REVISIONS TO IFR ALTITUDES AND CHANGEOVER POINTS—Continued

[Amendment 465 effective date January 18, 2007]

From	To	MEA
§ 95.6195 VOR Federal Airway V195 is Amended to Read in Part		
Burrs, CA FIX *7000—MRA *7000—MCA TOMAD, CA FIX, W BND	*Tomad, CA FIX	6000
§ 95.6278 VOR Federal Airway V278 is Amended to Read in Part		
Bowie, TX VORTAC	Bonham, TX VORTAC	4000
§ 95.6573 VOR Federal Airway V573 is Amended to Read in Part		
*Alexx, OK FIX *7000—MRA **2900—MOCA	Ardmore, OK VORTAC	**4000

From	To	MEA	MAA
§ 95.7001 Jet Routes **§ 95.7510 Jet Route J510 is Amended to Delete**			
Emmonak, AK VOR/DME Unalakleet, AK VOR/DME	Unalakleet, AK VOR/DME Galena, AK VORTAC	18000 18000	45000 45000
§ 95.7512 Jet Route J512 is Added to Read			
Emmonak, AK VOR/DME Unalakleet, AK VOR/DME	Unalakleet, AK VOR/DME Galena, AK VORTAC	18000 18000	45000 45000

From	To	Changeover Points	
		Distance	From
§ 95.8003 VOR Federal Airway Changeover Points **Airway Segment Points V162 Is Amended to Add Changeover Point**			
Allentown, PA VORTAC Allentown	Huguenot, NY VOR/DME	10	Allentown
V285 is Amended to Add Changeover Point			
White Cloud, MI VOR/DME White Cloud	Manistee, MI VOR/DME	17	White Cloud
V290 is Amended to Delete Changeover Point			
Tar River, NC VORTAC Tar River	Pamlico NC NDB/DME	44	Tar River

[FR Doc. E6–21836 Filed 12–20–06; 8:45 am]

BILLING CODE 4910–13–P

SECURITIES AND EXCHANGE COMMISSION

17 CFR PARTS 210, 228, 229, 240 and 249

[RELEASE NOS. 33–8760; 34–54942; File No. S7–06–03]

RIN 3235–AJ64

Internal Control Over Financial Reporting in Exchange Act Periodic Reports of Non-Accelerated Filers and Newly Public Companies

AGENCY: Securities and Exchange Commission.

ACTION: Final rule; extension of compliance dates; request for comment on Paperwork Reduction Act burden estimates.

SUMMARY: We are extending further for smaller public companies the dates that were published on September 29, 2005, in Release No. 33–8618 [70 FR 56825], for their compliance with the internal control reporting requirements mandated by Section 404 of the Sarbanes-Oxley Act of 2002. Under the extension, a non-accelerated filer is not required to provide management's report on internal control over financial reporting until it files an annual report for its first fiscal year ending on or after December 15, 2007. If we have not issued additional guidance for management on how to complete its

assessment of internal control over financial reporting in time to be of sufficient assistance in connection with annual reports filed for fiscal years ending on or after December 15, 2007, we will consider whether we should further postpone this date. A non-accelerated filer is not required to file the auditor's attestation report on internal control over financial reporting until it files an annual report for its first fiscal year ending on or after December 15, 2008. We will consider further postponing this date after we consider the anticipated revisions to Auditing Standard No. 2. Management's report included in a non-accelerated filer's annual report during the filer's first year of compliance with the Section 404(a) requirements will be deemed ''furnished'' rather than filed. Management's report for foreign private issuers filing on Form 20–F or 40–F that are accelerated filers (but not large accelerated filers) also will be deemed furnished rather than filed for the year that such issuers are only required to provide management's report. Companies that only provide management's report during their first year of compliance in accordance with our rules must state in the annual report that the report does not include the auditor's attestation report and that the company's registered public accounting firm has not attested to management's report on the company's internal control over financial reporting.

