(d) If the small business issuer intends to satisfy the disclosure requirement under Item 10 of Form 8–K regarding an amendment to, or a waiver from, a provision of its code of ethics that applies to the small business issuer's principal executive officer, principal financial officer, principal accounting officer or controller, or persons performing similar functions and that relates to any element of the code of ethics definition enumerated in paragraph (b) of this Item by posting such information on its Internet website, disclose the small business issuer's Internet address and such intention.

Instructions to Item 406. 1. A small business issuer may have separate codes of ethics for different types of officers. Furthermore, a *code of ethics* within the meaning of paragraph (b) of this Item may be a portion of a broader document that addresses additional topics or that applies to more persons than those specified in paragraph (a). In satisfying the requirements of paragraph (c), a small business issuer need only file, post or provide the portions of a broader document that constitutes a *code of ethics* as defined in paragraph (b) and that apply to the persons specified in paragraph (a).

2. If a small business issuer elects to satisfy paragraph (c) of this Item by posting its code of ethics on its website pursuant to paragraph (c)(2), the code of ethics must remain accessible on its website for as long as the small business issuer remains subject to the requirements of this Item and chooses to comply with this Item by posting its code on its Web site pursuant to paragraph (c)(2).

3. A small business issuer that is an Asset-Backed Issuer (as defined in § 240.13a–14(g) and § 240.15d–14(g) of this chapter) is not required to disclose the information required by this Item.

4. Amend § 228.601 by:

a. Removing the ''reserved'' designation for exhibit (14) and adding ''Code of ethics'' in its place in the Exhibit Table;

b. Removing ''N/A'' corresponding to exhibit (14) under all captions in the Exhibit Table;

c. Adding an ''X'' corresponding to exhibit (14) under the caption ''Exchange Act Forms'', ''8–K'' and ''10–KSB'' in the Exhibit Table; and

d. Adding the text of paragraph (b)(14).

The revisions and additions read as follows:

§ 228.601 (Item 601) Exhibits.

* * * * *

(b) *Description of exhibits.* * * *

(14) *Code of ethics.* Any code of ethics, or amendment thereto, that is the subject of the disclosure required by Item 406 of Regulation S–B (§ 228.406) or Item 10 of Form 8–K (§ 249.308 of this chapter), to the extent that the small business issuer intends to satisfy the Item 406 or Item 10 requirements through filing of an exhibit.

* * * * *

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

5. The authority citation for Part 229 is amended by adding the following citations in numerical order 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, 78*l*, 78m, 78n, 78o, 78u–5, 78w, 78*ll*(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.

* * * * *

Section 229.401 is also issued under secs. 3(a) and 407, Pub. L. 107–204, 116 Stat. 745.

Section 229.406 is also issued under secs. 3(a) and 406, Pub. L. 107–204, 116 Stat. 745.

Section 229.601 is also issued under secs. 3(a) and 406, Pub. L. 107–204, 116 Stat. 745.

6. Amend § 229.401 by adding paragraph (h) to read as follows:

§ 229.401 (Item 401) Directors, executive officers, promoters and control persons.

* * * * *

(h) *Audit committee financial expert.* (1)(i) Disclose that the registrant's board of directors has determined that the registrant either:

(A) Has at least one audit committee financial expert serving on its audit committee; or

(B) Does not have an audit committee financial expert serving on its audit committee.

(ii) If the registrant provides the disclosure required by paragraph (h)(1)(i)(A) of this Item, it must disclose the name of the audit committee financial expert and whether that person is *independent,* as that term is used in Item 7(d)(3)(iv) of Schedule 14A (240.14a–101 of this chapter) under the Exchange Act.

(iii) If the registrant provides the disclosure required by paragraph (h)(1)(i)(B) of this Item, it must explain why it does not have an audit committee financial expert.

Instruction to paragraph (h)(1) of Item 401. If the registrant's board of directors has determined that the registrant has more than one audit committee financial expert serving on its audit committee, the registrant may, but is not required to, disclose the names of those additional persons. A registrant choosing to identify such persons must indicate whether they are independent pursuant to Item 401(h)(1)(ii).

