

SECURITIES AND EXCHANGE COMMISSION

17 CFR PARTS 210, 229 and 249

[RELEASE NOS. 33-9142; 34-62914]

INTERNAL CONTROL OVER FINANCIAL REPORTING IN EXCHANGE ACT PERIODIC REPORTS OF NON-ACCELERATED FILERS

AGENCY: Securities and Exchange Commission.

ACTION: Final rule.

SUMMARY: The Securities and Exchange Commission (“Commission”) is adopting amendments to its rules and forms to conform them to Section 404(c) of the Sarbanes-Oxley Act of 2002 (the “Sarbanes-Oxley Act”), as added by Section 989G of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the “Dodd-Frank Act”). Section 404(c) provides that Section 404(b) of the Sarbanes-Oxley Act shall not apply with respect to any audit report prepared for an issuer that is neither an accelerated filer nor a large accelerated filer as defined in Rule 12b-2 under the Securities Exchange Act of 1934 (the “Exchange Act”).

EFFECTIVE DATE: September 21, 2010

FOR FURTHER INFORMATION CONTACT: Steven G. Hearne, Special Counsel, Office of Rulemaking, Division of Corporation Finance, at (202) 551-3430, Steven Jacobs, Associate Chief Accountant, Division of Corporation Finance, at (202) 551-3400, or John Offenbacher, Senior Associate Chief Accountant, or Annemarie Ettinger, Senior Special Counsel, Office of the Chief Accountant, at (202) 551-5300, U.S. Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549.

SUPPLEMENTARY INFORMATION: We are adopting conforming amendments to Rule 2-02¹ of

¹ 17 CFR 210.2-02.

Regulation S-X,² Item 308³ of Regulation S-K,⁴ Item 15 of Form 20-F,⁵ and General Instruction B.(6) of Form 40-F.⁶

I. DESCRIPTION OF AMENDMENTS

The Commission is adopting amendments to its rules and forms to conform them to new Section 404(c) of the Sarbanes-Oxley Act,⁷ as added by Section 989G of the Dodd-Frank Act.⁸ Section 404(c) provides that Section 404(b) of the Sarbanes-Oxley Act shall not apply with respect to any audit report prepared for an issuer that is neither an accelerated filer nor a large accelerated filer as defined in Rule 12b-2⁹ under the Exchange Act.¹⁰ Prior to enactment of the Dodd-Frank Act, a non-accelerated filer¹¹ would have been required, under existing Commission rules, to include an attestation report of its registered public accounting firm on internal control over financial reporting in

² 17 CFR Part 210.

³ 17 CFR 229.308.

⁴ 17 CFR Part 229.

⁵ 17 CFR 249.220f.

⁶ 17 CFR 249.240f.

⁷ 15 U.S.C. 7201 et seq.

⁸ Pub. L. No. 111-203 (July 21, 2010).

⁹ 17 CFR 240.12b-2.

¹⁰ 15 U.S.C. 78a et seq.

¹¹ Although the term “non-accelerated filer” is not defined in Commission rules, we use it throughout this release to refer to a reporting company that does not meet the definition of either an “accelerated filer” or a “large accelerated filer” under Exchange Act Rule 12b-2. Under Exchange Act Rule 12b-2, an accelerated filer is an issuer that “had an aggregate worldwide market value of the voting and non-voting common equity held by its non-affiliates of \$75 million or more, but less than \$700 million, as of the last business day of the issuer’s most recently completed second fiscal quarter” and a large accelerated filer is an issuer that “had an aggregate worldwide market value of the voting and non-voting common equity held by its non-affiliates of \$700 million or more, as of the last business day of the issuer’s most recently completed second fiscal quarter”. In addition, for both definitions, the issuer needs to have been subject to reporting requirements for at least twelve calendar months, have filed at least one annual report, and not be eligible to use the requirements for smaller reporting companies for its annual and quarterly reports.

the filer's annual report filed with the Commission for fiscal years ending on or after June 15, 2010.¹²

To conform the Commission's rules to Section 404(c) of the Sarbanes-Oxley Act, these amendments remove the requirement for a non-accelerated filer to include in its annual report an attestation report of the filer's registered public accounting firm.¹³ We are also adopting a conforming change to our rules concerning management's disclosure in the annual report regarding inclusion of an attestation report to provide that the disclosure only applies if an attestation report is included.¹⁴ Lastly, we are making a conforming change to Rule 2-02(f) of Regulation S-X to clarify that an auditor of a non-accelerated filer need not include in its audit report an assessment of the issuer's internal control over financial reporting.

