

## SECURITIES AND EXCHANGE COMMISSION

### 17 CFR Parts 228, 229, 240, 249, 270 and 274

[Release Nos. 33-8212, 34-47551, IC-25967; File No. S7-06-03]

RIN 3235-A179

#### Certification of Disclosure in Certain Exchange Act Reports

**AGENCY:** Securities and Exchange Commission.

**ACTION:** Proposed rule; interim guidance regarding filing procedures.

**SUMMARY:** We are proposing amendments to our rules and forms under the Securities Exchange Act of 1934 and the Investment Company Act of 1940 to require issuers to provide the certifications required by sections 302 and 906 of the Sarbanes-Oxley Act of 2002 as exhibits to the periodic reports to which they relate. We also are publishing guidance about how the certifications required by section 906 may "accompany" a periodic report to which they relate, pending the adoption of final rules.

**DATES:** Comments must be received on or before May 15, 2003.

**ADDRESSES:** Comments should be submitted in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549-0609.

Comments also may be submitted electronically at the following electronic mail address: [rule-comments@sec.gov](mailto:rule-comments@sec.gov). To help us process and review your comments more efficiently, comments should be submitted by one method only. All comment letters should refer to File No. S7-06-03; this file number should be included in the subject line if electronic mail is used. Comment letters will be available for public inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, DC 20549. Electronically submitted comment letters will be posted on the Commission's Internet Web site (<http://www.sec.gov>).<sup>1</sup>

#### FOR FURTHER INFORMATION CONTACT:

Mark A. Borges or Andrew Thorpe, Special Counsel, Office of Rulemaking, Division of Corporation Finance, at (202) 942-2910, or Carol McGee or Jonathan Ingram, Special Counsel, Office of Chief Counsel, Division of

Corporation Finance, at (202) 942-2900, or, with respect to investment companies, Christian Broadbent, Senior Counsel, Office of Disclosure Regulation, Division of Investment Management, at (202) 942-0721, at the Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549.

**SUPPLEMENTARY INFORMATION:** We are proposing amendments to Item 601<sup>2</sup> of Regulation S-B,<sup>3</sup> Item 601<sup>4</sup> of Regulation S-K,<sup>5</sup> Rules 12b-15,<sup>6</sup> 13a-14,<sup>7</sup> 13a-15,<sup>8</sup> 15d-14<sup>9</sup> and 15d-15<sup>10</sup> under the Securities Exchange Act of 1934,<sup>11</sup> Rules 8b-15,<sup>12</sup> 30a-2<sup>13</sup> and 30a-3<sup>14</sup> under the Investment Company Act of 1940,<sup>15</sup> Forms 10-Q,<sup>16</sup> 10-QSB,<sup>17</sup> 10-K,<sup>18</sup> 10-KSB,<sup>19</sup> 20-F<sup>20</sup> and 40-F<sup>21</sup> under the Securities Exchange Act of 1934 and Form N-CSR<sup>22</sup> under the Securities Exchange Act of 1934 and the Investment Company Act of 1940.

#### I. Background

On July 30, 2002, the Sarbanes-Oxley Act of 2002 (the "Act") was enacted.<sup>23</sup> Section 302 of the Act required the Commission to adopt final rules to be effective by August 29, 2002 under which the principal executive officer or officers and the principal financial officer or officers, or persons performing similar functions, of a company filing periodic reports under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (the "Exchange Act")<sup>24</sup> must

certify in each quarterly and annual report, among other things, that, based on his or her knowledge:

- The report does not contain any untrue statement of a material fact or omit to state a material fact necessary in order to make the statements made, in light of the circumstances under which such statements were made, not misleading; and
- The financial statements, and other financial information included in the report, fairly present in all material respects the financial condition and results of operations of the issuer as of, and for, the periods presented in the report.<sup>25</sup>

On August 28, 2002, we adopted Exchange Act Rules 13a-14 and 15d-14 and Investment Company Act Rule 30a-2 and amended our periodic report forms to implement this statutory directive.<sup>26</sup> These rules and amendments became effective on August 29, 2002. On January 27, 2003, we adopted Form N-CSR to be used by registered management investment companies to file certified shareholder reports with the Commission.<sup>27</sup>

Section 906 of the Act added new section 1350 to Title 18 of the United States Code,<sup>28</sup> which contains federal criminal provisions. Section 906 contains a certification requirement that is separate and distinct from the certification requirement mandated by section 302.<sup>29</sup> Section 906 provides that each periodic report containing financial statements filed by an issuer<sup>30</sup> with the Commission pursuant to section 13(a) or 15(d) of the Exchange Act must be accompanied by a written statement by the issuer's chief executive officer and chief financial officer (or the equivalent thereof) certifying that:

pursuant to section 12, unless the duty to file under section 15(d) has been suspended for any fiscal year. See Exchange Act Rule 12h-3 [17 CFR 240.12h-3].

<sup>25</sup> See sections 302(a)(2) and (3) of the Act [15 U.S.C. 7241(a)(2) and (3)].

<sup>26</sup> See Release No. 33-8124 (Aug. 28, 2002) [67 FR 57276] (the "Adopting Release").

<sup>27</sup> See Release No. IC-25914 (Jan. 27, 2003) [68 FR 5348].

<sup>28</sup> 18 U.S.C. 1350.

<sup>29</sup> See Release No. 34-46300 (Aug. 2, 2002) [67 FR 51508] containing supplemental information on the Commission's original certification proposal in light of the enactment of the Sarbanes-Oxley Act of 2002, at n. 11.

<sup>30</sup> As defined in section 2(a)(7) of the Act [15 U.S.C. 7201(7)], the term "issuer" means an issuer (as defined in section 3(a)(8) of the Exchange Act [15 U.S.C. 78c(a)(8)]) the securities of which are registered under section 12 of the Exchange Act, that is required to file reports under section 15(d) of the Exchange Act or that files, or has filed, a registration statement that has not yet become effective under the Securities Act and that has not been withdrawn.

<sup>1</sup> We do not edit personal identifying information, such as names or electronic mail addresses, from electronic submission. You should submit only information that you wish to make available publicly.

<sup>2</sup> 17 CFR 228.601.

<sup>3</sup> 17 CFR 228.10 *et seq.*

<sup>4</sup> 17 CFR 229.601.

<sup>5</sup> 17 CFR 229.10 *et seq.*

<sup>6</sup> 17 CFR 240.12b-15.

<sup>7</sup> 17 CFR 240.13a-14.

<sup>8</sup> 17 CFR 240.13a-15.

<sup>9</sup> 17 CFR 240.15d-14.

<sup>10</sup> 17 CFR 240.15d-15.

<sup>11</sup> 15 U.S.C. 78a *et seq.*

<sup>12</sup> 17 CFR 270.8b-15.

<sup>13</sup> 17 CFR 270.30a-2.

<sup>14</sup> 17 CFR 270.30a-3.

<sup>15</sup> 15 U.S.C. 80a-1 *et seq.*

<sup>16</sup> 17 CFR 249.308a.

<sup>17</sup> 17 CFR 249.308b.

<sup>18</sup> 17 CFR 249.310.

<sup>19</sup> 17 CFR 249.310b.

<sup>20</sup> 17 CFR 249.220f.

<sup>21</sup> 17 CFR 249.240f.

<sup>22</sup> 17 CFR 249.331; 17 CFR 274.128.

<sup>23</sup> Pub. L. 107-204, 116 Stat. 745 (2002).

<sup>24</sup> 15 U.S.C. 78m(a) or 78o(d). Section 13(a) of the Exchange Act requires every issuer of a security registered pursuant to section 12 of the Exchange Act [15 U.S.C. 781] to file with the Commission such annual reports and such quarterly reports as the Commission may prescribe. Section 15(d) of the Exchange Act requires each issuer that has filed a registration statement that has become effective pursuant to the Securities Act of 1933 [15 U.S.C. 77a *et seq.*] (the "Securities Act") to file such supplementary and periodic information, documents and reports as may be required pursuant to section 13 in respect of a security registered

- The report fully complies with the requirements of section 13(a) or 15(d) of the Exchange Act; and

- The information contained in the report fairly presents, in all material respects, the financial condition and results of operations of the issuer.

Section 906 expressly creates new criminal penalties for a knowingly or willfully false certification.<sup>31</sup> This provision became effective on July 30, 2002. As discussed below, we propose to require the inclusion of the certifications required by sections 302 and 906 of the Act as exhibits to the periodic reports to which they relate.

## II. Proposed Amendments

### A. Section 302 Certifications

To implement section 302's directive that the required certifications be "in" each quarterly or annual report filed or submitted under section 13(a) or 15(d) of the Exchange Act, we amended Forms 10-Q, 10-QSB, 10-K, 10-KSB, 20-F and 40-F under the Exchange Act to require the certifications to appear immediately after the signature block at the end of these reports. Because the certifications are part of the text of the report to which they relate, however, investors are not able to easily access the certifications through our Electronic Data Gathering, Analysis and Retrieval ("EDGAR") system. In addition, the Commission staff must review the actual text of a quarterly or annual report to confirm that the certifications have been filed.

Consequently, we propose to amend our rules and forms to require issuers to file these certifications as an exhibit to the periodic reports to which they relate. Specifically, we propose to amend Item 601 of Regulations S-B and S-K to add the section 302 certifications to the list of required exhibits as new Item 31.<sup>32</sup> With this change, investors using third-party databases to access an issuer's Exchange Act reports should be able to locate the section 302 certifications more easily and efficiently. In addition, the Commission staff should be able to search a periodic report more expeditiously to verify that the required certifications have been

<sup>31</sup> See section 1350(c) [18 U.S.C. 1350(c)]. An individual who willfully fails to submit a certification required by section 1350 may be subject to criminal prosecution under section 32 of the Exchange Act [15 U.S.C. 78ff]. See section 3(b)(1) of the Act [15 U.S.C. 7202(b)(1)].

<sup>32</sup> We recently adopted Form N-CSR, to be used by registered management investment companies to file certified shareholder reports with the Commission. See Release No. IC-25914 [Jan. 27, 2003] [68 FR 5348]. As adopted, Form N-CSR requires the section 302 certifications to be filed as an exhibit to a report on Form No-CSR. Item 10(b) of Form No-CSR.

included in the report and to review the certifications.