(2) For purposes of this Item, an *audit committee financial expert* means a person who has the following attributes:

(i) An understanding of generally accepted accounting principles and financial statements;

(ii) The ability to assess the general application of such principles in connection with the accounting for estimates, accruals and reserves;

(iii) Experience preparing, auditing, analyzing or evaluating financial statements that present a breadth and level of complexity of accounting issues that are generally comparable to the breadth and complexity of issues that can reasonably be expected to be raised by the registrant's financial statements, or experience actively supervising one or more persons engaged in such activities;

(iv) An understanding of internal controls and procedures for financial reporting; and

(v) An understanding of audit committee functions.

(3) A person shall have acquired such attributes through:

(i) Education and experience as a principal financial officer, principal accounting officer, controller, public accountant or auditor or experience in one or more positions that involve the performance of similar functions;

(ii) Experience actively supervising a principal financial officer, principal accounting officer, controller, public accountant, auditor or person performing similar functions;

(iii) Experience overseeing or assessing the performance of companies or public accountants with respect to the preparation, auditing or evaluation of financial statements; or

(iv) Other relevant experience.

(4) *Safe Harbor.* (i) A person who is determined to be an audit committee financial expert will not be deemed an *expert* for any purpose, including without limitation for purposes of section 11 of the Securities Act of 1933 (15 U.S.C. 77k), as a result of being designated or identified as an audit committee financial expert pursuant to this Item 401.

(ii) The designation or identification of a person as an audit committee financial expert pursuant to this Item 401 does not impose on such person any duties, obligations or liability that are greater than the duties, obligations and liability imposed on such person as a member of the audit committee and board of directors in the absence of such designation or identification.

(iii) The designation or identification of a person as an audit committee financial expert pursuant to this Item 401 does not affect the duties, obligations or liability of any other member of the audit committee or board of directors.

Instructions to Item 401(h). 1. The registrant need not provide the disclosure required by this Item 401(h) in a proxy or information statement unless that registrant is electing to incorporate this information by reference from the proxy or information statement into its annual report pursuant to general instruction G(3) to Form 10–K.

2. If a person qualifies as an audit committee financial expert by means of having held a position described in paragraph (h)(3)(iv) of this Item, the registrant shall provide a brief listing of that person's relevant experience. Such disclosure may be made by reference to disclosures required under paragraph (e) of this Item 401 (§ 229.401(e) or this chapter).

3. In the case of a foreign private issuer with a two-tier board of directors, for purposes of this Item 401(h), the term *board of directors* means the supervisory or non-management board. Also, in the case of a foreign private issuer, the term *generally accepted accounting principles* in paragraph (h)(2)(i) of this Item means the body of generally accepted accounting principles used by that issuer in its primary financial statements filed with the Commission.

4. A registrant that is an Asset-Backed Issuer (as defined in § 240.13a–14(g) and § 240.15d–14(g) of this chapter) is not required to disclose the information required by this Item 401(h).

7. Add § 229.406 to read as follows:

§ 229.406 (Item 406) Code of ethics.

(a) Disclose whether the registrant has adopted a code of ethics that applies to the registrant's principal executive officer, principal financial officer, principal accounting officer or controller, or persons performing similar functions. If the registrant has not adopted such a code of ethics, explain why it has not done so.

(b) For purposes of this Item 406, the term *code of ethics* means written standards that are reasonably designed to deter wrongdoing and to promote:

(1) Honest and ethical conduct, including the ethical handling of actual or apparent conflicts of interest between personal and professional relationships;

(2) Full, fair, accurate, timely, and understandable disclosure in reports and documents that a registrant files with, or submits to, the Commission and in other public communications made by the registrant;

(3) Compliance with applicable governmental laws, rules and regulations;

(4) The prompt internal reporting of violations of the code to an appropriate person or persons identified in the code; and

(5) Accountability for adherence to the code.

(c) The registrant must:

(1) File with the Commission a copy of its code of ethics that applies to the registrant's principal executive officer,

principal financial officer, principal accounting officer or controller, or persons performing similar functions, as an exhibit to its annual report;

(2) Post the text of such code of ethics on its Internet website and disclose, in its annual report, its Internet address and the fact that it has posted such code of ethics on its Internet Web site; or

(3) Undertake in its annual report filed with the Commission to provide to any person without charge, upon request, a copy of such code of ethics and explain the manner in which such request may be made.