We also are adopting amendments that provide for a transition period for a newly public company before it becomes subject to the internal control over financial reporting requirements. Under the new amendments, a company will not become subject to these requirements until it either had been required to file an annual report for the prior fiscal year with the Commission or had filed an annual report with the Commission for the prior fiscal year. A newly public company is required to include a statement in its first annual report that the annual report does not include either management's assessment on the company's internal control over financial reporting or the auditor's attestation report.

DATES: *Effective Date:* The effective date published on June 18, 2003, in Release No. 33–8238 [68 FR 36636], remains August 14, 2003. The effective date of this document is February 20, 2007 except Temporary § 210.2–02T(c), Temporary § 228.308T, Temporary § 229.308T, Temporary Item 15T of Form 20–F (§ 249.220f), Temporary Instruction 3T of General Instruction B(6) of Form 40–F (§ 249.240f), Temporary Item 4T of Form 10–Q (§ 249.308a), Temporary Item 3A(T) of Form 10–QSB (§ 249.308b), Temporary Item 9A(T) of Form 10–K (§ 249.310), and Temporary Item 8A(T) of Form 10–KSB (§ 249.310b) are effective from February 20, 2007 to June 30, 2009. Temporary § 210.2–02T(a) remains effective from September 14, 2006 to December 31, 2007.

Compliance Dates: The compliance dates are extended as follows: A company that does not meet the definition of either an ''accelerated filer'' or a ''large accelerated filer,'' as these terms are defined in Rule 12b–2 under the Securities Exchange Act of 1934, is not required to comply with the requirement to provide management's report on internal control over financial reporting until it files an annual report for its first fiscal year ending on or after December 15, 2007. Non-accelerated filers 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. The extended compliance also applies to the amendments of Exchange Act Rule 13a–15(a) or 15d–15(a) relating to the maintenance of internal control over financial reporting. We also are extending the compliance date to permit a non-accelerated filer to omit the portion of the introductory language in paragraph 4 as well as language in paragraph 4(b) of the certification required by Exchange Act Rules 13a–14(a) and 15d–14(a) that refers to the certifying officers' responsibility for designing, establishing and maintaining internal control over financial reporting for the company, until it files an annual report that includes a report by management on the effectiveness of the company's internal control over financial reporting.

A company that does not meet the definition of either an accelerated filer or a large accelerated filer is not required to comply with the requirement to provide the auditor's attestation report on internal control over financial reporting until it files an annual report for its first fiscal year ending on or after December 15, 2008. Furthermore, until this type of company becomes subject to the auditor attestation report requirement, the registered public accounting firm retained by the company need not comply with the obligation in Rule 2–02(f) of Regulation S–X. Rule 2–02(f) requires every registered public accounting firm that issues or prepares an accountant's report that is included in an annual report filed by an Exchange Act reporting company (other than a registered investment company) containing an assessment by management of the effectiveness of the company's internal control over financial reporting to attest to, and report on, such assessment.

Comment Date: Comments regarding the collection of information requirements within the meaning of the Paperwork Reduction Act of 1995 should be received on or before January 22, 2007.

ADDRESSES: Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/final.shtml*);
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number S7–06–03 on the subject line; or
- Use the Federal Rulemaking Portal (*http://www.regulations.gov*). Follow the instructions for submitting comments.

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number S7–06–03. This file number should be included on the subject line if e-mail is used. To help us process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/final.shtml*). Comments are also available for public inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549. All comments received will be posted without change; we do not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly.

FOR FURTHER INFORMATION CONTACT: Sean Harrison, Steven G. Hearne, or Katherine Hsu, Special Counsels, Office of Rulemaking, Division of Corporation Finance, at (202) 551–3430, U.S. Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–3628.

SUPPLEMENTARY INFORMATION: We are amending certain internal control over financial reporting requirements in

Rules 13a–14,[1] 13a–15,[2] 15d–14,[3] and 15d–15[4] under the Securities Exchange Act of 1934,[5] Item 308 of Regulations S–K[6] and S–B,[7] Item 15 of Form 20–F,[8] General Instruction B(6) of Form 40–F,[9] and Rule 2–02(f)[10] of Regulation S–X.[11] We also are adding the following temporary provisions: Rule 2–02T of Regulation S–X, Item 308T of Regulations S–K and S–B, Item 3A(T) of Form 10–QSB, Item 4T of Form 10–Q, Item 8A(T) of Form 10–KSB, Item 9A(T) of Form 10–K, Item 15T of Form 20–F, and Instruction 3T of General Instruction B(6) of Form 40–F.