The signatures appearing at the end of the certifications that we propose to require as an exhibit would continue to be part of the periodic reports to which they relate and, therefore, would be subject to the signature requirement of our rules.<sup>33</sup> Aside from our proposal to require issuers to file the section 302 certifications as an exhibit,<sup>34</sup> we do not propose in this release to modify any other substantive aspect of the certification requirements under Exchange Act Rules 13a-14 and 15d-14.<sup>35</sup> In particular, we note that the consequences for failing to file a required certification or making a false or misleading certification would not be affected by the proposed amendments.<sup>36</sup>

### B. Section 906 Certifications

Each periodic report containing financial statements filed by an issuer with the Commission pursuant to section 13(a) or 15(d) of the Exchange Act must "be accompanied by" a

<sup>33</sup> See Exchange Act Rule 12b-11(d) [17 CFR 240.12b-11(d)]. Rule 302 of Regulations S-T applies to the signatures appearing in a certification. Regulation S-T contains the rules prescribing requirements for filing information electronically and the procedures for making such filings. Instructions for electronic filing, including technical formatting requirements, are set forth in the EDGAR Filer Manual. See Rule 301 of Registration S-T [17 CFR 232.301].

<sup>34</sup> In connection with this change, we are proposing to revise Exchange Act Rules 13a-14(b) and 15d-14(b) and Investment Company Rule 30a-2(b) to delete from those paragraphs the detailed description of the contents of the required certifications and to revise the instructions to Forms 10-Q, 10-QSB, 10-K, 10-KSB and N-CSR to delete the references to the section 302 certification requirements. As proposed, it is contemplated that the specific form and content of the required certifications will be set forth in the exhibit item (or in the appropriate item of the form, in the case of Forms 20-F, 40-F, 40-F and N-CSR). Further, we are proposing to move the definition of the term "disclosure controls and procedures" from Exchange Act Rules 13a-14(c) and 15d-14(c) and Investment Company Act Rule 30a-2(c) to new Exchange Act Rules 13a-15(c) and 15d-15(c) and Investment Company Act Rule 30a-3(c), respectively, and to redesignate the subsequent paragraphs of Exchange Act Rules 13a-14 and 15d-14 and Investment Company Act Rule 30a-2. Finally, we are proposing technical conforming amendments to Exchange Act Rules 12b-15, 13a-14(a), 13a-14(d) (proposed to be redesignated as Rule 13a-14(c), 13a-14(e) (proposed to be redesignated as Rule 13a-14(d), 13a-14(f) (proposed to be redesignated as Rule 13a-14(e), 13a-15(a), 15d-14(a), 15d-14(d) (proposed to be redesignated as Rule 15d-14(c)), 15d-14(e) (proposed to be redesignated as Rule 15d-14(d)), 15d-14(f) (proposed to be redesignated as Rule 15d-14(e)) and 15d-15(a).

<sup>35</sup> We note, however, that we have proposed substantive revisions to these rules in conjunction with our consideration of new rules implementing section 404 of the Act [15 U.S.C. 7262]. See Release No. 33-8138 (Oct. 22, 2002) [67 FR 66208]. These proposals are pending.

<sup>36</sup> See the Adopting Release at Section II.B.6.

written statement by the issuer's chief executive and financial officers containing the information specified in section 906 of the Act (referred to in this release as the "section 906 certifications").<sup>37</sup> After discussions with the Department of Justice, we propose to amend our rules and forms to require issuers to furnish these certifications as an exhibit to the periodic reports to which they relate. Specifically, we propose to amend Exchange Act Rules 13a-14 and 15d-14 to require the submission of the section 906 certifications with the periodic reports to which they relate,<sup>38</sup> and to amend Item 601 of Regulations S-B and S-K to add the section 906 certifications to the list of required exhibits as new Item 32. We also propose to amend Investment Company Act Rule 30a-2 to require the submission of the section 906 certifications with the periodic reports on Form N-CSR to which they relate<sup>39</sup> and Item 10 of Form N-CSR to add the section 906 certifications as a required exhibit.<sup>40</sup> Because the section 906 certification requirement applies to periodic reports containing financial statements that are filed by an issuer pursuant to section 13(a) or 15(d) of the Exchange Act, the proposed exhibit requirement would only apply to reports on Form N-CSR filed under these sections and not to reports on Form N-CSR that are filed under the

<sup>37</sup> This certification requirement applies to quarterly reports on Forms 10-Q and 10-QSB, annual reports on Forms 10-K, 10-KSB, 20-F and 40-F and semi-annual reports on Form N-CSR containing financial statements. It does not apply to reports that are current reports, such as reports on Forms 6-K [17 CFR 249.306] and 8-K [17 CFR 249.308], rather than periodic reports. In addition, this certification requirement does not apply to issues of asset-backed securities that are not required to file financial statements in their reports. Such entities typically are passive pools of assets, without an audit committee or board of directors or persons acting in a similar capacity. Accordingly, most asset-backed issuers are currently not subject to section 906. Similarly, unit investment trusts ("UITs"), as defined in section 4(2) of the Investment Company Act [15 U.S.C. 80a-4(2)], and small business investment companies ("SBICs") licensed under the Small Business Investment Act of 1958 are currently not subject to section 906. UITs and SBICs file reports on Form N-SAR pursuant to section 13(a) or 15(d) of the Exchange Act, and reports on Form N-SAR do not contain financial statements.

<sup>38</sup> See proposed Exchange Act Rules 13a-14(b) and 15d-14(b). As discussed in n. 34 above, we are proposing to delete existing Exchange Act Rules 13a-14(b) and 15d-14(b).

<sup>39</sup> See proposed Investment Company Act Rule 30a-2(b).

<sup>40</sup> See proposed Item 10(b) of Form N-CSR. Existing Items 10(a) and 10(b) of Form N-CSR would be redesignated as Items 10(a) and 10(a)(2). We also are proposing technical conforming amendments to Investment Company Act Rules 8b-15 and 30a-2(d) (proposed to be redesignated as Rule 30a-2(c)).

Investment Company Act only.<sup>41</sup> Just as with the section 302 certifications, an exhibit requirement would enable investors and the Commission staff, as well as the Department of Justice, to monitor compliance with this certification requirement more easily and efficiently.

Unlike the section 302 certifications, the section 906 certifications are required only in periodic reports that contain financial statements. In addition, unlike the section 302 certifications, the section 906 certifications may take the form of a single statement signed by an issuer's chief executive and financial officers.<sup>42</sup> Issuers with unusual structures may contact the Office of Chief Counsel in the Commission's Division of Corporation Finance for further guidance on compliance with the section 906 certification requirement.

We propose to amend Exchange Act Rules 13a-14 and 15d-14 and Investment Company Act Rule 30a-2 to require the section 906 certifications to be provided with periodic reports containing financial statements. We also propose to amend Item 601 of Regulations S-B and S-K to add the section 906 certifications to the list of required exhibits to be included in reports filed with the Commission. Each form specified in the exhibit table in Item 601(a) requires a registrant to include as part of the report the exhibits required by Item 601.<sup>43</sup> Consequently, a failure to furnish the section 906 certifications would cause the periodic report to which they relate to be incomplete, thereby violating section 13(a) of the Exchange Act.<sup>44</sup> In addition, referencing the section 906 certifications in Exchange Act Rules 13a-14 and 15d-14 and Investment Company Act Rule 30a-2 would subject these certifications to the signature requirements of Rule 302 of Regulation S-T.<sup>45</sup>

We note that section 906 merely requires that the certifications

"accompany" a periodic report to which they relate. This is in contrast to section 302, which requires the certifications to be included "in" the periodic report. In recognition of this difference, we are proposing to require issuers to "furnish," rather than "file," the section 906 certifications with the Commission.<sup>46</sup> Thus, the certifications would not be subject to liability under section 18 of the Exchange Act.<sup>47</sup> Moreover, the certifications would not be subject to automatic incorporation by reference into an issuer's Securities Act registration statements, which are subject to liability under section 11 of the Securities Act,<sup>48</sup> unless the issuer takes steps to include the certifications in a registration statement. Although section 906 does not explicitly require the certifications to be made public, we believe that it is appropriate to require the certifications to accompany a periodic report in the proposed manner.

### III. Interim Guidance Regarding Filing Procedures

As previously discussed, section 906 requires that the written statements of an issuer's chief executive and financial officers "accompany" any periodic report containing financial statements filed by the issuer pursuant to section 13(a) or 15(d) of the Exchange Act. To date, issuers have employed a variety of methods to submit the section 906 certifications with the periodic reports to which they relate.<sup>49</sup>

Until we adopt final rules, we encourage issuers to submit the section 906 certifications as an exhibit to the periodic reports to which they relate. An issuer using this approach should designate the certifications as an "Additional Exhibit" under Item 99 of Item 601(b) of Regulation S-B or S-K<sup>50</sup> or, in the case of a foreign private issuer, satisfy the exhibit requirements of the appropriate report form.<sup>51</sup> Where the

periodic report to which the section 906 certifications relate is being filed electronically via our EDGAR system, which will generally be the case, an issuer should retain the manual signature page for each certification or another document authenticating, acknowledging or otherwise adopting the signature that appears in typed form within the electronic version of the certification. In order to treat these electronically filed signed statements consistent with other electronically filed signed statements, the issuer should insert the following legend after the text of each certification: "A signed original of this written statement required by section 906 has been provided to [name of issuer] and will be retained by [name of issuer] and furnished to the Securities and Exchange Commission or its staff upon request." Where the periodic report to which the section 906 certifications relate is being filed in paper form (where a paper submission is permitted by Regulation S-T), an issuer should file signed originals and conformed copies of each section 906 certification in accordance with the requirements of the relevant report form. A Section 906 certification submitted in this manner will be treated as "accompanying" the periodic report to which it relates rather than "filed" as part of the report.

### IV. General Request for Comment

We are proposing these amendments to enhance the accessibility of the certifications that must be provided in connection with periodic reports filed pursuant to the Exchange Act. We solicit comment, both specific and general, upon each aspect of the proposed amendments. If you would like to submit written comments on the proposed amendments, to suggest changes or to submit comments on other matters that might affect the proposed amendments, we encourage you to do so.

In particular, we solicit comment on the following specific aspects of the proposed amendments:

- Will the inclusion of the section 302 certifications and the section 906 certifications as exhibits make it easier for investors to access this information?
- Are there any means other than those proposed to enhance investor or Commission staff access to the certifications?

investment companies other than SBICs must either file Form N-CSR or continue to comply with the certification requirements of Form N-SAR. See Release No. IC-25914 (Jan. 27, 2003) [68 FR 5348, 5356] (discussing transition provisions and compliance dates for requirement to file Form N-CSR).