(d) If the registrant intends to satisfy the disclosure requirement under Item 10 of Form 8–K regarding an amendment to, or a waiver from, a provision of its code of ethics that applies to the registrant's principal executive officer, principal financial officer, principal accounting officer or controller, or persons performing similar functions and that relates to any element of the code of ethics definition enumerated in paragraph (b) of this Item by posting such information on its Internet website, disclose the registrant's Internet address and such intention.

Instructions to Item 406. 1. A registrant may have separate codes of ethics for different types of officers. Furthermore, a *code of ethics* within the meaning of paragraph (b) of this Item may be a portion of a broader document that addresses additional topics or that applies to more persons than those specified in paragraph (a). In satisfying the requirements of paragraph (c), a registrant need only file, post or provide the portions of a broader document that constitutes a *code of ethics* as defined in paragraph (b) and that apply to the persons specified in paragraph (a).

2. If a registrant elects to satisfy paragraph (c) of this Item by posting its code of ethics on its website pursuant to paragraph (c)(2), the code of ethics must remain accessible on its Web site for as long as the registrant remains subject to the requirements of this Item and chooses to comply with this Item by posting its code on its Web site pursuant to paragraph (c)(2).

3. A registrant that is an Asset-Backed Issuer (as defined in § 240.13a–14(g) and § 240.15d–14(g) of this chapter) is not required to disclose the information required by this Item.

8. Amend § 229.601 by:

a. Removing the ''reserved'' designation for exhibit (14) and adding ''Code of ethics'' in its place in the Exhibit Table;

b. Removing ''N/A'' corresponding to exhibit (14) under all captions in the Exhibit Table;

c. Adding an ''X'' corresponding to exhibit (14) under the caption ''Exchange Act Forms'', ''8–K'' and ''10–K'' in the Exhibit Table; and

d. Adding the text of paragraph (b)(14).

The revisions and additions read as follows:

§ 229.601 (Item 601) Exhibits.

* * * * *

(b) *Description of exhibits.* * * *

(14) *Code of ethics.* Any code of ethics, or amendment thereto, that is the subject of the disclosure required by Item 406 of Regulation S–K (§ 229.406) or Item 10 of Form 8–K (§ 249.308 of this chapter), to the extent that the registrant intends to satisfy the Item 406 or Item 10 requirements through filing of an exhibit.

* * * * *

PART 249—FORMS, SECURITIES EXCHANGE ACT OF 1934

9. The authority citation for Part 249 is amended by revising the sectional authority for §§ 249.220f, 249.240f, 249.308, 249.310 and 249.310b to read as follows:

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

Section 249.220f is also issued under secs. 3(a), 302, 306(a), 401(b), 406 and 407, Pub. L. 107–204, 116 Stat. 745.

Section 249.240f is also issued under secs. 3(a), 302, 306(a), 406 and 407, Pub. L. 107–204, 116 Stat. 745.

Section 249.308 is also issued under 15 U.S.C. 80a–29, 80a–37 and secs. 3(a), 306(a), 401(b) and 406, Pub. L. 107–204, 116 Stat. 745.

* * * * *

Section 249.310 is also issued under secs. 3(a), 302, 406 and 407, Pub. L. 107–204, 116 Stat. 745.

Section 249.310b is also issued under secs. 3(a), 302, 406 and 407, Pub. L. 107–204, 116 Stat. 745.

* * * * *

10. Amend Form 8–K (referenced in § 249.308) by:

a. Revising General Instruction B.1.; and

b. Adding Item 10.

The revision and addition read as follows:

Note: The text of Form 8–K does not, and this amendment will not, appear in the Code of Federal Regulations.