I. Background

On June 5, 2003,[12] the Commission adopted several amendments to its rules and forms implementing Section 404 of the Sarbanes-Oxley Act of 2002.[13] Among other things, these amendments require companies, other than registered investment companies, to include in their annual reports filed with us a report of management, and an accompanying auditor's attestation report, on the effectiveness of 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 Form 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.

Under the compliance dates that we originally established, companies meeting the definition of an ''accelerated filer'' in Exchange Act Rule 12b–2[14] would have become subject to the internal control reporting requirements with respect to the first annual report that they filed for a fiscal year ending on or after June 15, 2004. Non-accelerated filers[15] would not have become subject to the requirements until they filed an annual report for a fiscal year ending on or after April 15, 2005. The Commission provided a lengthy compliance period for these requirements in light of the substantial time and resources needed by companies to implement the rules properly.[16] In addition, we believed that a corresponding benefit to investors would result from an extended transition period that allowed companies to implement the new requirements carefully, and noted that an extended period would provide additional time for the Public Company Accounting Oversight Board (the PCAOB) to consider relevant factors in determining and implementing new attestation standards for registered public accounting firms.[17]

In February 2004, we extended the compliance dates for accelerated filers to fiscal years ending on or after November 15, 2004, and for non-accelerated filers and for foreign private issuers to fiscal years ending on or after July 15, 2005.[18] The primary purpose of this extension was to provide additional time for companies' auditors to implement Auditing Standard No. 2, which the PCAOB had issued in final form in June 2004.[19]

In March 2005, we approved a further one-year extension of the compliance dates for non-accelerated filers and for all foreign private issuers filing annual reports on Form 20–F or 40–F in view of the efforts by the Committee of Sponsoring Organizations of the Treadway Commission (''COSO'') to provide more guidance on how the COSO framework on internal control can be applied to smaller public companies.[20] We also acknowledged the significant efforts being expended by many foreign private issuers to apply the International Financial Reporting Standards.

Most recently, in September 2005, we again extended the compliance dates for the internal control over financial reporting requirements applicable to companies that are non-accelerated filers.[21] Based on the September 2005 extension, domestic and foreign non-accelerated filers were scheduled to comply with the internal control over financial reporting requirements beginning with annual reports filed for their first fiscal year ending on or after July 15, 2007. This extension was based primarily on our desire to have the additional guidance in place that COSO had begun to develop to assist smaller companies in applying the COSO framework. In addition, the extension was consistent with a recommendation made by the SEC Advisory Committee on Smaller Public Companies.

Since we granted that extension last year, a number of events related to internal control over financial reporting assessments have occurred. Most recently, on July 11, 2006, COSO and its Advisory Task Force issued *Guidance for Smaller Public Companies Reporting on Internal Control over Financial Reporting*.[22] The guidance is intended to assist the management of smaller companies in understanding and applying the COSO framework. It outlines 20 fundamental principles associated with the five key components of internal control described in the COSO framework, defines each principle, describes a variety of approaches that smaller companies can use to apply the principles to financial reporting, and includes examples of how smaller companies have applied the principles.

In addition, on April 23, 2006, the SEC Advisory Committee on Smaller Public Companies submitted its final report to the Commission.[23] The final report includes recommendations designed to address the potential impact of the internal control reporting requirements on smaller public companies. Specifically, the Advisory Committee recommended that certain smaller public companies be provided exemptive relief from the management report requirement and from external auditor involvement in the Section 404 process under certain conditions unless and until a framework for assessing internal control over financial reporting is developed that recognizes the

---

[1] 17 CFR 240.13a–14.

[2] 17 CFR 240.13a–15.

[3] 17 CFR 240.15d–14.

[4] 17 CFR 240.15d–15.

[5] 15 U.S.C. 78a *et seq.*

[6] 17 CFR 229.10 *et seq.*

[7] 17 CFR 228.10 *et seq.*

[8] 17 CFR 249.220f.

