

## SUBCHAPTER IV—ENHANCED FINANCIAL DISCLOSURES

**§ 7261. Disclosures in periodic reports****(a) Omitted****(b) Commission rules on pro forma figures**

Not later than 180 days after July 30, 2002, the Commission shall issue final rules providing that pro forma financial information included in any periodic or other report filed with the Commission pursuant to the securities laws, or in any public disclosure or press or other release, shall be presented in a manner that—

(1) does not contain an untrue statement of a material fact or omit to state a material fact necessary in order to make the pro forma financial information, in light of the circumstances under which it is presented, not misleading; and

(2) reconciles it with the financial condition and results of operations of the issuer under generally accepted accounting principles.

**(c) Study and report on special purpose entities****(1) Study required**

The Commission shall, not later than 1 year after the effective date of adoption of off-balance sheet disclosure rules required by section 78m(j) of this title, complete a study of filings by issuers and their disclosures to determine—

(A) the extent of off-balance sheet transactions, including assets, liabilities, leases, losses, and the use of special purpose entities; and

(B) whether generally accepted accounting rules result in financial statements of issuers reflecting the economics of such off-balance sheet transactions to investors in a transparent fashion.

**(2) Report and recommendations**

Not later than 6 months after the date of completion of the study required by paragraph (1), the Commission shall submit a report to the President, the Committee on Banking, Housing, and Urban Affairs of the Senate, and the Committee on Financial Services of the House of Representatives, setting forth—

(A) the amount or an estimate of the amount of off-balance sheet transactions, including assets, liabilities, leases, and losses of, and the use of special purpose entities by, issuers filing periodic reports pursuant to section 78m or 78o of this title;

(B) the extent to which special purpose entities are used to facilitate off-balance sheet transactions;

(C) whether generally accepted accounting principles or the rules of the Commission result in financial statements of issuers reflecting the economics of such transactions to investors in a transparent fashion;

(D) whether generally accepted accounting principles specifically result in the consolidation of special purpose entities sponsored by an issuer in cases in which the issuer has the majority of the risks and rewards of the special purpose entity; and

(E) any recommendations of the Commission for improving the transparency and

quality of reporting off-balance sheet transactions in the financial statements and disclosures required to be filed by an issuer with the Commission.

(Pub. L. 107-204, title IV, § 401, July 30, 2002, 116 Stat. 785.)

**Editorial Notes****CODIFICATION**

Section is comprised of section 401 of Pub. L. 107-204. Subsec. (a) of section 401 of Pub. L. 107-204 amended section 78m of this title.

**§ 7262. Management assessment of internal controls****(a) Rules required**

The Commission shall prescribe rules requiring each annual report required by section 78m(a) or 78o(d) of this title to contain an internal control report, which shall—

(1) state the responsibility of management for establishing and maintaining an adequate internal control structure and procedures for financial reporting; and

(2) contain an assessment, as of the end of the most recent fiscal year of the issuer, of the effectiveness of the internal control structure and procedures of the issuer for financial reporting.

**(b) Internal control evaluation and reporting**

With respect to the internal control assessment required by subsection (a), each registered public accounting firm that prepares or issues the audit report for the issuer, other than an issuer that is an emerging growth company (as defined in section 78c of this title), shall attest to, and report on, the assessment made by the management of the issuer. An attestation made under this subsection shall be made in accordance with standards for attestation engagements issued or adopted by the Board. Any such attestation shall not be the subject of a separate engagement.

**(c) Exemption for smaller issuers**

Subsection (b) shall not apply with respect to any audit report prepared for an issuer that is neither a “large accelerated filer” nor an “accelerated filer” as those terms are defined in Rule 12b-2 of the Commission (17 C.F.R. 240.12b-2).

(Pub. L. 107-204, title IV, § 404, July 30, 2002, 116 Stat. 789; Pub. L. 111-203, title IX, § 989G(a), July 21, 2010, 124 Stat. 1948; Pub. L. 112-106, title I, § 103, Apr. 5, 2012, 126 Stat. 310.)

**Editorial Notes****AMENDMENTS**

2012—Subsec. (b). Pub. L. 112-106 inserted “, other than an issuer that is an emerging growth company (as defined in section 78c of this title),” before “shall attest to”.

2010—Subsec. (c). Pub. L. 111-203 added subsec. (c).

