

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 210, 228, 229, 240, 249, 270, and 274

[Release Nos. 33-8392; 34-49313; IC-26357; File Nos. S7-40-02; S7-06-03]

RIN 3235-AI66 and 3235-AI79

Management's Report on Internal Control Over Financial Reporting and Certification of Disclosure in Exchange Act Periodic Reports

AGENCY: Securities and Exchange Commission.

ACTION: Final rule; extension of compliance dates.

SUMMARY: We are extending the compliance dates that were published on June 18, 2003, in Release No. 33-8238 (68 FR 36636) for certain amendments to Rules 13a-15 and 15d-15 under the Securities Exchange Act of 1934, items 308(a) and (b) of Regulations S-K and S-B and the corresponding provisions in Forms 20-F and 40-F, that require companies, other than registered investment companies, to include in their annual reports a report of management on the company's internal control over financial reporting, and to evaluate, as of the end of each fiscal period, any change in the company's internal control over financial reporting that occurred during the period that has materially affected, or is reasonably likely to materially affect, the company's internal control over financial reporting. We are also extending the compliance dates for amendments to certain representations that must be included in the certifications required by Exchange Act Rules 13a-14 and 15d-14 and Investment Company Act of 1940 Rule 30a-2, regarding the company's internal control over financial reporting. The companies subject to these certification provisions include registered investment companies. Finally, we are extending the compliance date for an amendment to Investment Company Act Rule 30a-3 regarding the maintenance of internal control over financial reporting.

DATES: *Effective Date:* The effective date published on June 18, 2003, remains August 14, 2003.

Compliance Dates: The compliance dates are extended as follows: A company that is an "accelerated filer," as defined in Exchange Act Rule 12b-2, must begin to comply with the management report on internal control over financial reporting requirement

and the related registered public accounting firm report requirement in items 308(a) and (b) of Regulations S-K and S-B for its first fiscal year ending on or after November 15, 2004. A non-accelerated filer must begin to comply with these requirements for its first fiscal year ending on or after July 15, 2005. A foreign private issuer that files its annual report on Form 20-F or Form 40-F must begin to comply with the corresponding requirements in these forms for its first fiscal year ending on or after July 15, 2005.

A company must begin to comply with the provisions of Exchange Act Rule 13a-15(d) or 15d-15(d), whichever applies, requiring an evaluation of changes to internal control over financial reporting requirements with respect to the company's first periodic report due after the first annual report that must include management's report on internal control over financial reporting.

In addition, we are applying the extended compliance period to the amended portion of the introductory language in paragraph 4 of the certification required by Exchange Act Rules 13a-14(a) and 15d-14(a) that refers to the certifying officers' responsibility for establishing and maintaining internal control over financial reporting for the company, as well as paragraph 4(b). The amended language must be provided in the first annual report required to contain management's internal control report and in all periodic reports filed thereafter. The extended compliance dates also apply to the amendments of Exchange Act Rules 13a-15(a) and 15d-15(a) relating to the maintenance of internal control over financial reporting.

We are also extending the compliance period for registered investment companies to comply with the amended portion of the introductory language in paragraph 4 of the certification in Form N-CSR required by Investment Company Act Rule 30a-2(a) that refers to the certifying officers' responsibility for establishing and maintaining internal control over financial reporting for the company, as well as paragraph 4(b) of the certification in Form N-CSR. The amended language must be provided beginning with the first annual report filed on Form N-CSR for a fiscal year ending on or after November 15, 2004.¹ Registered investment companies

must comply with the amendment to Investment Company Act Rule 30a-3(a) relating to the maintenance of internal control over financial reporting with respect to fiscal years ending on or after November 15, 2004.

The extended compliance period does not in any way affect the provisions of our other rules and regulations regarding internal controls that are in effect, including, without limitation, Exchange Act Rule 13b2-2.

FOR FURTHER INFORMATION CONTACT:

Sean Harrison, Special Counsel, Division of Corporation Finance, at (202) 942-2910, or with respect to registered investment companies, Christian Broadbent, Senior Counsel, Division of Investment Management, at (202) 942-0721, U.S. Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549.

SUPPLEMENTARY INFORMATION: On June 5, 2003,² the Commission adopted amendments to Items 307, 401 and 601 of Regulations S-B³ and S-K;⁴ added new Item 308 to Regulations S-B and S-K; amended Form 10-K,⁵ Form 10-KSB,⁶ Form 10-Q,⁷ Form 10-QSB,⁸ Form 20-F,⁹ Form 40-F,¹⁰ Rule 12b-15,¹¹ Rule 13a-14,¹² Rule 13a-15,¹³ Rule 15d-14¹⁴ and Rule 15d-15¹⁵ under the Securities Exchange Act of 1934;¹⁶ amended Rules 1-02 and 2-02¹⁷ of Regulation S-X;¹⁸ amended Rules 8b-15,¹⁹ 30a-2²⁰ and 30a-3²¹ under the Investment Company Act of 1940;²² and amended Forms N-CSR²³ and N-SAR²⁴ under the Exchange Act and the Investment Company Act. Among other things, these amendments require companies, other than registered investment companies, to include in their annual reports a report of

60 days after the close of the first and third quarters of each fiscal year.

² See Release No. 33-8238 (June 5, 2003) (68 FR 36636) (the "Adopting Release").

³ 17 CFR 228.10 *et seq.*

⁴ 17 CFR 229.10 *et seq.*

⁵ 17 CFR 249.310.

⁶ 17 CFR 249.310b.

⁷ 17 CFR 249.308a.

⁸ 17 CFR 249.308b.

⁹ 17 CFR 249.220f.