[9] 17 CFR 249.240f.

[10] 17 CFR 210.2–02(f).

[11] 17 CFR 210.1–01 *et seq.*

[12] See Release No. 33–8238 (June 5, 2003) [68 FR 36636].

[13] 15 U.S.C. 7262.

[14] 17 CFR 240.12b–2.

[15] Although the term ''non-accelerated filer'' is not defined in our rules, we use it throughout this release to refer to an Exchange Act reporting company that does not meet the Exchange Act Rule 12b–2 definitions of either an ''accelerated filer'' or a ''large accelerated filer.''

[16] See Release No. 33–8238.

[17] Under the Sarbanes-Oxley Act, the PCAOB was granted authority to set auditing and attestation standards for registered public accounting firms.

[18] See Release No. 33–8392 (Feb. 24, 2004) [69 FR 9722].

[19] See Release No. 34–49884 File No. PCAOB 2004–03 (June 17, 2004) [69 FR 35083]. Auditing Standard No. 2, *An Audit of Internal Control Over Financial Reporting Performed in Connection with an Audit of Financial Statements*, provides the professional standards and related performance guidance for independent auditors to attest to, and report on, management's assessment of the effectiveness of companies' internal control over financial reporting.

[20] Release No. 33–8545 (Mar. 2, 2005) [70 FR 11528].

[21] See Release No. 33–8618 (Sept. 22, 2005) [70 FR 56825].

[22] See SEC Press Release No. 2006–114 (July 11, 2006) at *http://www.sec.gov/news/press/2006/2006–114.htm.*

[23] See *Final Report of the Advisory Committee on Smaller Public Companies to the United States Securities and Exchange Commission* (Apr. 23, 2006), available at *http://www.sec.gov/info/smallbus/acspc.shtml.*

characteristics and needs of these companies.

In April 2006, the U.S. Government Accountability Office (GAO) issued a report entitled *Sarbanes-Oxley Act, Consideration of Key Principles Needed in Addressing Implementation for Smaller Public Companies*.[24] This report recommended that the Commission consider whether the currently available guidance, particularly the guidance on management's assessment, is sufficient or whether additional action is needed to help companies comply with the internal control over financial reporting requirements. The report indicates that management's implementation and assessment efforts were largely driven by Auditing Standard No. 2 because guidance at a similar level of detail was not available for management's implementation and assessment process. Furthermore, the report recommended that the Commission coordinate its efforts with the PCAOB so that the Section 404-related audit standards and guidance are consistent with any additional guidance applicable to management's assessment of internal control over financial reporting.[25]

Finally, on May 10, 2006, the Commission and the PCAOB sponsored a roundtable to elicit feedback from companies, their auditors, board members, investors, and others regarding their experiences during the accelerated filers' second year of compliance with the internal control over financial reporting requirements.[26] Several of the comments provided at, and in connection with, the roundtable suggested that additional management guidance would be useful, particularly for smaller public companies, and also expressed support for revisions to the PCAOB's Auditing Standard No. 2.[27]

II. Extension of Internal Control Reporting Compliance Dates for Non-Accelerated Filers

On May 17, 2006, the Commission and the PCAOB each announced a series of actions that they intended to take to improve the implementation of the Section 404 internal control over financial reporting requirements.[28] These actions included:

- Issuance of a concept release [29] soliciting comment on a variety of issues that might be included in future Commission guidance for management to assist in its performance of a top-down, risk-based assessment of internal control over financial reporting;
- Consideration of additional guidance from COSO;
- Revisions to Auditing Standard No. 2;
- Reinforcement of auditor efficiency through PCAOB inspections and Commission oversight of the PCAOB's audit firm inspection program;
- Development, or facilitation of development, of implementation guidance for auditors of smaller public companies;
- Continuation of PCAOB forums on auditing in the small business environment; and
- Provision of an additional extension of the compliance dates of the internal control reporting requirements for non-accelerated filers.