All issuers, including non-accelerated filers, continue to be subject to the requirements of Section 404(a) of the Sarbanes-Oxley Act. Section 404(a) and its implementing rules require that an issuer's annual report include a report of management on the issuer's internal control over financial reporting.¹⁵

¹² See Release No. 33-9072 (Oct. 13, 2009) [74 FR 53628]. Consistent with Sections 404(a) and 404(b) of the Sarbanes-Oxley Act, on June 5, 2003, the Commission adopted initial amendments to its rules and forms requiring companies, other than registered investment companies, to include in their annual reports filed with the Commission a report of management and an accompanying auditor's attestation report on the effectiveness of the company's internal control over financial reporting. See Release No. 33-8238 (June 5, 2003) [68 FR 36636]. Subsequent to the adoption of those rules, the Commission postponed the Section 404(b) auditor attestation requirement for non-accelerated filers, such that the auditor's attestation report for these filers would have first been required for annual reports filed with the Commission for fiscal years ending on or after June 15, 2010. The amendments in this Release will not affect the transition rules applicable for non-accelerated filers with fiscal years ending prior to June 15, 2010.

¹³ An issuer that is an accelerated filer or a large accelerated filer continues to be subject to the requirements of Section 404(b) of the Sarbanes-Oxley Act.

¹⁴ See new Item 308(a)(4) of Regulation S-K.

¹⁵ See 17 CFR 229.308(a). For further guidance on management's report, see Commission Guidance Regarding Management's Report on Internal Control Over Financial Reporting Under Section 13(a) or 15(d) of the Securities Exchange Act of 1934, Release No. 33-8810 (June 20, 2007) [72 FR 35324]. All such reports for non-accelerated filers for fiscal years ending on or after June 15, 2010 will be considered "filed" under the Exchange Act. Although there are many different ways to conduct an evaluation of the effectiveness of internal control over financial reporting, an evaluation that is conducted in accordance with this interpretive guidance is one way to satisfy the requirements for the evaluation.

II. PROCEDURAL AND OTHER MATTERS

Under the Administrative Procedure Act, a notice of proposed rulemaking is not required when the agency, for good cause, finds that notice and public comment are impracticable, unnecessary, or contrary to the public interest.¹⁶ These amendments merely conform certain rules and forms to a newly enacted statute, Section 404(c) of the Sarbanes-Oxley Act, as amended by the Dodd-Frank Act, so the Commission finds that it is unnecessary to publish notice of these amendments.¹⁷ These amendments revise the Commission's rules and forms to make them consistent with the internal control reporting requirements for non-accelerated filers in the Sarbanes-Oxley Act, as amended by the Dodd-Frank Act, and should therefore minimize potential confusion of issuers and investors.

The Administrative Procedure Act also requires publication of a rule at least 30 days before its effective date unless the agency finds otherwise for good cause.¹⁸ The Commission finds there is good cause for the amendments to take effect on September 21, 2010 because the Commission's current applicable rules and forms do not conform to Section 404(c) of the Sarbanes-Oxley Act.

The Commission is taking this action to implement the Dodd-Frank Act. Thus, any costs and benefits to the economy resulting from these amendments are mandated by the Dodd-Frank Act. Section 23(a)(2) of the Exchange Act requires the Commission, in adopting rules under the Exchange Act, to consider the competitive effects of such rules, if any, and to refrain from adopting a rule that would impose a burden on competition not necessary or appropriate in furtherance of the purposes of

¹⁶ 5 U.S.C. 553(b).