<sup>41</sup> See General Instruction A of Form N-CSR (Form N-CSR is a combined reporting form to be used for reports of registered management investment companies under section 30(b)(2) of the Investment Company Act of 1940 and sections 13(a) or 15(d) of the Exchange Act); n. 24 above (discussing issuers covered by sections 13(a) and 15(d) of the Exchange Act).

<sup>42</sup> See proposed Exchange Act Rules 13a-14(b) and 15d-14(b).

<sup>43</sup> See for example, Item 6(a) of Form 10-Q and Item 15(a)(3) of Form 10-K.

<sup>44</sup> See also section 3(b)(1) of the Act, which provides that "[a] violation by any person of this Act . . . shall be treated for all purposes in the same manner as a violation of the Securities Exchange Act of 1934 . . . and any such person shall be subject to the same penalties, and to the same extent, as for a violation of that Act \* \* \*"

<sup>45</sup> See Rule 302(b) of Regulation S-T [17 CFR 232.302(b)].

<sup>46</sup> See, for example, proposed Item 601(b)(32)(ii) of Regulation S-K.

<sup>47</sup> 15 U.S.C. 78r.

<sup>48</sup> 15 U.S.C. 77k.

<sup>49</sup> These methods include: (1) Submitting the statement as non-public paper correspondence; (2) submitting the statement as non-public electronic correspondence with the EDGAR filing of the periodic report; (3) submitting the statement under (1) or (2) above supplemented by an Item 9 Form 8-K report so that the statement is publicly available; (4) submitting the statement as an exhibit to the periodic report; or (5) submitting the statement in the text of the periodic report (typically, below the signature block for the report).

<sup>50</sup> 17 CFR 228.601(b)(99) and 17 CFR 229.601(b)(99).

<sup>51</sup> For a registered management investment company filing reports on Form N-CSR that uses this approach, the EDGAR document type should be EX-99.906CERT for the section 906 certifications. For fiscal annual or semi-annual periods ending on or before March 31, 2003, registered management

• Will treatment of section 906 certifications as “furnished” to, rather than “filed” with, the Commission adequately address liability concerns arising from the proposed requirement that issuers include the certifications in the periodic reports to which the certifications relate?

Finally, we request comment on whether any further changes to our rules and forms are necessary or appropriate to implement the objectives of the proposed amendments or the Act.

#### V. Paperwork Reduction Act

The rules and forms that we are proposing to amend contain “collection of information” requirements within the meaning of the Paperwork Reduction Act of 1995 (“PRA”).<sup>52</sup> We do not believe that the proposed amendments with respect to the section 302 certifications would alter the burden estimates for Forms 10-K (OMB Control No. 3235-0063), 10-KSB (OMB Control No. 3235-0420), 10-Q (OMB Control No. 3235-0070), 10-QSB (OMB Control No. 3235-0416), 20-F (OMB Control No. 3235-0288) or 40-F (OMB Control No. 3235-0381) previously submitted to, and approved by, the Office of Management and Budget (the “OMB”). These proposed amendments merely relocate the certifications from the text of quarterly and annual reports filed or submitted under section 13(a) or 15(d) of the Exchange Act to the “Exhibits” section of these reports.

The proposed amendments with respect to the section 906 certifications may alter the burden estimates for these reports and for Form N-CSR (OMB Control No. 3235-0570). Accordingly, we are submitting these proposed amendments to the OMB for review in accordance with the PRA.<sup>53</sup> The titles for these collections of information are “Form 10-K,” “Form 10-KSB,” “Form 10-Q,” “Form 10-QSB,” “Form 20-F,” “Form 40-F” and “Form N-CSR.” An agency may not conduct or sponsor, and a person is not required to respond to, an information collection unless it displays a currently valid OMB control number.

#### A. Summary of Proposed Rules

Section 1350 of Title 18 of the United States Code, added by section 906 of the Act, requires each periodic report containing financial statements filed by an issuer with the Commission pursuant to section 13(a) or 15(d) of the Exchange Act to be accompanied by a written statement by the issuer’s chief executive officer and chief financial officer (or the

equivalent thereof) certifying that the report fully complies with the requirements of section 13(a) or 15(d) of the Exchange Act and the information contained in the report fairly presents, in all material respects, the financial condition and results of operations of the issuer. By requiring these certifications to be furnished to the Commission as an exhibit to the periodic reports to which they relate, the certifications would become part of the “collection of information” required in each periodic report filed with the Commission. Compliance with the proposed exhibit requirement would be mandatory. Under our rules for the retention of manual signatures, issuers would be required to maintain the original certifications for five years. The information required by the proposed amendments would not be kept confidential.

#### B. Reporting and Cost Burden Estimates

The compliance burden estimates for the proposed collections of information are based on several assumptions. The reporting requirements of section 13 of the Exchange Act apply to entities that have a class of securities registered under section 12 of the Exchange Act. The reporting requirements of section 15(d) of the Exchange Act apply to entities with an effective registration statement under the Securities Act that are not otherwise subject to the registration requirements of section 12 of the Exchange Act. We estimate that there are approximately 13,200 entities that fit these descriptions.<sup>54</sup> In addition, we estimate that there are approximately 3,700 registered management investment companies that are required to file reports on Form N-CSR.

The compliance burden associated with the proposed amendments would be the burden of preparing and including the section 906 certifications in periodic reports containing financial statements filed by an issuer, after the issuer’s chief executive and financial officers evaluated the information relevant to making the certification statements. To a large extent, this evaluation is already performed in connection with the section 302 certifications required by Exchange Act Rules 13a-14 and 15d-14 and Investment Company Act Rule 30a-2. We estimate that the proposed

amendments to require the section 906 certifications to be included as an exhibit to the periodic reports to which they relate would result in an increase of two burden hours<sup>55</sup> per issuer in connection with preparing each quarterly report on Form 10-Q or 10-QSB and annual report on Form 10-K, 10-KSB, 20-F or 40-F. With respect to semi-annual reports on Form N-CSR, because the financial statements of registered management investment companies are not as complex as those of operating companies, we estimate that the proposed amendments relating to the section 906 certifications would result in an increase of one burden hour per portfolio.<sup>56</sup>

In the case of domestic issuers, based on a burden hour estimate of eight hours per respondent per year,<sup>57</sup> we estimate that, in the aggregate, all respondents will incur approximately 105,384 burden hours<sup>58</sup> to comply with the proposed amendments. The total burden hours of complying with Forms 10-Q and 10-QSB, revised to include the burden hours expected from the proposed amendments, is estimated to be 3,334,256 hours for Form 10-Q, an increase of 56,304 hours<sup>59</sup> from the current annual burden of 3,277,952 hours, and 1,497,884 hours for Form 10-QSB, an increase of 22,734 hours<sup>60</sup> from the current annual burden of 1,475,150 hours. The total burden hours of complying with Forms 10-K and 10-KSB, revised to include the burden hours expected from the proposed amendments, is estimated to be 11,535,739 hours for Form 10-K, an increase of 18,768 hours<sup>61</sup> from the current annual burden of 11,516,971 hours, and 3,619,627 hours for Form 10-KSB, an increase of 7,578 hours<sup>62</sup>

<sup>55</sup> This estimate is based on consultations with several law firms and other persons who regularly assist registrants in preparing and filing periodic reports containing financial statements with the Commission.

<sup>56</sup> Many registered management investment companies have multiple portfolios. However, they prepare separate financial statements for each portfolio. Thus, the burden of the section 1350 certifications is estimated on a portfolio basis rather than a registered management investment company basis.

<sup>57</sup> Three quarterly reports and one annual report at an estimated two burden hours per report equals eight hours.

<sup>58</sup> 13,173 companies multiplied by eight burden hours each equals 105,384 hours.

<sup>59</sup> 28,152 quarterly reports multiplied by two burden hours each equals 56,304 hours.

<sup>60</sup> 11,367 quarterly reports multiplied by two burden hours each equals 22,734 hours.

<sup>61</sup> 9,384 annual reports multiplied by two burden hours each equals 18,768 hours.

<sup>62</sup> 3,789 annual reports multiplied by two burden hours each equals 7,578 hours.

<sup>52</sup> 44 U.S.C. 3501 *et seq.*

<sup>53</sup> 44 U.S.C. 3507(d) and 5 CFR 1320.11.

<sup>54</sup> This estimate is based on the total number of companies that filed annual reports on Form 10-K (9,384) or Form 10-KSB (3,789) during the 2001 fiscal year, which are required of all companies with a class of securities registered under section 12 of the Exchange Act and all companies subject to section 15(d) of the Exchange Act.

from the current annual burden of 3,612,049 hours. Based on a burden hour estimate of two hours per portfolio per year, we estimate that the total burden hours of complying with Form N-CSR for registered management investment companies, revised to include the burden hours expected from the proposed amendments, will be 142,498 hours, an increase of 19,700 hours<sup>63</sup> from the current annual burden of 122,798 hours.

In the case of foreign private issuers, based on a burden hour estimate of two hours per respondent per year, we estimate that the total burden hours of complying with Forms 20-F and 40-F, revised to include the burden hours expected from the proposed amendments, will be 655,521.25 hours for Form 20-F, an increase of 2,400<sup>64</sup> from the current annual burden of 653,121.25 hours, and 1,412.25 hours for Form 40-F, an increase of 200 hours<sup>65</sup> from the current annual burden of 1,212.25 hours.

### C. Request for Comment

We request comment in order to: (a) Evaluate whether the proposed information collections are necessary for the proper performance of the functions of the Commission, including whether the information would have practical utility; (b) evaluate the accuracy of our estimate of the burden of the proposed amendments; (c) determine whether there are ways to enhance the quality, utility and clarity of the information to be collected; and (d) evaluate whether there are ways to minimize the burden of the proposed amendments on those who respond, including through the use of automated collection techniques or other forms of information technology.<sup>66</sup>

Any member of the public may direct to us any comments concerning the accuracy of these burden estimates and any suggestions for reducing the burdens. Persons who desire to submit comments on the proposed collection of

<sup>63</sup> This estimate is based on the current annual burden for registered management investment companies required to file reports on Form N-CSR. We estimate that there are 3,700 registered management investment companies that will file reports on Form N-CSR, containing 9,850 portfolios. The estimate of 19,700 hours is calculated by 9,850 portfolios x two filings per year x one burden hour.