Form 8–K—Current Report Pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934

* * * * *

General Instructions

* * * * *

B. Events To Be Reported and Time for Filing of Reports

1. A report on this form is required to be filed upon the occurrence of any one or more of the events specified in Items 1–4, 6 and 10 of this form. A report of an event specified in Items 1–3 is to be filed within 15 calendar days after the occurrence of the event. A report of an event specified in Item 4, 6 or 10 is to be filed within 5 business days after the occurrence of the event; if the event occurs on a Saturday, Sunday, or holiday on which the Commission is not open for business then the 5 business day period shall begin to run on and include the first business day thereafter. A report on this form pursuant to Item 8 is required to be filed within 15 calendar days after the date on which the registrant makes the determination to use a fiscal year end different from that used in its most recent filing with the Commission. A registrant either furnishing a report on this form under Item 9 or electing to file a report on this form under Item 5 solely to satisfy its obligations under Regulation FD (17 CFR 243.100 and 243.101) must furnish such report or make such filing in accordance with the requirements of Rule 100(a) of Regulation FD (17 CFR 243.100(a)). A report on this form pursuant to Item 11 is required to be filed not later than the date prescribed for transmission of the notice to directors and executive officers required by Rule 104(b)(2) of Regulation BTR (§ 245.104(b)(2) of this chapter).

* * * * *

Information To Be Included in the Report

* * * * *

Item 10. Amendments to the Registrant's Code of Ethics, or Waiver of a Provision of the Code of Ethics

(a) The registrant must briefly describe the nature of any amendment to a provision of its code of ethics that applies to the registrant's principal executive officer, principal financial officer, principal accounting officer or controller, or persons performing similar functions and that relates to any element of the code of ethics definition enumerated in Item 406(b) of Regulations S–K and S–B (§ 229.406(b) and § 228.406(b) of this chapter).

(b) If the registrant has granted a waiver, including an implicit waiver, from a provision of the code of ethics to one of these officers or persons that relates to one or more of the items set forth in Item 406(b) of Regulations S–K and S–B (§ 229.406(b) and § 228.406(b) of this chapter), the registrant must briefly describe the nature of the waiver, the name of the person to whom the waiver was granted, and the date of the waiver.

(c) The registrant does not need to provide any information pursuant to this Item if it discloses the required information on its Internet website within five business days following the date of the amendment or waiver and the registrant has disclosed in its most recently filed annual report its Internet address and intention to provide disclosure in this manner. If the registrant elects to disclose the information required by this Item through its website, such information must remain available on the website for at least a 12-month period. Following the 12-month period, the registrant must retain the information for a period of not less than five years. Upon request, the registrant must furnish to the Commission or its staff a copy of any or all information retained pursuant to this requirement.

Instructions. 1. The registrant does not need to disclose technical, administrative or other non-substantive amendments to its code of ethics.

2. For purposes of this Item: a. The term ''waiver'' means the approval by the registrant of a material departure from a provision of the code of ethics; and

b. The term ''implicit waiver'' means the registrant's failure to take action within a reasonable period of time regarding a material departure from a provision of the code of ethics that has been made known to an executive officer, as defined in Rule 3b-7 (§ 240.3b-7 of this chapter) of the registrant.

* * * * *

11. Amend Form 20–F (referenced in § 249.220f) by:

a. Redesignating Item 16 as Item 16A, adding text to Item 16A and adding Item 16B;

b. Redesignating paragraph 11 of ''Instructions as to Exhibits'' as paragraph 12; and

c. Adding new paragraph 11 to ''Instructions as to Exhibits.''

The additions and revisions read as follows:

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

Form 20–F

* * * * *

Item 16A. Audit Committee Financial Expert

(a)(1) Disclose that the registrant's board of directors has determined that the registrant either: (i) Has at least one audit committee financial expert serving on its audit committee; or

(ii) Does not have an audit committee financial expert serving on its audit committee.

(2) If the registrant provides the disclosure required by paragraph (a)(1)(i) of this Item, it must disclose the name of the audit committee financial expert.

(3) If the registrant provides the disclosure required by paragraph (a)(1)(ii) of this Item, it must explain why it does not have an audit committee financial expert.

Instruction to paragraph (a) of Item 16A: If the registrant's board of directors has determined that the registrant has more than one audit committee financial expert serving on its audit committee, the registrant may, but is not required to, disclose the names of those additional persons.