¹⁷ This finding also satisfies the requirements of 5 U.S.C. 808(2), allowing the rule amendment to become effective notwithstanding the requirement of 5 U.S.C. 801 (if a federal agency finds that notice and public comment are "impractical, unnecessary or contrary to the public interest," a rule "shall take effect at such time as the federal agency promulgating the rule determines"). For similar reasons, the amendments do not require analysis under the Regulatory Flexibility Act. See 5 U.S.C. 601(2) (for purposes of Regulatory Flexibility Act analysis, the term "rule" means "any rule for which the agency publishes a general notice of proposed rulemaking").

¹⁸ See 5 U.S.C. 553(d)(3).

the Exchange Act.¹⁹ Section 3(f) of the Exchange Act requires the Commission, whenever it engages in rulemaking and must consider or determine if an action is necessary or appropriate in the public interest, to consider if the action will promote efficiency, competition, and capital formation.²⁰ We do not anticipate any competitive or capital formation effects from these amendments as they merely conform certain rules and forms to new Section 404(c) of the Sarbanes-Oxley Act. We do not anticipate that these conforming amendments will impose any costs, and they may promote efficiency by eliminating potential confusion that may otherwise result from a discrepancy between our rules and the statute.

New Section 404(c) of the Sarbanes-Oxley Act will have an effect on the “collection of information” requirements within the meaning of the Paperwork Reduction Act of 1995.²¹ The current burden estimates for the relevant forms include 0.5 hours for approximately 4,700 non-accelerated filers attributable to the burden of filing the auditor attestation report and related disclosure, but not the audit work. As a result of the statutory change, those non-accelerated filers no longer are required to include that attestation.²²

III. STATUTORY BASIS AND TEXT OF AMENDMENTS

The amendments described in this release are made under the authority set forth in Section 19 of the Securities Act, Sections 3, 12, 13, 15, and 23 of the Exchange Act, and Sections 3(a) and 404 of the Sarbanes-Oxley Act.

List of Subjects

17 CFR Part 210

Accountants, Accounting, Reporting and recordkeeping requirements, Securities.

¹⁹ 15 U.S.C. 78w(a)(2).

²⁰ 15 U.S.C. 78c(f).

²¹ 44 U.S.C. 3501 *et seq.*

²² We are issuing a separate notice regarding the impact of this change on paperwork burdens.

Reporting and recordkeeping requirements, Securities.

TEXT OF AMENDMENTS

In accordance with the foregoing, the Commission is amending Title 17, Chapter II of the Code of Federal Regulations as follows:

PART 210 - FORM AND CONTENT OF AND REQUIREMENTS FOR FINANCIAL STATEMENTS, SECURITIES ACT OF 1933, SECURITIES EXCHANGE ACT OF 1934, PUBLIC UTILITY HOLDING COMPANY ACT OF 1935, INVESTMENT COMPANY ACT OF 1940, INVESTMENT ADVISERS ACT OF 1940 AND ENERGY POLICY AND CONSERVATION ACT OF 1975

1. The authority citation for Part 210 continues to read as follows:

Authority: 15 U.S.C. 77f, 77g, 77h, 77j, 77s, 77z-2, 77z-3, 77aa(25), 77aa(26), 77nn(25), 77nn(26), 78c, 78j-1, 78l, 78m, 78n, 78o(d), 78q, 78u-5, 78w, 78ll, 78mm, 80a-8, 80a-20, 80a-29, 80a-30, 80a-31, 80a-37(a), 80b-3, 80b-11, 7202, and 7262, unless otherwise noted.

* * * * *

2. In Section 210.2-02, paragraph (f) is amended by revising paragraph (f) to read as follows:

* * * * *

(f) Attestation report on internal control over financial reporting. (1) Every registered public accounting firm that issues or prepares an accountant's report for a registrant, other than a registrant that is neither an accelerated filer nor a large accelerated filer (as defined in § 240.12b-2 of this chapter) or an investment company registered under section 8 of the Investment Company Act of 1940 (15 U.S.C. 80a-8), that is included in an annual report required by section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.) containing an assessment by management of the effectiveness of the registrant's internal control over financial reporting must include an attestation report on internal control over financial reporting.