<sup>64</sup> This estimate is based on the current annual burden per filing for each foreign private issuer. The estimate of 2,400 hours is based on an estimate of 1,200 foreign private issuers with one filing per year multiplied by two burden hours for each filing.

<sup>65</sup> This estimate is based on the current annual burden per filing for each Canadian issuer. The estimate of 200 hours is based on an estimate of 100 Canadian issuers with one filing per year multiplied by two burden hours for each filing.

<sup>66</sup> Comments are requested pursuant to 44 U.S.C. 3506(c)(2)(B).

information requirements should direct their comments to the OMB, Attention: Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Washington, DC 20503, and send a copy of the comments to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549-0609, with reference to File No. S7-06-03. Requests for materials submitted to the OMB by us with regard to these collections of information should be in writing, refer to File No. S7-06-03 and be submitted to the Securities and Exchange Commission, Records Management, Office of Filings and Information Services, 450 Fifth Street NW., Washington, DC 20549. Because the OMB is required to make a decision concerning the collections of information between 30 and 60 days after publication, your comments are best assured of having their full effect if the OMB receives them within 30 days of publication.

### VI. Cost-Benefit Analysis

The proposed amendments would relocate the certifications required by Exchange Act Rules 13a-14 and 15d-14 from the text of quarterly and annual reports filed or submitted under section 13(a) or 15(d) of the Exchange Act to the "Exhibits" section of these reports. The proposed amendments also would require that the certifications required by section 1350 of Title 18 of the United States Code, added by section 906 of the Act, accompany the periodic reports to which they relate as an exhibit to these reports. These changes should enhance the ability of investors and the Commission staff to verify that the certifications have, in fact, been submitted with the Exchange Act reports to which they relate and to review the contents of the certifications to ensure compliance with the applicable requirements. In addition, the changes should enable the Department of Justice, which has responsibility for enforcing section 906, to effectively review the form and content of the certifications required by that provision.

Since issuers must already include the certifications required by Exchange Act Rules 13a-14 and 15d-14 in their quarterly and annual reports, there should be no incremental cost to relocating the certifications from the text of the reports to the "Exhibits" section of these reports. Requiring the section 906 certifications to be included as an exhibit to the periodic reports to which they relate may lead to some additional costs for issuers that

currently are submitting the certifications to the Commission in some other manner. While these costs are difficult to quantify, we estimate that the annual paperwork burden of the proposed amendments would be approximately \$25.5 million.<sup>67</sup>

To the extent that issuers may assume greater legal risk by including the section 906 certifications as part of their periodic reports filed pursuant to the Exchange Act where these reports are incorporated by reference into Securities Act registration statements, we address this risk by proposing to require issuers to "furnish," rather than "file," the certifications with the Commission for purposes of section 18 of the Exchange Act or incorporation by reference into other filings. Thus, the proposed amendments should mitigate this potential indirect cost of compliance.

### VII. Initial Regulatory Flexibility Analysis

This Initial Regulatory Flexibility Analysis, or IRFA, has been prepared in accordance with the Regulatory Flexibility Act.<sup>68</sup> It involves proposed amendments that would relocate the certifications required by Exchange Act Rules 13a-14 and 15d-14 from the text of quarterly and annual reports filed or submitted under section 13(a) or 15(d) of the Exchange Act to the "Exhibits" section of these reports, and require that the certifications required by section 1350 of Title 18 of the United States Code, added by section 906 of the Act, accompany the periodic reports to which they relate as an exhibit to these reports.

#### A. Reasons for, and Objectives of, Proposed Rule and Form Amendments

The relocation of the certifications required by Exchange Act Rules 13a-14 and 15d-14 from the text of quarterly and annual reports to the "Exhibits" section of these reports should enhance the ability of investors and the Commission staff to verify that the certifications have, in fact, been submitted with the Exchange Act reports to which they relate and to review the contents of the certifications to ensure compliance with the applicable requirements. In addition, the proposed amendments should

<sup>67</sup> This calculation is based on an estimate of 127,684 burden hours (see nn. 58, 63, 64 and 65 above) multiplied by a cost of \$200.00 per hour. (127,684 hours multiplied by \$200.00 per hour equals \$25,536,800) The hourly cost estimate is based on consultations with several registrants and law firms and other persons who regularly assist registrants in preparing and filing periodic reports with the Commission.

<sup>68</sup> 5 U.S.C. 603.

enable the Department of Justice, which has responsibility for enforcing section 1350, to efficiently review the form and content of the certifications required by that provision.

#### B. Legal Basis

We are proposing the amendments under the authority set forth in sections 13, 15(d), 23(a) and 36 of the Exchange Act, sections 8, 30 and 38 of the Investment Company Act and sections 3(a), 302 and 906 of the Sarbanes-Oxley Act of 2002.

#### C. Small Entities Subject to the Proposed Rule and Form Amendments

The proposed amendments would affect small entities that are subject to the reporting requirements of section 13(a) or 15(d) of the Exchange Act. For purposes of the Regulatory Flexibility Act, the Exchange Act defines the term "small business," other than an investment company, to be an issuer that, on the last day of its most recent fiscal year, has total assets of \$5 million or less.<sup>69</sup> We estimate that there are approximately 2,500 companies subject to the reporting requirements of section 13(a) or 15(d) of the Exchange Act that are not investment companies and that have assets of \$5 million or less.<sup>70</sup>

For purposes of the Regulatory Flexibility Act, an investment company is a "small entity" if it, together with other investment companies in the same group of related investment companies, has net assets of \$50 million or less as of the end of its most recent fiscal year.<sup>71</sup> We estimate that there are approximately 205 registered management investment companies that, together with other investment companies in the same group of related investment companies, have net assets of \$50 million or less as of the end of the most recent fiscal year.<sup>72</sup>

#### D. Reporting, Recordkeeping and Other Compliance Requirements

The proposed amendments would require issuers, including "small businesses," to provide the certifications required by Exchange Act Rules 13a-14 and 15d-14, as well as the certifications required by section 906, as exhibits to the periodic reports to which they relate. Depending on how an

issuer's chief executive and financial officers presently satisfy the section 906 certification requirements, issuers, including "small businesses," may incur some additional costs in submitting these certifications as an exhibit to these reports. While these costs are difficult to quantify, we believe that they would be nominal.

#### E. Duplicative, Overlapping or Conflicting Federal Rules

Presently, Exchange Act Rules 13a-14 and 15d-14 require an issuer to include in the text of its quarterly and annual reports filed or submitted under section 13(a) or 15(d) of the Exchange Act the required certifications of its principal executive and financial officers. While section 906 requires that written statements of an issuer's chief executive and financial officers certifying the contents of a periodic report to which the certifications relate "accompany" the report when it is filed with the Commission, issuers have used a variety of different methods to submit these certifications to the Commission.

#### F. Agency Action to Minimize Effect on Small Entities

The Regulatory Flexibility Act directs us to consider significant alternatives that would accomplish the stated objectives, while minimizing any significant adverse impact on small entities. In that regard, we are considering the following alternatives: (a) Establishing different compliance or reporting requirements that take into account the resources of small entities, (b) clarifying, consolidating or simplifying compliance and reporting requirements under the rules for small entities and (c) exempting small entities from all or part of the proposed rule and form amendments. Both the section 302 and section 906 certifications are required by the Sarbanes-Oxley Act of 2002 and the legislative history does not reflect a Congressional intent to exempt small entities from these requirements. We are not aware of means to further simplify these requirements. After discussions with the Department of Justice, we believe a design standard for how the section 906 certifications are to "accompany" a periodic report is necessary to monitor compliance. We solicit comment as to whether small business issuers should be excluded from the proposed amendments or if other changes are warranted to accommodate the interests of small business issuers.

#### G. Request for Comments

We encourage the submission of comments with respect to any aspect of

the IRFA. In particular, we request comment on the number of small businesses that would be affected by the proposed amendments, the nature of the impact, how to quantify the number of small businesses that would be affected and how to quantify the impact of the proposed rule and form amendments. Commenters are requested to describe the nature of any effect and provide empirical data and other factual support for their views to the extent possible. These comments will be considered in the preparation of the Final Regulatory Flexibility Analysis, if the proposed amendments are adopted, and will be placed in the same public file as comments on the proposed amendments.

#### VIII. Consideration of Impact on the Economy

For purposes of the Small Business Regulatory Enforcement Fairness Act of 1996, or "SBREFA,"<sup>73</sup> we must advise the Office of Management and Budget as to whether the proposed amendments constitute a "major" rule. Under SBREFA, a rule is considered "major" where, if adopted, it results or is likely to result in:

- An annual effect on the economy of \$100 million or more (either in the form of an increase or a decrease);
- A major increase in costs or prices for consumers or individual industries;
- or
- Significant adverse effects on competition, investment or innovation.

We request comment on the potential impact of the proposed amendments on the economy on an annual basis. Commenters are requested to provide empirical data and other factual support for their views to the extent possible.

#### IX. Consideration of Burden on Competition

Section 23(a)(2) of the Exchange Act<sup>74</sup> 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.

The proposed amendments would relocate the certifications required by Exchange Act Rules 13a-14 and 15d-14 from the text of quarterly and annual reports filed or submitted under section 13(a) or 15(d) of the Exchange Act to the

<sup>69</sup> 17 CFR 240.0-10(a). A similar definition is provided under Securities Act Rule 157 [17 CFR 230.157].

<sup>70</sup> This estimate is based on filings with the Commission.

<sup>71</sup> 17 CFR 270.0-10.

<sup>72</sup> This estimate is based on figures compiled by the Commission staff regarding investment companies registered on Forms N-1A, N-2, and N-3, which will be required to file reports on Form N-CSR.

<sup>73</sup> Pub. L. 104-121, Title II, 110 Stat. 857 (1996) (codified in various sections of 5 U.S.C., 15 U.S.C. and as a note to 5 U.S.C. 601).

<sup>74</sup> 15 U.S.C. 78w(a)(2).

“Exhibits” section of these reports. This relocation should enhance the ability of investors and the Commission staff to verify that the certifications have, in fact, been submitted with the Exchange Act reports to which they relate and to review the contents of the certifications to ensure compliance with the applicable requirements. The proposed amendments also would streamline compliance with section 1350 of Title 18 of the United States Code, added by section 906 of the Act, and should enable investors, the Commission staff and the Department of Justice, which has responsibility for enforcing section 1350, to verify submission and efficiently review the form and content of the certifications required by that provision.