(b) For purposes of this Item, an ''audit committee financial expert'' means a person who has the following attributes:

(1) An understanding of generally accepted accounting principles and financial statements;

(2) The ability to assess the general application of such principles in connection with the accounting for estimates, accruals and reserves;

(3) Experience preparing, auditing, analyzing or evaluating financial statements that present a breadth and level of complexity of accounting issues that are generally comparable to the breadth and complexity of issues that can reasonably be expected to be raised by the registrant's financial statements, or experience actively supervising one or more persons engaged in such activities;

(4) An understanding of internal controls and procedures for financial reporting; and

(5) An understanding of audit committee functions.

(c) A person shall have acquired such attributes through:

(1) Education and experience as a principal financial officer, principal accounting officer, controller, public accountant or auditor or experience in one or more positions that involve the performance of similar functions;

(2) Experience actively supervising a principal financial officer, principal accounting officer, controller, public accountant, auditor or person performing similar functions;

(3) Experience overseeing or assessing the performance of companies or public accountants with respect to the preparation, auditing or evaluation of financial statements; or

(4) Other relevant experience.

(d) *Safe Harbor*

(1) A person who is determined to be an audit committee financial expert will not be deemed an ''expert'' for any purpose, including without limitation for purposes of section 11 of the Securities Act of 1933 (15 U.S.C. 77k), as a result of being designated or identified as an audit committee financial expert pursuant to this Item 16A.

(2) The designation or identification of a person as an audit committee financial expert pursuant to this Item 16A does not impose on such person any duties, obligations or liability that are greater than the duties, obligations and liability imposed on such person as a member of the audit committee and board of directors in the absence of such designation or identification.

(3) The designation or identification of a person as an audit committee financial expert pursuant to this Item 16A does not affect the duties, obligations or liability of any other member of the audit committee or board of directors.

Instructions to Item 16A: 1. Item 16A applies only to annual reports, and does not apply to registration statements, on Form 20–F.

2. If a person qualifies as an audit committee financial expert by means of having held a position described in paragraph (c)(4) of this Item, the registrant shall provide a brief listing of that person's relevant experience. Such disclosure may be made by reference to disclosures required under Item 6.A.

3. In the case of a foreign private issuer with a two-tier board of directors, for purposes of this Item 16A, the term ''board of directors'' means the supervisory or non-management board. Also, the term ''generally accepted accounting principles'' in paragraph (b)(1) of this Item means the body of generally accepted accounting principles used by the foreign private issuer in its primary financial statements filed with the Commission.

4. A registrant that is an Asset-Backed Issuer (as defined in § 240.13a–14(g) and § 240.15d–14(g) of this chapter) is not required to disclose the information required by this Item 16A.

Item 16B. Code of Ethics

(a) Disclose whether the registrant has adopted a code of ethics that applies to the registrant's principal executive officer, principal financial officer, principal accounting officer or controller, or persons performing similar functions. If the registrant has not adopted such a code of ethics, explain why it has not done so.

(b) For purposes of this Item 16B, the term ''code of ethics'' means written standards that are reasonably designed to deter wrongdoing and to promote:

(1) Honest and ethical conduct, including the ethical handling of actual or apparent conflicts of interest between personal and professional relationships;

(2) Full, fair, accurate, timely, and understandable disclosure in reports and documents that a registrant files with, or submits to, the Commission and in other public communications made by the registrant;

(3) Compliance with applicable governmental laws, rules and regulations;

(4) The prompt internal reporting of violations of the code to an appropriate person or persons identified in the code; and

(5) Accountability for adherence to the code.

(c) The registrant must:

(1) File with the Commission a copy of its code of ethics that applies to the registrant's principal executive officer,

principal financial officer, principal accounting officer or controller, or persons performing similar functions, as an exhibit to its annual report;

(2) Post the text of such code of ethics on its Internet Web site and disclose, in its annual report, its Internet address and the fact that it has posted such code of ethics on its Internet Web site; or

(3) Undertake in its annual report filed with the Commission to provide to any person without charge, upon request, a copy of such code of ethics and explain the manner in which such request may be made.

(d) The registrant must briefly describe the nature of any amendment to a provision of its code of ethics that applies to the registrant's principal executive officer, principal financial officer, principal accounting officer or controller, or persons performing similar functions and that relates to any element of the code of ethics definition enumerated in Item 16B(b), which has occurred during the registrant's most recently completed fiscal year.