Consistent with this announcement, on August 9, 2006, we proposed to extend further the date for complying with the internal control over financial reporting requirements for domestic and foreign non-accelerated filers.[30] Approximately 44% of domestic companies filing periodic reports are non-accelerated filers, and an estimated 38% of the foreign private issuers subject to Exchange Act reporting are non-accelerated filers.[31] Prior to today's actions, non-accelerated filers were scheduled to begin complying with the management report requirement in Item 308(a) of Regulations S–K and S–B and the auditor attestation requirement in Item 308(b) of Regulations S–K and S–B for their fiscal years ending on or after July 15, 2007. We proposed to postpone for five months (from fiscal years ending on or after July 15, 2007 to fiscal years ending on or after December 15, 2007) the date by which non-accelerated filers must begin to include management's report. We also proposed to extend the compliance date for a non-accelerated filer regarding the auditor attestation report requirement for 17 months—until it files an annual report for a fiscal year ending on or after December 15, 2008.[32]

Furthermore, in a separate release also issued on August 9, 2006, we adopted an extension of the date for complying with the auditor attestation requirement for foreign private issuers that meet the Exchange Act definition of an accelerated filer, but not a large accelerated filer, and that file their annual reports on Form 20–F or 40–F, so that such issuers would not be subject to the auditor attestation requirement until a year after they first begin complying with the management report requirement.[33]

We received letters from a total of 36 commenters on the proposed extension of the internal control over financial reporting compliance dates for non-accelerated filers.[34] Thirty-five of these commenters generally supported the proposed extension.[35] Many of these commenters believed that the extension would reduce compliance costs for smaller companies and provide them

[24] U.S. Govt. Accountability Office, Report to the Committee on Small Business and Entrepreneurship, U.S. Senate: *Sarbanes-Oxley Act: Consideration of Key Principles Needed in Addressing Implementation for Smaller Public Companies* (April 2006).

[25] See GAO Report at 52–53, 58.

[26] Materials related to the roundtable, including an archived broadcast and a transcript of the roundtable, are available on-line at *http://www.sec.gov/spotlight/soxcomp.htm.*

[27] See, for example, letters from the Biotech Industry Association, American Electronics Association, Emerson Electric Institute, U.S. Chamber of Commerce and Joseph A. Grundfest. These letters are available in File No. 4–511, at *http://www.sec.gov/news/press/4–511.shtml.*

[28] See SEC Press Release 2006–75 (May 17, 2006), ''SEC Announces Next Steps for Sarbanes-Oxley Implementation'' and PCAOB Press Release (May 17, 2006), ''Board Announces Four-Point Plan to Improve Implementation of Internal Control Reporting Requirements.''

[29] Release No. 34–54122 (July 11, 2006) [71 FR 40866].

[30] Release No. 33–8731 (Aug. 9, 2006) [71 FR 47060].

[31] The percentage of domestic filing companies, excluding Investment Company Act of 1940 filers, that is categorized as non-accelerated filers is based on public float where available (or market capitalization, otherwise) from Datastream as of December 31, 2005. The estimated percentage of foreign private issuers that are non-accelerated filers is based on market capitalization data from Datastream as of December 31, 2005.

[32] We also proposed and are extending the compliance dates for the auditor attestation report requirement appearing in Item 15(c) of Form 20–F and General Instruction B(6) of Form 40–F with respect to foreign private issuers that are non-accelerated filers.

[33] Release No. 33–8730A (Aug. 9, 2006) [71 FR 47056].

[34] The public comments we received are available for inspection in the Commission's Public Reference Room at 100 F Street, NE., Washington DC 20549 in File No. S7–06–03. They are also available on-line at *http://www.sec.gov/rules/proposed/s70603.shtml.*