We do not believe that the proposed amendments would impose any burden on competition. Depending on how an issuer’s chief executive and financial officers presently satisfy the section 906 certification requirements, issuers may incur some additional costs in submitting these certifications as an exhibit to their periodic reports. While these costs are difficult to quantify, we believe that they would be nominal. We request comment on whether the proposed amendments, if adopted, would promote competition. Commenters are requested to provide empirical data and other factual support for their views to the extent possible.

**X. Promotion of Efficiency, Competition and Capital Formation**

Section 3(f) of the Exchange Act <sup>75</sup> and section 2(c) of the Investment Company Act <sup>76</sup> 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 proposed amendments would relocate the certifications required by Exchange Act

Rules 13a–14 and 15d–14 from the text of quarterly and annual reports filed or submitted under section 13(a) or 15(d) of the Exchange Act to the “Exhibits” section of these reports. This relocation should enhance the ability of investors and the Commission staff to verify that the certifications have, in fact, been submitted with the Exchange Act reports to which they relate and to review the contents of the certifications to ensure compliance with the applicable requirements. The proposed amendments also would streamline compliance with section 1350 of Title 18 of the United States Code, added by section 906 of the Act, and should enable investors, the Commission staff and the Department of Justice, which has responsibility for enforcing section 1350, to verify submission and efficiently review the form and content of the certifications required by that provision.

We do not believe that the proposed amendments would impose any burden on competition. Nor are we aware of any impact on capital formation that would result from the proposed amendments. Depending on how an issuer’s chief executive and financial officers presently satisfy the section 906 certification requirements, issuers may incur some additional costs in submitting these certifications as an exhibit to their periodic reports. While these costs are difficult to quantify, we believe that they would be nominal. We request comment on whether the proposed amendments, if adopted, would affect competition, efficiency and capital formation. Commenters are requested to provide empirical data and other factual support for their views to the extent possible.

**XI. Statutory Authority**

The amendments described in this release are being proposed under the authority set forth in sections 13, 15(d), 23(a) and 36 of the Exchange Act, sections 8, 30 and 38 of the Investment

Company Act and sections 3(a), 302 and 906 of the Sarbanes-Oxley Act of 2002.

**List of Subjects**

*17 CFR Part 228*

Reporting and recordkeeping requirements, Securities, Small businesses.

*17 CFR Parts 229, 240 and 249*

Reporting and recordkeeping requirements, Securities.

*17 CFR Parts 270 and 274*

Investment companies, Reporting and recordkeeping requirements, Securities.

**Text of the Proposed Amendments**

For the reasons set out in the preamble, the Commission proposes to 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 revising the authority citation for “Section 228.601” to read as follows:

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

\* \* \* \* \*

Section 228.601 is also issued under secs. 3(a), 302, 406 and 906, Pub. L. 107–204, 116 Stat. 745.

- 2. By amending § 228.601 by:
  - a. Removing the last sentence of paragraph (a)(1);
  - b. Revising the Exhibit Table;
  - c. Revising paragraph (b)(7) to read “No Exhibit Required.”; and
  - d. Revising paragraphs (b)(27) through (b)(98).

The revisions read as follows.

**§ 228.601 (Item 601) Exhibits.**

\* \* \* \* \*

	Securities Act Forms					Exchange Act Forms			
	SB–2	S–2	S–3	S–4 <sup>3</sup>	S–8	10–SB	8–K	10–QSB	10–KSB
(1) Underwriting agreement .....	X	X	X	X	.....	.....	X	.....	.....
(2) Plan of purchase, sale, reorganization, arrangement, liquidation or succession. ....	X	X	X	X	.....	X	X	X	X
(3) (i) Articles of Incorporation ....	X	.....	.....	X	.....	X	.....	X	X
(ii) By-laws .....	X	.....	.....	X	.....	X	.....	X	X
(4) Instruments defining the rights of security holders, including indentures .....	X	X	X	X	X	X	X	X	X
(5) Opinion re: legality .....	X	X	X	X	X	.....	.....	.....	.....

<sup>75</sup> 15 U.S.C. 78c(f).

<sup>76</sup> 15 U.S.C. 80a–2(c).

	Securities Act Forms					Exchange Act Forms			
	SB-2	S-2	S-3	S-4 <sup>3</sup>	S-8	10-SB	8-K	10-QSB	10-KSB
(6) No exhibit required .....	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
(7) No exhibit required .....	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
(8) Opinion on tax matters .....	X	X	X	X					
(9) Voting trust agreement and amendments .....	X			X		X			X
(10) Material contracts .....	X	X		X		X		X	X
(11) Statement re: computation of per share earnings .....	X	X		X		X		X	X
(12) No exhibit required .....	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
(13) Annual report to security holders for the last fiscal year, Form 10-Q or 10-QSB or quarterly report to security holders <sup>1</sup> .....	X	X		X					X
(14) Code of ethics .....									X
(15) Letter on unaudited interim financial information .....	X	X	X	X	X			X	
(16) Letter on change in certifying accountant <sup>4</sup> .....	X	X		X		X	X		X
(17) Letter on director resignation .....							X		
(18) Letter on change in accounting principles .....								X	X
(19) Reports furnished to security holders .....								X	
(20) Other documents or statements to security holders or any document incorporated by reference .....								X	X
(21) Subsidiaries of the small business issuer .....	X			X		X			X
(22) Published report regarding matters submitted to vote of security holders .....								X	X
(23) Consents of experts and counsel .....	X	X	X	X	X		X <sup>2</sup>	X <sup>2</sup>	X <sup>2</sup>
(24) Power of attorney .....	X	X	X	X	X	X	X	X	X
(25) Statement of eligibility of trustee .....	X	X	X	X					
(26) Invitations for competitive bids .....		X	X	X	X				
(27) through (30) [Reserved] .....									
(31) Rule 13a-14(a)/15d-14(a) Certifications .....								X	X
(32) Section 1350 Certifications ..								X	X
(33) through (98) [Reserved] .....									
(99) Additional Exhibits .....	X	X	X	X	X	X	X	X	X

<sup>1</sup> Only if incorporated by reference into a prospectus and delivered to holders along with the prospectus as permitted by the registration statement; or in the case of a Form 10-KSB, where the annual report is incorporated by reference into the text of the Form 10-KSB.

<sup>2</sup> Where the opinion of the expert or counsel has been incorporated by reference into a previously filed Securities Act registration statement.

<sup>3</sup> An issuer need not provide an exhibit if: (1) an election was made under Form S-4 to provide S-2 or S-3 disclosure; and (2) the form selected (S-2 or S-3) would not require the company to provide the exhibit.

<sup>4</sup> If required under item 304 of Regulation S-B.

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

(27) through (30) [Reserved]

(31) *Rule 13a-14(a)/15d-14(a)*

*Certifications.* The certifications required by Rule 13a-14(a) (17 CFR 240.13a-14(a)) or Rule 15d-14(a) (17 CFR 240.15d-14(a)) exactly as set forth below:

**Certifications \***

I, [identify the certifying individual], certify that:

1. I have reviewed this [specify report] of [identify registrant];

2. Based on my knowledge, this report does not contain any untrue statement

of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;

3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;

4. The registrant's other certifying officers and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15 and 15d-15) for the registrant and have:

(a) Designed such disclosure controls and procedures to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;

(b) Evaluated the effectiveness of the registrant's disclosure controls and

procedures as of a date within 90 days prior to the filing date of this report (the "Evaluation Date"); and

(c) Presented in this report our conclusions about the effectiveness of the disclosure controls and procedures based on our evaluation as of the Evaluation Date;

5. The registrant's other certifying officers and I have disclosed, based on our most recent evaluation, to the registrant's auditors and the audit committee of registrant's board of directors (or persons performing the equivalent functions):

(a) All significant deficiencies in the design or operation of internal controls which could adversely affect the registrant's ability to record, process, summarize and report financial data and have identified for the registrant's auditors any material weaknesses in internal controls; and

(b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal controls; and

6. The registrant's other certifying officers and I have indicated in this report whether there were significant changes in internal controls or in other factors that could significantly affect internal controls subsequent to the date of our most recent evaluation, including any corrective actions with regard to significant deficiencies and material weaknesses.

Date: \_\_\_\_\_

[Signature]  
[Title]

\* Provide a separate certification for each principal executive officer and principal financial officer of the registrant. See Rules 13a-14(a) and 15d-14(a).

(32) Section 1350 Certifications.

(i) The certifications required by Rule 13a-14(b) (17 CFR 240.13a-14(b)) or Rule 15d-14(b) (17 CFR 240.15d-14(b)) and Section 1350 of Chapter 63 of Title 18 of the United States Code (18 U.S.C. 1350).

(ii) A certification furnished pursuant to this item will not be deemed "filed" for purposes of Section 18 of the Exchange Act [15 U.S.C. 78r], or otherwise subject to the liability of that section. Such certification will not be deemed to be incorporated by reference into any filing under the Securities Act or the Exchange Act, except to the extent that the registrant specifically incorporates it by reference.

(33) through (98) [Reserved]

\* \* \* \* \*

**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**

3. The authority citation for part 229 is amended by revising the authority

citation for "Section 229.601" to read as follows:

**Authority:** 15 U.S.C. 77e, 77f, 77g, 77h, 77j, 77k, 77s, 77z-2, 77z-3, 77aa(25), 77aa(26), 77ddd, 77eee, 77ggg, 77hhh, 77iii, 77jjj, 77nnn, 77sss, 78c, 78i, 78j, 78l, 78m, 78n, 78o, 78u-5, 78w, 78ll, 78mm, 79e, 79j, 79n, 79t, 80a-8, 80a-9, 80a-20, 80a-29, 80a-30, 80a-31(c), 80a-37, 80a-38(a), 80a-39 and 80b-11, unless otherwise noted.

\* \* \* \* \*

Section 229.601 is also issued under secs. 3(a), 302, 406 and 906, Pub. L. No. 107-204, 116. Stat. 745.

4. By amending § 229.601 by:

a. Removing the second sentence of paragraph (a)(1);

b. Revising the phrase "Notwithstanding the provisions of paragraphs (b)(27) and (c) of this Item, registered investment companies" at the beginning of the third sentence of paragraph (a)(1) to read "Registered investment companies";

c. Revising the Exhibit Table which follows the Instructions to the Exhibit Table; and

d. Revising paragraphs (b)(27) through (b)(98).