¹⁰ 17 CFR 249.240f.

¹¹ 17 CFR 240.12b-15.

¹² 17 CFR 240.13a-14.

¹³ 17 CFR 240.13a-15.

¹⁴ 17 CFR 240.15d-14.

¹⁵ 17 CFR 240.15d-15.

¹⁶ 15 U.S.C. 78a *et seq.*

¹⁷ 17 CFR 210.1-02 and 2-02.

¹⁸ 17 CFR 210.1-01 *et seq.*

¹⁹ 17 CFR 270.8b-15.

²⁰ 17 CFR 270.30a-2.

²¹ 17 CFR 270.30a-3.

²² 15 U.S.C. 80a-1 *et seq.*

²³ 17 CFR 249.331; 17 CFR 274.128.

²⁴ 17 CFR 249.330; 17 CFR 274.101.

¹ The amended language must also be provided in reports on Form N-Q following this report on Form N-CSR. On February 11, 2004, the Commission indicated that it would issue a release adopting rules that will require a registered management investment company to file its portfolio holdings with the Commission on Form N-Q not later than

management on the company's internal control over financial reporting, and to evaluate, as of the end of each fiscal quarter, or year in the case of a foreign private issuer filing its annual report on Form 20-F or 40-F, any change in the company's internal control over financial reporting that occurred during the period that has materially affected, or is reasonably likely to materially affect, the company's internal control over financial reporting.

In our June 2003 Adopting Release, we decided to provide a lengthy compliance period for the amendments requiring a report by management on a company's internal control over financial reporting. Specifically, we provided that a company that was an accelerated filer would have to begin complying with the new amendments in its annual report for its first fiscal year ending on or after June 15, 2004, and that a non-accelerated filer would have to begin complying in its annual report for its first fiscal year ending on or after April 15, 2005. We stated that a longer transition period was appropriate in light of both the substantial time and resources needed by companies to properly implement the rules, and the corresponding benefit to investors that would result from companies' proper implementation of the new requirements. We further noted that a longer transition period would provide additional time for the Public Company Accounting Oversight Board (the "PCAOB") to consider relevant factors in determining and implementing new standards for registered public accounting firms.²⁵ The PCAOB made a

determination to set new standards and has been working expeditiously to do so. It held a public roundtable in July 2003 to discuss significant issues associated with the establishment of a new standard and issued a proposed standard on October 7, 2003.²⁶ The PCAOB received nearly 200 comment letters on the proposals and has completed its review and analysis of the public comment.

On January 23, 2004, representatives of five companies requested that the Commission extend the June 15, 2004, compliance date for accelerated filers.²⁷ In their request, these companies argued that it would be extremely difficult for companies to properly prepare for compliance with the new internal control over financial reporting requirements, and for auditors to properly implement a new standard that has not yet been finalized, for a fiscal year that is nearly complete. They further asserted that companies with June, July and August fiscal year ends that are in the process of documenting and evaluating controls have based these processes on the PCAOB's proposed standard. Several commenters on the PCAOB's proposed standard

attestations to, and reports on, management's assessment regarding its internal control over financial reporting.

²⁶ See PCAOB Release No. 2003-017, PCAOB Rulemaking Docket Matter No. 008.

²⁷ See letter to Mr. William H. Donaldson, Chairman of the Securities and Exchange Commission, and Mr. William J. McDonough, Chairman of the Public Company Accounting Oversight Board, from John G. Connors, Sr., Vice President and Chief Financial Officer, Microsoft Corporation, on behalf of Clayton C. Daley Jr., Chief Financial Officer, Procter & Gamble; Richard J. Miller, Executive Vice President and Chief Financial Officer, Cardinal Health Corporation; Richard A. Galanti, Executive Vice President and Chief Financial Officer, Costco Wholesale Corporation and Michael J. Irwin, Executive Vice President and Chief Financial Officer, WD-40 Company, dated January 23, 2004.

expressed similar concerns and requested that the Commission and the PCAOB provide additional time for compliance.²⁸

We believe that an extension of compliance dates for the internal control reporting over financial reporting requirements is appropriate. We believe that the extension will benefit investors because this will help ensure that appropriate controls are in place for the first reporting process. Moreover, an extension will minimize the cost and disruption of implementing a new disclosure requirement under a current standard that will soon be superseded, and will provide companies and their auditors with a sufficient amount of time to perform additional testing or remediation of controls based on the final standard. We also, for good cause, find that, based on the reasons cited above, notice and solicitation of comment regarding extension of the compliance dates is impracticable, unnecessary, and contrary to the public interest.²⁹ In addition, for good cause and because the extension will relieve a restriction, the extension will be effective on March 1, 2004.

By the Commission.

Dated: February 24, 2004.

Margaret H. McFarland,
Deputy Secretary.

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²⁸ See letters regarding PCAOB Rulemaking Docket Matter No. 008 of: the American Institute of Certified Public Accountants, Deloitte & Touche LLP, PricewaterhouseCoopers LLP, Walt Disney Corporation and H.W. Willoughby. These letters are available at www.pcaobus.org.

²⁹ See section 553(b)(3)(B) of the Administrative Procedure Act (5 U.S.C. 553(b)(3)(B)) (an agency may dispense with prior notice and comment when it finds, for good cause, that notice and comment are "impracticable, unnecessary, or contrary to the public interest").

²⁵ Under the Sarbanes-Oxley Act, the PCAOB was granted authority to set auditing and attestation standards for registered public accounting firms to use in the preparation and issuance of audit reports on the financial statements of issuers. Under section 404(b) of the Act, the PCAOB is required to set standards for registered public accounting firms'