(e) If the registrant has granted a waiver, including an implicit waiver, from a provision of the code of ethics to one of the officers or persons described in Item 16B(a) that relates to one or more of the items set forth in Item 16B(b) during the registrant's most recently completed fiscal year, the registrant must briefly describe the nature of the waiver, the name of the person to whom the waiver was granted, and the date of the waiver.

Instructions to Item 16B. 1. Item 16B applies only to annual reports, and does not apply to registration statements, on Form 20–F.

2. A registrant may have separate codes of ethics for different types of officers. Furthermore, a ''code of ethics'' within the meaning of paragraph (b) of this Item may be a portion of a broader document that addresses additional topics or that applies to more persons than those specified in paragraph (a). In satisfying the requirements of paragraph (c), a registrant need only file, post or provide the portions of a broader document that constitute a ''code of ethics'' as defined in paragraph (b) and that apply to the persons specified in paragraph (a).

3. If a registrant elects to satisfy paragraph (c) of this Item by posting its code of ethics on its website pursuant to paragraph (c)(2), the code of ethics must remain accessible on its website for as long as the registrant remains subject to the requirements of this Item and chooses to comply with this Item by posting its code on its website pursuant to paragraph (c)(2).

4. A registrant that is an Asset-Backed Issuer (as defined in § 240.13a–14(g) and § 240.15d–14(g) of this chapter) is not required to disclose the information required by this Item.

5. The registrant does not need to provide any information pursuant to paragraphs (d) and (e) of this Item if it discloses the required information on its Internet website within five business days following the date of the amendment or waiver and the registrant has disclosed in its most recently filed annual report its Internet address and intention to provide disclosure in this manner. If the registrant elects to disclose the information required by paragraphs (d) and (e) through its website, such information must remain available on the website for at least a 12-month period. Following the 12-month period, the registrant must retain the information for a period of not less than five years. Upon request, the registrant must furnish to the Commission or its staff a copy of any or all information retained pursuant to this requirement.

6. The registrant does not need to disclose technical, administrative or other non-substantive amendments to its code of ethics.

7. For purposes of this Item 16B:

a. The term ''waiver'' means the approval by the registrant of a material departure from a provision of the code of ethics; and

b. The term ''implicit waiver'' means the registrant's failure to take action within a reasonable period of time regarding a material departure from a provision of the code of ethics that has been made known to an executive officer, as defined in Rule 3b–7 (§ 240.3b–7 of this chapter), of the registrant.

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Instructions as to Exhibits

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11. Any code of ethics, or amendment thereto, that is the subject of the disclosure required by Item 16B of Form 20–F, to the extent that the registrant intends to satisfy the Item 16B requirements through filing of an exhibit.

* * * * *

12. Amend Form 40–F (referenced in § 249.240f) by adding paragraphs (8) and (9) to General Instruction B to read as follows.

Note: The text of Form 40–F does not, and this amendment will not, appear in the Code of Federal Regulations.

Form 40–F

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General Instructions

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B. Information To Be Filed on This Form

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(8)(a)(1) Disclose that the registrant's board of directors has determined that the registrant either: (i) Has at least one audit committee financial expert serving on its audit committee; or

(ii) Does not have an audit committee financial expert serving on its audit committee.

(2) If the registrant provides the disclosure required by paragraph (8)(a)(1)(i) of this General Instruction B, it must disclose the name of the audit committee financial expert.

(3) If the registrant provides the disclosure required by paragraph (8)(a)(1)(ii) of this General Instruction B, it must explain why it does not have an audit committee financial expert.

Note to paragraph (8)(a) of General Instruction B: If the registrant's board of directors has determined that the registrant has more than one audit committee financial expert serving on its audit committee, the registrant may, but is not required to, disclose the names of those additional persons.