The revisions read as follows.

**§ 229.601 (Item 601) Exhibits.**

(a) Exhibits and index required. \* \* \*

Instructions to the Exhibit Table

\* \* \* \* \*

EXHIBIT TABLE

	Securities act forms										Exchange act forms			
	S-1	S-2	S-3	S-4 <sup>3</sup>	S-8	S-11	F-1	F-2	F-3	F-4 <sup>3</sup>	10	8-K	10-Q	10-K
(1) Underwriting agreement .....	X	X	X	X	.....	X	X	X	X	X	.....	X		
(2) Plan of acquisition, reorganization, arrangement, liquidation or succession .....	X	X	X	X	.....	X	X	X	X	X	X	X	X	X
(3)(i) Articles of incorporation .....	X	.....	.....	X	.....	X	X	.....	.....	X	X	.....	X	X
(ii) By-laws .....	X	.....	.....	X	.....	X	X	.....	.....	X	X	.....	X	X
(4) Instruments defining the rights of security holders, including indentures .....	X	X	X	X	X	X	X	X	X	X	X	X	X	X
(5) Opinion re legality ...	X	X	X	X	X	X	X	X	X	X				
(6) [Reserved] .....	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
(7) [Reserved] .....	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
(8) Opinion re tax matters .....	X	X	X	X	.....	X	X	X	X	X				
(9) Voting trust agreement .....	X	.....	.....	X	.....	X	X	.....	.....	X	X	.....	.....	X
(10) Material contracts	X	X	.....	X	.....	X	X	X	.....	X	X	.....	X	X
(11) Statement re computation of per share earnings .....	X	X	.....	X	.....	X	X	X	.....	X	X	.....	X	X
(12) Statements re computation of ratios	X	X	X	X	.....	X	X	X	.....	X	X	.....	.....	X

EXHIBIT TABLE—Continued

	Securities act forms										Exchange act forms			
	S-1	S-2	S-3	S-4 <sup>3</sup>	S-8	S-11	F-1	F-2	F-3	F-4 <sup>3</sup>	10	8-K	10-Q	10-K
(13) Annual report to security holders, Form 10-Q or 10-QSB, or quarterly report to security holders <sup>1</sup> .....		X		X										X
(14) Code of Ethics .....														X
(15) Letter re unaudited interim financial information .....	X	X	X	X	X	X	X	X	X	X			X	
(16) Letter re change in certifying accountant <sup>4</sup> .....	X	X		X		X					X	X		X
(17) Letter re director resignation .....												X		
(18) Letter re change in accounting principles .....													X	X
(19) Report furnished to security holders .....													X	
(20) Other documents or statements to security holders .....												X		
(21) Subsidiaries of the registrant .....	X			X		X	X			X	X			X
(22) Published report regarding matters submitted to vote of security holders .....													X	X
(23) Consents of experts and counsel .....	X	X	X	X	X	X	X	X	X	X		X <sup>2</sup>	X <sup>2</sup>	X <sup>2</sup>
(24) Power of attorney .....	X	X	X	X	X	X	X	X	X	X	X	X	X	X
(25) Statement of eligibility of trustee .....	X	X	X	X		X	X	X	X	X				
(26) Invitations for competitive bids .....	X	X	X	X			X	X	X	X				
(27) through (30) [Reserved] .....														
(31) Rule 13a-14(a)/15d-14(a) Certifications .....													X	X
(32) Section 1350 Certifications .....													X	X
(33) through (98) [Reserved] .....	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
(99) Additional Exhibits .....	X	X	X	X	X	X	X	X	X	X	X	X	X	X

<sup>1</sup> Where incorporated by reference into the text of the prospectus and delivered to security holders along with the prospectus as permitted by the registration statement; or, in the case of the Form 10-K, where the annual report to security holders is incorporated by reference into the text of the Form 10-K.

<sup>2</sup> Where the opinion of the expert or counsel has been incorporated by reference into a previously filed Securities Act registration statement.

<sup>3</sup> An exhibit need not be provided about a company if: (1) With respect to such company an election has been made under Form S-4 or F-4 to provide information about such company at a level prescribed by Forms S-2, S-3, F-2 or F-3 and (2) the form, the level of which has been elected under Forms S-4 or F-4, would not require such company to provide such exhibit if it were registering a primary offering.

<sup>4</sup> If required pursuant to Item 304 of Regulation S-K.

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

(27) through (30) [Reserved]

(31) Rule 13a-14(a)/15d-14(a)

*Certifications.* The certifications required by Rule 13a-14(a) (17 CFR 240.13a-14(a)) or Rule 15d-14(a) (17 CFR 240.15d-14(a)) exactly as set forth below:

**Certifications\***

I, [identify the certifying individual], certify that:

1. I have reviewed this [specify report] of [identify registrant];

2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;

3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations

and cash flows of the registrant as of, and for, the periods presented in this report;

4. The registrant's other certifying officers and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15 and 15d-15) for the registrant and have:

(a) Designed such disclosure controls and procedures to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within

those entities, particularly during the period in which this report is being prepared;

(b) Evaluated the effectiveness of the registrant's disclosure controls and procedures as of a date within 90 days prior to the filing date of this report (the "Evaluation Date"); and

(c) Presented in this report our conclusions about the effectiveness of the disclosure controls and procedures based on our evaluation as of the Evaluation Date;

5. The registrant's other certifying officers and I have disclosed, based on our most recent evaluation, to the registrant's auditors and the audit committee of registrant's board of directors (or persons performing the equivalent functions):

(a) All significant deficiencies in the design or operation of internal controls which could adversely affect the registrant's ability to record, process, summarize and report financial data and have identified for the registrant's auditors any material weaknesses in internal controls; and

(b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal controls; and

6. The registrant's other certifying officers and I have indicated in this report whether there were significant changes in internal controls or in other factors that could significantly affect internal controls subsequent to the date of our most recent evaluation, including any corrective actions with regard to significant deficiencies and material weaknesses.

Date: \_\_\_\_\_  
[Signature] \_\_\_\_\_  
[Title]

\* Provide a separate certification for each principal executive officer and principal financial officer of the registrant. See Rules 13a-14 and 15d-14.

(32) Section 1350 Certifications.

(i) The certifications required by Rule 13a-14(b) (17 CFR 240.13a-14(b)) or Rule 15d-14(b) (17 CFR 240.15d-14(b)) and Section 1350 of Chapter 63 of Title 18 of the United States Code (18 U.S.C. 1350).

(ii) A certification furnished pursuant to this item will not be deemed "filed" for purposes of Section 18 of the Exchange Act [15 U.S.C. 78r], or otherwise subject to the liability of that section. Such certification will not be deemed to be incorporated by reference into any filing under the Securities Act or the Exchange Act, except to the extent that the registrant specifically incorporates it by reference.

(33) through (98) [Reserved]

\* \* \* \* \*

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

5. The authority citation for Part 240 is amended by revising the authority citations for "Section 240.12b-15," "Section 240.13a-14" and "Section 240.15d-14" to read as follows:

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

\* \* \* \* \*

Section 240.12b-15 is also issued under secs. 3(a), 302 and 906, Pub. L. No. 107-204, 116 Stat. 745.

\* \* \* \* \*

Section 240.13a-14 is also issued under secs. 3(a), 302 and 906, Pub. L. 107-204, 116 Stat. 745.

\* \* \* \* \*

Section 240.15d-14 is also issued under secs. 3(a), 302 and 906, Pub. L. 107-204, 116 Stat. 745.

\* \* \* \* \*

6. By revising § 240.12b-15 to read as follows:

**§ 240.12b-15 Amendments.**

All amendments must be filed under cover of the form amended, marked with the letter "A" to designate the document as an amendment, e.g., "10-K/A," and in compliance with pertinent requirements applicable to statements and reports. Amendments filed pursuant to this section must set forth the complete text of each item as amended. Amendments must be numbered sequentially and be filed separately for each statement or report amended. Amendments to a statement may be filed either before or after registration becomes effective. Amendments must be signed on behalf of the registrant by a duly authorized representative of the registrant. An amendment to any report required to include the certifications as specified in § 240.13a-14(a) or § 240.15d-14(a) must include new certifications by each principal executive officer and principal financial officer of the registrant, and an amendment to any report required to be accompanied by the certifications as specified in § 240.13a-14(b) or § 240.15d-14(b) must be accompanied by new certifications by each chief executive officer and chief financial officer of the registrant. The requirements of the form being amended will govern the number of copies to be

filed in connection with a paper format amendment. Electronic filers satisfy the provisions dictating the number of copies by filing one copy of the amendment in electronic format. See § 232.309 of this chapter (Rule 309 of Regulation S-T).

7. By amending § 240.13a-14 by:

- a. Revising paragraphs (a) and (b);
- b. Removing paragraph (c);
- c. Redesignating paragraphs (d), (e), (f) and (g) as paragraphs (c), (d), (e) and (f); and
- d. Revising newly redesignated paragraph (c), the introductory text of newly redesignated paragraph (d) and newly redesignated paragraph (e).

The revisions read as follows.

**§ 240.13a-14 Certification of disclosure in annual and quarterly reports.**

(a) Each report, including transition reports, filed on Form 10-Q, Form 10-QSB, Form 10-K, Form 10-KSB, Form 20-F or Form 40-F (§§ 249.308a, 249.308b, 249.310, 249.310b, 249.220f or 249.240f of this chapter) under section 13(a) of the Act (15 U.S.C. 78m(a)), other than a report filed by an Asset-Backed Issuer (as defined in paragraph (f) of this section), must include certifications in the form specified in paragraph (b)(31) of Item 601 of Regulation S-B [17 CFR 228.10 through 228.702] or S-K [17 CFR 229.10 through 229.1016] and filed as Exhibit (31) to such report. Each principal executive officer or officers and principal financial officer or officers of the issuer, or persons performing similar functions, at the time of filing of the report must sign a certification.

(b) Each periodic report containing financial statements filed by an issuer pursuant to section 13(a) of the Act (15 U.S.C. 78m(a)) must be accompanied by certifications in the form specified in paragraph(b)(32) of Item 601 of Regulation S-B [17 CFR 228.10 through 228.702] or S-K [17 CFR 229.10 through 229.1016] and furnished as Exhibit (32) to such report. Each chief executive officer and chief financial officer of the issuer (or equivalent thereof) must sign a certification. This requirement may be satisfied by a single certification signed by an issuer's chief executive officer and chief financial officer.