**Statutory Notes and Related Subsidiaries****EFFECTIVE DATE OF 2010 AMENDMENT**

Amendment by Pub. L. 111-203 effective 1 day after July 21, 2010, except as otherwise provided, see section

4 of Pub. L. 111-203, set out as an Effective Date note under section 5301 of Title 12, Banks and Banking.

### § 7263. Exemption

Nothing in section 401, 402, or 404, the amendments made by those sections, or the rules of the Commission under those sections shall apply to any investment company registered under section 80a-8 of this title.

(Pub. L. 107-204, title IV, § 405, July 30, 2002, 116 Stat. 789.)

#### Editorial Notes

##### REFERENCES IN TEXT

Sections 401, 402, and 404, referred to in text, mean sections 401, 402, and 404 of Pub. L. 107-204. Section 401 enacted section 7261 of this title and amended section 78m of this title. Section 402 amended section 78m of this title. Section 404 enacted section 7262 of this title.

### § 7264. Code of ethics for senior financial officers

#### (a) Code of ethics disclosure

The Commission shall issue rules to require each issuer, together with periodic reports required pursuant to section 78m(a) or 78o(d) of this title, to disclose whether or not, and if not, the reason therefor, such issuer has adopted a code of ethics for senior financial officers, applicable to its principal financial officer and comptroller or principal accounting officer, or persons performing similar functions.

#### (b) Changes in codes of ethics

The Commission shall revise its regulations concerning matters requiring prompt disclosure on Form 8-K (or any successor thereto) to require the immediate disclosure, by means of the filing of such form, dissemination by the Internet or by other electronic means, by any issuer of any change in or waiver of the code of ethics for senior financial officers.

#### (c) Definition

In this section, the term "code of ethics" means such standards as are reasonably necessary to promote—

- (1) honest and ethical conduct, including the ethical handling of actual or apparent conflicts of interest between personal and professional relationships;
- (2) full, fair, accurate, timely, and understandable disclosure in the periodic reports required to be filed by the issuer; and
- (3) compliance with applicable governmental rules and regulations.

#### (d) Deadline for rulemaking

The Commission shall—

- (1) propose rules to implement this section, not later than 90 days after July 30, 2002; and
- (2) issue final rules to implement this section, not later than 180 days after July 30, 2002.

(Pub. L. 107-204, title IV, § 406, July 30, 2002, 116 Stat. 789.)

### § 7265. Disclosure of audit committee financial expert

#### (a) Rules defining "financial expert"

The Commission shall issue rules, as necessary or appropriate in the public interest and con-

sistent with the protection of investors, to require each issuer, together with periodic reports required pursuant to sections 78m(a) and 78o(d) of this title, to disclose whether or not, and if not, the reasons therefor, the audit committee of that issuer is comprised of at least 1 member who is a financial expert, as such term is defined by the Commission.

#### (b) Considerations

In defining the term "financial expert" for purposes of subsection (a), the Commission shall consider whether a person has, through education and experience as a public accountant or auditor or a principal financial officer, comptroller, or principal accounting officer of an issuer, or from a position involving the performance of similar functions—

- (1) an understanding of generally accepted accounting principles and financial statements;
- (2) experience in—
  - (A) the preparation or auditing of financial statements of generally comparable issuers; and
  - (B) the application of such principles in connection with the accounting for estimates, accruals, and reserves;
- (3) experience with internal accounting controls; and
- (4) an understanding of audit committee functions.

#### (c) Deadline for rulemaking

The Commission shall—

- (1) propose rules to implement this section, not later than 90 days after July 30, 2002; and
- (2) issue final rules to implement this section, not later than 180 days after July 30, 2002.

(Pub. L. 107-204, title IV, § 407, July 30, 2002, 116 Stat. 790.)

### § 7266. Enhanced review of periodic disclosures by issuers

#### (a) Regular and systematic review

The Commission shall review disclosures made by issuers reporting under section 78m(a) of this title (including reports filed on Form 10-K), and which have a class of securities listed on a national securities exchange or traded on an automated quotation facility of a national securities association, on a regular and systematic basis for the protection of investors. Such review shall include a review of an issuer's financial statement.

#### (b) Review criteria

For purposes of scheduling the reviews required by subsection (a), the Commission shall consider, among other factors—

- (1) issuers that have issued material restatements of financial results;
- (2) issuers that experience significant volatility in their stock price as compared to other issuers;
- (3) issuers with the largest market capitalization;
- (4) emerging companies with disparities in price to earning ratios;
- (5) issuers whose operations significantly affect any material sector of the economy; and