(b) For purposes of paragraph (8) of General Instruction B, an ''audit committee financial expert'' means a person who has the following attributes:

(1) An understanding of generally accepted accounting principles and financial statements;

(2) The ability to assess the general application of such principles in connection with the accounting for estimates, accruals and reserves;

(3) Experience preparing, auditing, analyzing or evaluating financial statements that present a breadth and level of complexity of accounting issues that are generally comparable to the breadth and complexity of issues that can reasonably be expected to be raised by the registrant's financial statements, or experience actively supervising one or more persons engaged in such activities;

(4) An understanding of internal controls and procedures for financial reporting; and

(5) An understanding of audit committee functions.

(c) A person shall have acquired such attributes through:

(1) Education and experience as a principal financial officer, principal accounting officer, controller, public accountant or auditor or experience in one or more positions that involve the performance of similar functions;

(2) Experience actively supervising a principal financial officer, principal accounting officer, controller, public accountant, auditor or person performing similar functions;

(3) Experience overseeing or assessing the performance of companies or public accountants with respect to the preparation, auditing or evaluation of financial statements; or

(4) Other relevant experience.

(d) *Safe Harbor*

(1) A person who is determined to be an audit committee financial expert will not be deemed an ''expert'' for any purpose, including without limitation for purposes of section 11 of the Securities Act of 1933 (15 U.S.C. 77k), as a result of being designated or

identified as an audit committee financial expert pursuant to this paragraph (8) of General Instruction B.

(2) The designation or identification of a person as an audit committee financial expert pursuant to this paragraph (8) of General Instruction B does not impose on such person any duties, obligations or liability that are greater than the duties, obligations and liability imposed on such person as a member of the audit committee and board of directors in the absence of such designation or identification.

(3) The designation or identification of a person as an audit committee financial expert pursuant to this paragraph (8) of General Instruction B does not affect the duties, obligations or liability of any other member of the audit committee or board of directors.

Notes to Paragraph (8) of General Instruction B: 1. Paragraph (8) of General Instruction B applies only to annual reports, and does not apply to registration statements, on Form 40–F.

2. If a person qualifies as an audit committee financial expert by means of having held a position described in paragraph (8)(c)(4) of General Instruction B, the registrant shall provide a brief listing of that person's relevant experience. Such disclosure may be made by reference to disclosures in the annual report relating to the business experience of that director.

3. In the case of a foreign private issuer with a two-tier board of directors, for purposes of this paragraph (8) of General Instruction B, the term ''board of directors'' means the supervisory or non-management board. Also, the term ''generally accepted accounting principles'' in paragraph (8)(b)(1) of General Instruction B means the body of generally accepted accounting principles used by the foreign private issuer in its primary financial statements filed with the Commission.

4. A registrant that is an Asset-Backed Issuer (as defined in § 240.13a–14(g) and § 240.15d–14(g) of this chapter) is not required to disclose the information required by this paragraph (8) of General Instruction B.

(9)(a) Disclose whether the registrant has adopted a code of ethics that applies to the registrant's principal executive officer, principal financial officer, principal accounting officer or controller, or persons performing similar functions. If the registrant has not adopted such a code of ethics, explain why it has not done so.

(b) For purposes of this paragraph (9) of General Instruction B, the term ''code of ethics'' means written standards that are reasonably designed to deter wrongdoing and to promote:

(1) Honest and ethical conduct, including the ethical handling of actual or apparent conflicts of interest between personal and professional relationships;

(2) Full, fair, accurate, timely, and understandable disclosure in reports and documents that a registrant files with, or submits to, the Commission and in other public communications made by the registrant;

(3) Compliance with applicable governmental laws, rules and regulations;

(4) The prompt internal reporting of violations of the code to an appropriate person or persons identified in the code; and

(5) Accountability for adherence to the code.

(c) The registrant must:

(1) File with the Commission a copy of its code of ethics that applies to the registrant's principal executive officer, principal financial officer, principal accounting officer or controller, or persons performing similar functions, as an exhibit to its annual report;

(2) Post the text of such code of ethics on its Internet Web site and disclose, in its annual report, its Internet address and the fact that it has posted such code of ethics on its Internet Web site; or

(3) Undertake in its annual report filed with the Commission to provide to any person without charge, upon request, a copy of such code of ethics and explain the manner in which such request may be made.