(c) A person required to provide a certification specified in paragraph (a) or (b) of this section may not have the certification signed on his or her behalf pursuant to a power of attorney or other form of confirming authority.

(d) Each annual report filed by an Asset-Backed Issuer (as defined in paragraph (f) of this section) under section 13(a) of the Act (15 U.S.C.

78m(a)) must include a certification addressing the following items: \* \* \*

(e) With respect to Asset-Backed Issuers, the certification required by paragraph (d) of this section must be signed by the trustee of the trust (if the trustee signs the annual report) or the senior officer in charge of securitization of the depositor (if the depositor signs the annual report). Alternatively, the senior officer in charge of the servicing function of the master servicer (or entity performing the equivalent functions) may sign the certification.

\* \* \* \* \*

8. By amending § 240.13a–15 by:

a. Revising paragraph (a); and

b. Adding paragraph (c).

The revisions read as follows.

**§ 240.13a–15 Issuer's disclosure controls and procedures related to preparation of required reports.**

(a) Every issuer that has a class of securities registered pursuant to section 12 of the Act (15 U.S.C. 78j), other than an Asset-Backed Issuer (as defined in § 240.13a–14(f) of this chapter), a small business investment company registered on Form N–5 (§§ 239.24 and 274.5 of this chapter), or a unit investment trust as defined in section 4(2) of the Investment Company Act of 1940 (15 U.S.C. 80a–4(2)), must maintain disclosure controls and procedures (as defined in paragraph (c) of this section).

\* \* \* \* \*

(c) For purposes of this section, the term *disclosure controls and procedures* means controls and other procedures of an issuer that are designed to ensure that information required to be disclosed by the issuer in the reports that it files or submits under the Act (15 U.S.C. 78a *et seq.*) is recorded, processed, summarized and reported, within the time periods specified in the Commission's rules and forms. Disclosure controls and procedures include, without limitation, controls and procedures designed to ensure that information required to be disclosed by an issuer in the reports that it files or submits under the Act is accumulated and communicated to the issuer's management, including its principal executive officer or officers and principal financial officer or officers, or persons performing similar functions, as appropriate to allow timely decisions regarding required disclosure.

9. By amending § 240.15d–14 by:

a. Revising paragraphs (a) and (b);

b. Removing paragraph (c);

c. Redesignating paragraphs (d), (e), (f) and (g) as paragraphs (c), (d), (e) and (f); and

d. Revising newly redesignated paragraph (c), the introductory text of

newly redesignated paragraph (d) and newly redesignated paragraph (e).

The revisions read as follows.

**§ 240.15d–14 Certification of disclosure in annual and quarterly reports.**

(a) Each report, including transition reports, filed on Form 10–Q, Form 10–QSB, Form 10–K, Form 10–KSB, Form 20–F or Form 40–F (§§ 249.308a, 249.308b, 249.310, 249.310b, 249.220f or 249.240f of this chapter) under section 15(d) of the Act (15 U.S.C. 78o(d)), other than a report filed by an Asset-Backed Issuer (as defined in paragraph (f) of this section), must include certifications in the form specified in paragraph (b)(31) of Item 601 of Regulation S–B [17 CFR 228.10 through 228.702] or S–K [17 CFR 229.10 through 229.1016] and filed as Exhibit (31) to such report. Each principal executive officer or officers and principal financial officer or officers of the issuer, or persons performing similar functions, at the time of filing of the report must sign a certification.

(b) Each periodic report containing financial statements filed by an issuer pursuant to section 15(d) of the Act (15 U.S.C. 78o(d)) must be accompanied by certifications in the form specified in paragraph (b)(32) of Item 601 of Regulation S–B [17 CFR 228.10 through 228.702] or S–K [17 CFR 229.10 through 229.1016] and furnished as Exhibit (32) to such report. Each chief executive officer and chief financial officer of the issuer (or equivalent thereof) must sign a certification. This requirement may be satisfied by a single certification signed by an issuer's chief executive officer and chief financial officer.

(c) A person required to provide a certification specified in paragraph (a) or (b) of this section may not have the certification signed on his or her behalf pursuant to a power of attorney or other form of confirming authority.

(d) Each annual report filed by an Asset-Backed Issuer (as defined in paragraph (f) of this section) under section 13(a) of the Act (15 U.S.C. 78m(a)) must include a certification addressing the following items: \* \* \*

(e) With respect to Asset-Backed Issuers, the certification required by paragraph (d) of this section must be signed by the trustee of the trust (if the trustee signs the annual report) or the senior officer in charge of securitization of the depositor (if the depositor signs the annual report). Alternatively, the senior officer in charge of the servicing function of the master servicer (or entity performing the equivalent functions) may sign the certification.

\* \* \* \* \*

10. By amending § 240.15d–15 by:

a. Revising paragraph (a); and

b. Adding paragraph (c).

The revisions read as follows.

**§ 240.15d–15 Issuer's disclosure controls and procedures related to preparation of required reports.**

(a) Every issuer that has a class of securities registered pursuant to section 12 of the Act (15 U.S.C. 78j), other than an Asset-Backed Issuer (as defined in § 240.15d–14(f) of this chapter), a small business investment company registered on Form N–5 (§§ 239.24 and 274.5 of this chapter), or a unit investment trust as defined in section 4(2) of the Investment Company Act of 1940 (15 U.S.C. 80a–4(2)), must maintain disclosure controls and procedures (as defined in paragraph (c) of this section).

\* \* \* \* \*

(c) For purposes of this section, the term *disclosure controls and procedures* means controls and other procedures of an issuer that are designed to ensure that information required to be disclosed by the issuer in the reports that it files or submits under the Act (15 U.S.C. 78a *et seq.*) is recorded, processed, summarized and reported, within the time periods specified in the Commission's rules and forms. Disclosure controls and procedures include, without limitation, controls and procedures designed to ensure that information required to be disclosed by an issuer in the reports that it files or submits under the Act is accumulated and communicated to the issuer's management, including its principal executive officer or officers and principal financial officer or officers, or persons performing similar functions, as appropriate to allow timely decisions regarding required disclosure.

**PART 249—FORMS, SECURITIES EXCHANGE ACT OF 1934**

11. The authority citation for Part 249 is amended by revising the authority citations for “Section 249.220f,” “Section 249.240f” and “Section 249.331” 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, 404, 407 and 906, Pub. L. 107–204, 116 Stat. 745.

Section 249.240f is also issued under secs. 3(a), 302, 404, 407 and 906, Pub. L. 107–204, 116 Stat. 745.

Section 249.331 is also issued under secs. 3(a), 202, 208, 302, 406, 407 and 906, Pub. L. 107–204, 116 Stat. 745

12. By amending Form 10–Q (referenced in § 249.308a) by removing the last sentence of General Instruction

G and by removing the "Certifications" section after the "Signatures" section.

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

13. By amending Form 10-QSB (referenced in § 249.308b) by removing the last sentence of paragraph 2 of General Instruction F and by removing the "Certifications" section after the "Signatures" section.

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

14. By amending Form 10-K (referenced in § 249.310) by removing the phrase "(who also must provide the certification required by Rule 13a-14 (17 CFR 240.13a-14) or Rule 15d-14 (17 CFR 240.15d-14) exactly as specified in this form)" wherever it appears in the first sentence of paragraph (2)(a) of General Instruction D. and by removing the "Certifications" section after the "Signatures" section and before the reference to "Supplemental Information to be Furnished With Reports Filed Pursuant to Section 15(d) of the Act by Registrants Which Have Not Registered Securities Pursuant to Section 12 of the Act."

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

15. By amending Form 10-KSB (referenced in § 249.310b) by removing the phrase "(who also must provide the certification required by Rule 13a-14 (17 CFR 240.13a-14) or Rule 15d-14 (17 CFR 240.15d-14) exactly as specified in this form)" wherever it appears in the first sentence of paragraph 2 of General Instruction C. and by removing the "Certifications" section after the "Signatures" section and before the reference to "Supplemental Information to be Furnished With Reports Filed Pursuant to Section 15(d) of the Exchange Act By Non-reporting Issuers."

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

16. By amending Form 20-F (referenced in § 249.220f) by:  
a. Revising paragraph (e) to General Instruction B;

b. Removing the "Certifications" section after the "Signatures" section and before the section referencing "Instructions as to Exhibits"; and

c. In the "Instruction as to Exhibits" section, redesignate paragraph 12 as paragraph 14 and add new paragraph 12 and paragraph 13.

The revisions and additions 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  
\* \* \* \* \*  
General Instructions  
\* \* \* \* \*

*B. General Rules and Regulations That Apply to this Form.*

\* \* \* \* \*

(e) Where the Form is being used as an annual report filed under Section 13(a) or 15(d) of the Exchange Act, provide the certifications required by Rule 13a-14 (17 CFR 240.13a-14) or Rule 15d-14 (17 CFR 240.15d-14).

\* \* \* \* \*  
Instructions as to Exhibits  
\* \* \* \* \*

12. The certifications required by Rule 13a-14(a) (17 CFR 240.13a-14(a)) or Rule 15d-14(a) (17 CFR 240.15d-14(a)) exactly as set forth below:

**Certifications\***

I, [identify the certifying individual], certify that:

1. I have reviewed this annual report on Form 20-F of [identify registrant];

2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;

3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;

4. The registrant's other certifying officers and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15 and 15d-15) for the registrant and have:

(a) Designed such disclosure controls and procedures to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;

(b) Evaluated the effectiveness of the registrant's disclosure controls and procedures as of a date within 90 days prior to the filing date of this report (the "Evaluation Date"); and

(c) Presented in this report our conclusions about the effectiveness of the disclosure controls and procedures based on our evaluation as of the Evaluation Date;

5. The registrant's other certifying officers and I have disclosed, based on our most recent evaluation, to the registrant's auditors and the audit committee of registrant's board of directors (or persons performing the equivalent functions):

(a) All significant deficiencies in the design or operation of internal controls which could adversely affect the registrant's ability to record, process, summarize and report financial data and have identified for the registrant's auditors any material weaknesses in internal controls; and

(b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal controls; and

6. The registrant's other certifying officers and I have indicated in this report whether there were significant changes in internal controls or in other factors that could significantly affect internal controls subsequent to the date of our most recent evaluation, including any corrective actions with regard to significant deficiencies and material weaknesses.