[35] See letters from American Bar Association (ABA), American Bankers Association, America's Community Bankers (ACB), American Institute of Certified Public Accountants (AICPA), BDO Seidman, LLP (BDO), Biotechnology Industry Organization and eight other commenters (BIO), Callidus Software Inc. (Callidus), Calix Networks, Inc. (Calix), Core-Mark International, Inc. (Core-Mark), Cravath, Swaine & Moore LLP (Cravath), Davis Polk & Wardwell (Davis Polk), Deloitte Touche LLP (Deloitte), Ernst & Young (E&Y), Financial Executives International (FEI), James Finn (J. Finn), Grant Thornton LLP (Grant Thorton), Graybar Electric (Graybar), Hermes Equity Ownership Services Ltd. (Hermes), Independent Community Bankers of America (ICBA), Idaho Independent Bank (IIB), IncrediMail Ltd., Institute of Public Auditors of Germany (IDW), Key Technology (Key), KPMG LLP (KPMG), LaCrosse Footwear, Inc. (LaCrosse), Congressman Stephen F. Lynch (Congressman Lynch), George Merkl (G. Merkl), MOCON, Inc. (MOCON), National Venture Capital Association (NVCA), PricewaterhouseCoopers LLP (PwC), Priority Fulfillment Services, Inc. (PFS), The Office of Advocacy of the Small Business Administration (SBA), Telecommunications Industry Association (TIA), Village Super Market, Inc. (Village) and Washington Legal Foundation.

with additional time to develop best practices for compliance and greater efficiencies in preparing management reports.[36] Some commenters suggested that the Commission extend the compliance date associated with the management report requirement for an even longer period of time than proposed.[37] The commenter that did not express support for the proposed extension opposed, in particular, the 17-month extension of the auditor attestation compliance date.[38]

We are adopting the extension of the compliance dates substantially as proposed. In response to public comment, we are adding a requirement that a non-accelerated filer clearly disclose in management's report that management's assessment of internal control has not been attested to by the auditor, if it is providing only management's report during its first year of compliance with the Section 404 requirements.[39]

Some commenters suggested that the Commission broaden the scope of relief so that the extended compliance dates would still cover companies that currently are non-accelerated filers even if they become accelerated filers or large accelerated filers before December 15, 2008.[40] We are not adopting this relief as proposed. Consistent with the Exchange Act Rule 12b–2 definition of an accelerated filer and of a large accelerated filer, companies should determine their accelerated filing status at the end of the fiscal year in order to determine whether the extension is applicable to them.

Pursuant to the extension, a non-accelerated filer must begin to provide management's report on internal control over financial reporting in an annual report it files for its first fiscal year ending on or after December 15, 2007.[41] Non-accelerated filers must begin to comply with the provisions of Exchange Act Rule 13a–15(d) or 15d–15(d),[42] 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. The extended compliance date also applies to the amendments of Exchange Act Rule 13a–15(a) or 15d–15(a)[43] relating to the maintenance of internal control over financial reporting. Under the extension, a non-accelerated filer must begin to provide the auditor attestation report in the annual report it files for its first fiscal year ending on or after December 15, 2008. We believe that these changes will make the internal control reporting process more efficient and effective, while preserving the intended benefits of the internal control over financial reporting provisions to investors.

We estimate that fewer than 15% of all non-accelerated filers will have a fiscal year ending between July 15, 2007 and December 15, 2007.[44] Therefore, the extension of the compliance date of the management report requirement to December 15, 2007 will not impact the majority of non-accelerated filers in 2007, including those with a calendar year-end. Our intention is to provide all non-accelerated filers, none of which is yet required to comply with the Section 404 requirements, with the benefit of the management guidance that the Commission plans to issue and the recently issued COSO guidance on understanding and applying the COSO framework, before planning and conducting their internal control assessments. We expect that extending the implementation of the management report requirement for another five months will provide sufficient time for the Commission to issue final guidance to assist in management's performance of a top-down, risk-based and scalable assessment of controls over financial reporting.[45] If such guidance is not finalized in time to be of assistance to management of non-accelerated filers in connection with their assessments as of the end of the fiscal year for the annual reports filed for fiscal years ending on or after December 15, 2007, we will consider further postponing this compliance date.

The extension of the date for complying with the management report requirement permits non-accelerated filers to complete only management's report on internal control over financial reporting in the first year of compliance. As noted in the Proposing Release, we have several reasons for deferring the implementation of the auditor attestation report requirement for an additional year after the implementation of the management report requirement. First, we believe that the deferred implementation affords non-accelerated filers and their auditors the benefit of anticipated changes by the PCAOB to Auditing Standard No. 2, subject to Commission approval, as well as any implementation guidance that the PCAOB plans to issue for auditors of smaller public companies. We will consider further postponing this date after we consider the anticipated revisions to Auditing Standard No. 2.