- (2) If an attestation report on internal control over financial reporting is included in an annual

report required by section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.), it shall clearly state the opinion of the accountant, either unqualified or adverse, as to whether the registrant maintained, in all material respects, effective internal control over financial reporting, except in the rare circumstance of a scope limitation that cannot be overcome by the registrant or the registered public accounting firm which would result in the accounting firm disclaiming an opinion. The attestation report on internal control over financial reporting shall be dated, signed manually, identify the period covered by the report and indicate that the accountant has audited the effectiveness of internal control over financial reporting. The attestation report on internal control over financial reporting may be separate from the accountant's report.

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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 continues to read, in part, 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, 80a-8, 80a-9, 80a-20, 80a-29, 80a-30, 80a-31(c), 80a-37, 80a-38(a), 80a-39, 80b-11, and 7201 et seq.; and 18 U.S.C. 1350, unless otherwise noted.

* * * * *

4. Section 308 is amended by revising paragraphs (a)(4) and (b) to read as follows:

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

(a) * * *

(4) If the registrant is an accelerated filer or a large accelerated filer (as defined in § 240.12b-2 of this chapter), or otherwise includes in its annual report a registered public accounting firm's attestation report on internal control over financial reporting, a statement that the registered

public accounting firm that audited the financial statements included in the annual report containing the disclosure required by this Item has issued an attestation report on the registrant's internal control over financial reporting.

(b) Attestation report of the registered public accounting firm. If the registrant is an accelerated filer or a large accelerated filer (as defined in § 240.12b-2 of this chapter), provide the registered public accounting firm's attestation report on the registrant's internal control over financial reporting in the registrant's annual report containing the disclosure required by this Item.

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PART 249 – FORMS, SECURITIES EXCHANGE ACT OF 1934

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

Authority: 15 U.S.C. 78a et seq. and 7201 et seq.; and 18 U.S.C. 1350, unless otherwise noted.

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6. Form 20-F (referenced in § 249.220f) is amended by revising paragraphs (b)(4) and (c) of Item 15 to 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

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PART II

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Item 15. Controls and Procedures.

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(b) * * *

(4) If an issuer is an accelerated filer or a large accelerated filer (as defined in § 240.12b-2

of this chapter), or otherwise includes in its annual report a registered public accounting firm's attestation report on internal control over financial reporting, a statement that the registered public accounting firm that audited the financial statements included in the annual report containing the disclosure required by this Item has issued an attestation report on management's assessment of the issuer's internal control over financial reporting.

(c) Attestation report of the registered public accounting firm. If an issuer is an accelerated filer or a large accelerated filer (as defined in § 240.12b-2 of this chapter), and where the Form is being used as an annual report filed under Section 13(a) or 15(d) of the Exchange Act, provide the registered public accounting firm's attestation report on management's assessment of the issuer's internal control over financial reporting in the issuer's annual report containing the disclosure required by this Item.

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7. Form 40-F (referenced in § 249.240f) is amended by revising paragraphs (c)(4) and (d) in General Instruction B.(6) to read as follows:

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

FORM 40-F

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GENERAL INSTRUCTIONS

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B. Information To Be Filed on this Form

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(6) * * *

(c)(4) If an issuer is an accelerated filer or a large accelerated filer (as defined in 17 CFR

240.12b-2), or otherwise includes in its annual report a registered public accounting firm's attestation report on internal control over financial reporting, a statement that the registered public accounting firm that audited the financial statements included in the annual report containing the disclosure required by this Item has issued an attestation report on management's assessment of the issuer's internal control over financial reporting.

(d) Attestation report of the registered public accounting firm. If an issuer is an accelerated filer or a large accelerated filer (as defined in § 240.12b-2 of this chapter), and where the Form is being used as an annual report filed under Section 13(a) or 15(d) of the Exchange Act, provide the registered public accounting firm's attestation report on management's assessment of the issuer's internal control over financial reporting in the issuer's annual report containing the disclosure required by this Item.

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By the Commission.

Elizabeth M. Murphy
Secretary

Dated: September 15, 2010