Date: \_\_\_\_\_

\_\_\_\_\_  
[Signature]  
[Title]

\*Provide a separate certification for each principal executive officer and principal financial officer of the registrant. See Rules 13a-14 and 15d-14.

13. (a) The certifications required by Rule 13a-14(b) (17 CFR 240.13a-14(b)) or Rule 15d-14(b) (17 CFR 240.15d-14(b)) and Section 1350 of Chapter 63 of Title 18 of the United States Code (18 U.S.C. 1350).

(b) A certification furnished pursuant to this item will not be deemed "filed" for purposes of Section 18 of the Exchange Act [15 U.S.C. 78r], or otherwise subject to the liability of that section. Such certification will not be deemed to be incorporated by reference into any filing under the Securities Act or the Exchange Act, except to the extent that the registrant specifically incorporates it by reference.

\* \* \* \* \*

17. By amending Form 40-F (referenced in § 249.240f) by:

a. Revising paragraph (6) to General Instruction B; and

b. Removing the "Certifications" section after the "Signatures" section. The revisions 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

\* \* \* \* \*

General Instructions

\* \* \* \* \*

*B. Information To Be Filed on This Form*

\* \* \* \* \*

(6) Where the Form is being used as an annual report filed under Section 13(a) or 15(d) of the Exchange Act:

(a)(1) Provide the certifications required by Rule 13a-14(a) (17 CFR 240.13a-14(a)) or Rule 15d-14(a) (17 CFR 240.15d-14(a)) as an exhibit to this report exactly as set forth below.

**Certifications\***

I, [identify the certifying individual], certify that:

1. I have reviewed this annual report on Form 40-F of [identify registrant];

2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;

3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;

4. The registrant's other certifying officers and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15 and 15d-15) for the registrant and have:

(a) Designed such disclosure controls and procedures to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;

(b) Evaluated the effectiveness of the registrant's disclosure controls and procedures as of a date within 90 days prior to the filing date of this report (the "Evaluation Date"); and

(c) Presented in this report our conclusions about the effectiveness of the disclosure controls and procedures based on our evaluation as of the Evaluation Date;

5. The registrant's other certifying officers and I have disclosed, based on our most recent evaluation, to the

registrant's auditors and the audit committee of registrant's board of directors (or persons performing the equivalent functions):

(a) All significant deficiencies in the design or operation of internal controls which could adversely affect the registrant's ability to record, process, summarize and report financial data and have identified for the registrant's auditors any material weaknesses in internal controls; and

(b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal controls; and

6. The registrant's other certifying officers and I have indicated in this report whether there were significant changes in internal controls or in other factors that could significantly affect internal controls subsequent to the date of our most recent evaluation, including any corrective actions with regard to significant deficiencies and material weaknesses.

Date: \_\_\_\_\_

[Signature]

[Title]

\* Provide a separate certification for each principal executive officer and principal financial officer of the registrant. See Rules 13a-14(a) and 15d-14(a).

(2)(i) Provide the certifications required by Rule 13a-14(b) (17 CFR 240.13a-14(b)) or Rule 15d-14(b) (17 CFR 240.15d-14(b)) and Section 1350 of Chapter 63 of Title 18 of the United States Code (18 U.S.C. 1350).

(ii) A certification furnished pursuant to this item will not be deemed "filed" for purposes of Section 18 of the Exchange Act [15 U.S.C. 78r], or otherwise subject to the liability of that section. Such certification will not be deemed to be incorporated by reference into any filing under the Securities Act or the Exchange Act, except to the extent that the registrant specifically incorporates it by reference.

\* \* \* \* \*

**PART 270—RULES AND REGULATIONS, INVESTMENT COMPANY ACT OF 1940**

18. The authority citation for Part 270 is amended by revising the authority citation for "Section 270.30a-2" to read as follows:

**Authority:** 15 U.S.C. 80a-1 *et seq.*, 80a-34(d), 80a-37, and 80a-39, unless otherwise noted.

\* \* \* \* \*

Section 270.30a-2 is also issued under 15 U.S.C. 78m, 78o(d), 80a-8, and 80a-29, and

secs. 3(a), 302, and 906, Pub. L. 107-204, 116 Stat. 745.

\* \* \* \* \*

19. By revising the last sentence of § 270.8b-15 to read as follows:

**§ 270.8b-15 Amendments.**

\* \* \* An amendment to any report required to include the certifications as specified in § 270.30a-2(a) must include new certifications by each principal executive officer and principal financial officer of the registrant, and an amendment to any report required to be accompanied by the certifications as specified in § 270.30a-2(b) must be accompanied by new certifications by each chief executive officer and chief financial officer of the registrant.

20. Section 270.30a-2 is revised to read as follows:

**§ 270.30a-2 Certification of Form N-CSR.**

(a) Each report filed on Form N-CSR (§§ 249.331 and 274.128 of this chapter) by a registered management investment company must include certifications in the form specified in Item 10(a)(2) of Form N-CSR and filed as an exhibit to such report. Each principal executive officer or officers and principal financial officer or officers of the investment company, or persons performing similar functions, at the time of filing of the report must sign a certification.

(b) Each report on Form N-CSR filed by a registered management investment company under Section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(a); 15 U.S.C. 78o(d)) and that contains financial statements must be accompanied by certifications in the form specified in Item 10(b) of Form N-CSR and furnished as an exhibit to such report. Each chief executive officer and chief financial officer of the investment company (or equivalent thereof) must sign a certification. This requirement may be satisfied by a single certification signed by an investment company's chief executive officer and chief financial officer.

(c) A person required to provide a certification specified in paragraph (a) or (b) of this section may not have the certification signed on his or her behalf pursuant to a power of attorney or other form of confirming authority.

21. By amending § 270.30a-3 by:

- a. Revising paragraph (a); and
- b. Adding paragraph (c).

The revisions and additions read as follows.

**§ 270.30a-3 Disclosure controls and procedures related to preparation of required filings.**

(a) Every registered management investment company, other than a small

business investment company registered on Form N-5 (§§ 239.24 and 274.5 of this chapter), must maintain disclosure controls and procedures (as defined in paragraph (c) of this section).

\* \* \* \* \*

(c) For purposes of this section, the term *disclosure controls and procedures* means controls and other procedures of a registered management investment company that are designed to ensure that information required to be disclosed by the investment company on Form N-CSR (§§ 249.331 and 274.128 of this chapter) is recorded, processed, summarized, and reported within the time periods specified in the Commission's rules and forms. Disclosure controls and procedures include, without limitation, controls and procedures designed to ensure that information required to be disclosed by an investment company in the reports that it files or submits on Form N-CSR is accumulated and communicated to the investment company's management, including its principal executive officer or officers and principal financial officer or officers, or persons performing similar functions, as appropriate to allow timely decisions regarding required disclosure.

**PART 249—FORMS, SECURITIES EXCHANGE ACT OF 1934**

**PART 274—FORMS PRESCRIBED UNDER THE INVESTMENT COMPANY ACT OF 1940**

22. The authority citation for Part 274 is amended by revising the authority citation for "Section 274.128" to read as follows:

**Authority:** 15 U.S.C. 77f, 77g, 77h, 77j, 77s, 78c(b), 78l, 78m, 78n, 78o(d), 80a-8, 80a-24, 80a-26, and 80a-29, unless otherwise noted.

\* \* \* \* \*

Section 274.128 is also issued under secs. 3(a), 202, 208, 302, 406, 407, and 906, Pub. L. No. 107-204, 116 Stat. 745.

23. Form N-CSR (referenced in §§ 249.331 and 274.128) is amended by:

a. In General Instruction D, revising the reference "Item 10(a)" to read "Item 10(a)(1)";

b. Revising paragraph 2.(a) of General Instruction F;

c. In paragraph (c) of Item 2, revising the reference "Item 10(a)" to read "Item 10(a)(1)";

d. In paragraph (f)(1) of Item 2, revising the reference "Item 10(a)" to read "Item 10(a)(1)";

e. In paragraph (a) of Item 9, revising the reference "Rule 30a-2(c) under the Act (17 CFR 270.30a-2(c))" to read "Rule 30a-3(c) under the Act (17 CFR 270.30a-3(c))";

f. In Item 10:

(i) The introductory text, paragraphs (a) and (b) are redesignated as paragraphs (a), (a)(1) and (a)(2), respectively;

(ii) Revising newly redesignated paragraph (a) and the introductory text of newly redesignated paragraph (a)(2); and

(iii) Adding new paragraph (b) and an Instruction to Item 10; and

g. In paragraph 4 of the "Certifications" section in newly redesignated paragraph (a)(2) of Item 10, revising the reference "Rule 30a-2(c) under the Investment Company Act of 1940" to read "Rule 30a-3(c) under the Investment Company Act of 1940".

The revisions and additions read as follows.

**Note:** The text of Form N-CSR does not, and these amendments will not, appear in the Code of Federal Regulations.

Form N-CSR

\* \* \* \* \*

General Instructions

\* \* \* \* \*

*F. Signature and Filing of Report.*

\* \* \* \* \*

2.(a) The report must be signed by the registrant, and on behalf of the registrant

by its principal executive officer or officers and its principal financial officer or officers.

\* \* \* \* \*

Item 10. Exhibits

(a) File the exhibits listed below as part of this Form.

\* \* \* \* \*

(a)(2) A separate certification for each principal executive officer and principal financial officer of the registrant as required by rule 30a-2(a) under the Act (17 CFR 270.30a-2(a)), exactly as set forth below:

\* \* \* \* \*

(b) If the report is filed under Section 13(a) or 15(d) of the Exchange Act, provide the certifications required by rule 30a-2(b) under the Act (17 CFR 270.30a-2(b)) and Section 1350 of Chapter 63 of Title 18 of the United States Code (18 U.S.C. 1350) as an exhibit. A certification furnished pursuant to this paragraph will not be deemed "filed" for purposes of Section 18 of the Exchange Act (15 U.S.C. 78r), or otherwise subject to the liability of that section. Such certification will not be deemed to be incorporated by reference into any filing under the Securities Act of 1933 or the Exchange Act, except to the extent that the registrant specifically incorporates it by reference.

*Instruction to Item 10*

Letter or number the exhibits in the sequence that they appear in this item.

\* \* \* \* \*

By the Commission.

Dated: March 21, 2003.

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 03-7310 Filed 3-28-03; 8:45 am]

**BILLING CODE 8010-01-P**