Second, we believe that the deferred implementation of the auditor attestation requirement should save non-accelerated filers the full potential costs associated with the initial auditor's attestation to, and report on, management's assessment of internal control over financial reporting during the period that changes to Auditing Standard No. 2 are being considered and implemented, and the PCAOB is formulating guidance that will be specifically directed to auditors of smaller companies. Public commenters previously have asserted that the internal control reporting compliance costs are likely to be disproportionately higher for smaller public companies than larger ones, and that the auditor's fee represents a large percentage of those costs. Furthermore, we have learned from public comments, including our roundtables on implementation of the internal control

---

[36] See, for example, letters from Core-Mark, FEI, J. Finn, Graybar, and Village.

[37] See, for example, letters from ABA, ACB, Davis Polk, ICBA, and MOCON.

[38] See letter from Council of Institutional Investors (CII). This commenter indicated that it would not oppose one additional modest extension of the compliance date for the internal control over financial reporting requirements for non-accelerated filers.

[39] See paragraph 4 of Item 308T of Regulations S–K and S–B, paragraph 4 of Item 15T of Form 20–F, and Instruction 3T of General Instruction B(6) of Form 40–F.

[40] See letters from Callidus, Core-Mark, IIB, PFS, and Village.

[41] While the definition of an accelerated filer in Exchange Act Rule 12b–2 previously has had applicability only for a foreign private issuer that files its Exchange Act periodic reports on Forms 10–K and 10–Q, the definition by its terms does not exclude foreign private issuers. A foreign private issuer that is a large accelerated filer under the Exchange Act Rule 12b–2 definition, and that files its annual reports on Form 20–F or Form 40–F, must begin to comply with the internal control over financial reporting and related requirements in the annual report for its first fiscal year ending on or after July 15, 2006. A foreign private issuer that is an accelerated filer, but not a large accelerated filer, under the definition in Rule 12b–2 of the Exchange Act, and that files its annual report on Form 20–F or Form 40–F, must begin to comply with the requirement to provide the auditor's attestation report on internal control over financial reporting in the annual report filed for its first fiscal year ending on or after July 15, 2007. A foreign private issuer that is not an accelerated filer under the Exchange Act Rule 12b–2 definition is required, under this extension, to begin to comply with the management report requirement in its annual report for its first fiscal year ending on or after December 15, 2007.

[42] 17 CFR 240.13a–15(d) and 17 CFR 240.15d–15(d).

[43] 17 CFR 240.13a–15(a) and 17 CFR 240.15d–15(a).

[44] The percent of all non-accelerated filers is categorized using float where available (or market capitalization, otherwise) using Datastream as of December 31, 2005 and excludes 1940 Act filers. Fiscal year ends are also from Datastream.

[45] We anticipate issuing the proposed guidance for management by mid-December 2006. See SEC Press Release No. 2006–172 (Oct. 11, 2006) at *http://www.sec.gov/news/press/2006/2006–172.htm*.

reporting provisions,[46] that while companies incur increased internal costs in the first year of compliance as well due to ''deferred maintenance'' items (*e.g.*, documentation, remediation, etc.), these costs may decrease in the second year. Therefore, postponing the costs that result from the auditor's attestation report until the second year may help non-accelerated filers to smooth the significant cost spike that many accelerated filers experienced in their first year of compliance with the Section 404 requirements.