(d) The registrant must briefly describe the nature of any amendment to a provision of its code of ethics that applies to the registrant's principal executive officer, principal financial officer, principal accounting officer or controller, or persons performing similar functions and that relates to any element of the code of ethics definition enumerated in paragraph (9)(b) of General Instruction B, which has occurred during the registrant's most recently completed fiscal year. File a copy of the amendment as an exhibit to the annual statement.

(e) If the registrant has granted a waiver, including an implicit waiver, from a provision of the code of ethics to one of the officers or persons described in paragraph (9)(a) that relates to one or more of the items set forth in paragraph (9)(b) of General Instruction B during the registrant's most recently completed fiscal year, the registrant must briefly describe the nature of the waiver, the name of the person to whom the waiver was granted, and the date of the waiver.

Notes to paragraph (9) of General Instruction B: 1. Paragraph (9) of General Instruction B applies only to annual reports, and does not apply to registration statements, on Form 40–F.

2. A registrant may have separate codes of ethics for different types of officers. Furthermore, a ''code of ethics'' within the meaning of paragraph (9)(b) of this General Instruction may be a portion of a broader document that addresses additional topics or that applies to more persons than those specified in paragraph (9)(a). In satisfying the requirements of paragraph (9)(c), a registrant need only file, post or provide the portions of a broader document that constitutes a ''code of ethics'' as defined in paragraph (9)(b) and that apply to the persons specified in paragraph (9)(a).

3. If a registrant elects to satisfy paragraph (9)(c) of this General Instruction by posting its code of ethics on its Web site pursuant to paragraph (9)(c)(2), the code of ethics must remain accessible on its Web site for as long as the registrant remains subject to the requirements of this paragraph (9) of General Instruction B and chooses to comply with this paragraph (9) of General Instruction B by posting its code on its Web site pursuant to paragraph (9)(c)(2).

4. A registrant that is an Asset-Backed Issuer (as defined in § 240.13a–14(g) and § 240.15d–14(g) of this chapter) is not required to disclose the information required by this paragraph (9) of General Instruction B.

5. The registrant does not need to provide any information pursuant to paragraphs (9)(d) and (9)(e) of General Instruction B if it discloses the required information on its Internet Web site within five business days following the date of the amendment or waiver and the registrant has disclosed in its most recently filed annual report its Internet address and intention to provide disclosure in this manner. If the registrant elects to disclose the information required by paragraphs (9)(d) and (9)(e) of General Instruction B through its Web site, such information must remain available on the Web site for at least a 12-month period. Following the 12-month period, the registrant must retain the information for a period of not less than five years. Upon request, the registrant must furnish to the Commission or its staff a copy of any or all information retained pursuant to this requirement.

6. The registrant does not need to disclose technical, administrative or other non-substantive amendments to its code of ethics.

7. For purposes of this paragraph (9) of General Instruction B:

a. The term ''waiver'' means the approval by the registrant of a material departure from a provision of the code of ethics; and

b. The term ''implicit waiver'' means the registrant's failure to take action within a reasonable period of time regarding a material departure from a provision of the code of ethics that has been made known to an executive officer, as defined in Rule 3b–7 (§ 240.3b–7 of this chapter), of the registrant.

* * * * *

13. Amend Form 10–K (referenced in § 249.310) by revising Item 10 in Part III to read as follows:

Note: The text of Form 10–K does not, and this amendment will not, appear in the Code of Federal Regulations.

Form 10–K—Annual Report Pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934

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Part III

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Item 10. Directors and Executive Officers of the Registrant

Furnish the information required by Items 401, 405 and 406 of Regulation S–K (§§ 229.401, 229.405 and 229.406 of this chapter).

* * * * *

14. Amend Form 10–KSB (referenced in § 249.310b) by revising Item 9 in Part III to read as follows:

Note: The text of Form 10–KSB does not, and this amendment will not, appear in the Code of Federal Regulations.

Form 10–KSB—[ ] Annual Report Pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934

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Part III

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Item 9. Directors and Executive Officers of the Registrant

Furnish the information required by Items 401, 405 and 406 of Regulation S–B (§§ 228.401, 228.405, and 228.406 of this chapter).

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By the Commission.

Dated: January 23, 2003.

Margaret H. McFarland,

Deputy Secretary.

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