One commenter that opposed the 17-month extension of the compliance date for the auditor attestation requirement noted that there is anecdotal evidence that smaller companies have not taken advantage of the previous extensions for non-accelerated filers.[47] Unlike the previous extensions, however, which provided for an extension for both the management report requirement and the auditor attestation requirement, the extension that we are adopting now requires management of non-accelerated filers to examine their companies' internal control over financial report reporting (and to permit investors to see and evaluate the results of management's first compliance efforts) while enabling management to more gradually prepare for full compliance with the Section 404 requirements and to gain some efficiencies in the process of reviewing and evaluating the effectiveness of internal control over financial reporting before becoming subject to the auditor attestation requirement. Finally, deferred implementation should provide the Commission and the PCAOB with additional time to consider the public comments we received in response to the questions we raised in the Concept Release [48] on management guidance related to the appropriate role of the auditor in evaluating management's internal control assessment process.[49]

Several commenters supported the sequential implementation of the management assessment and auditor attestation requirements, which we are adopting.[50] Some agreed that the deferred implementation of the auditor report requirement would help smaller companies reduce the overall cost of compliance with the internal control over financial reporting requirements.[51] Some commenters opposed the deferred implementation of the auditor attestation requirement,[52] while some other commenters expressed concerns over the proposal without expressly opposing it.[53] For example, commenters questioned whether during the year in which management's report is not attested to by the auditor, there will be a greater risk that management will fail to report material weaknesses,[54] or whether there will be a lack of meaningful disclosure provided by management's assessment of internal control over financial reporting.[55] We acknowledge that investors will not receive the full assurance that a management assessment that has been attested to by an auditor would provide. Nevertheless, we believe that the graduated introduction of the 404 requirements will provide more meaningful benefit to investors more quickly than either the immediate introduction of both requirements or further delays in implementing the management report requirement.[56] This graduated approach will allow management to gain efficiencies in reporting without the full cost of an attestation and allow investors to review important information that would be otherwise unavailable.

We received some comments noting that the different schedules for implementing the two requirements on internal control over financial reporting might cause confusion to investors and the capital markets.[57] Also, several commenters, in response to a specific request for comment, expressed support for a requirement that non-accelerated filers disclose in its annual report that management's assessment has not been attested to by the auditor during the year that the auditor's attestation is not required.[58] In response to these comments that we received, we are adopting an additional disclosure requirement to Item 308 of Regulations S–K and S–B, Item 15 of Form 20–F, and General Instruction B(6) of Form 40–F.[59] Non-accelerated filers will be now required to include a statement in management's report on internal control over financial reporting in substantially the following form:

> This annual report does not include an attestation report of the company's registered public accounting firm regarding internal control over financial reporting. Management's report was not subject to attestation by the company's registered public accounting firm pursuant to temporary rules of the Securities and Exchange Commission that permit the company to provide only management's report in this annual report.

In the Proposing Release, we indicated that we had issued a separate release to extend the date by which a foreign private issuer that is an accelerated filer (but not a large accelerated filer) and that files its annual report on Form 20–F or 40–F must begin to comply with the auditor attestation report portion of the Section 404 requirements. We requested comment on whether we should consider taking additional actions specifically with respect to foreign private issuers. Like non-accelerated filers, these foreign private issuers will provide only management's report during their first year of compliance with the internal control over financial reporting requirements.[60] Some commenters expressed support for the delayed audit report compliance date for these issuers and thought it was appropriate for us to take similar action with respect to both non-accelerated filers and the foreign private issuers.[61] To maintain consistency among the revised requirements, we are adopting the same type of disclosure requirement for foreign private issuers that are accelerated filers that we are adopting for the non-accelerated filers.

One commenter noted that disagreements over whether management failed to report a material

[46] Materials related to the Commission's 2005 Roundtable Discussion on Implementation of Internal Control Reporting Provisions and 2006 Roundtable on Second-year Experiences with Internal Control Reporting and Auditing Provisions, including the archived roundtable broadcasts, are available at *http://www.sec.gov/spotlight/soxcomp.htm.*

[47] See letter from CII.

[48] Release No. 34–54122. The comment period for the Concept Release closed on September 18, 2006, and the letters that we received on the Concept Release are available in File No. S7–11–06, at *http://www.sec.gov/comments/s7–11–06/s71106.shtml.*

[49] Six commenters agreed that an extension will provide the Commission with additional time to consider the comments to the questions raised in the Concept Release. See letters from FEI, Hermes, ICBA, G. Merkl, NVCA, and ICBA.

[50] See letters from ACB, Cravath, FEI, J. Finn, Hermes, ICBA, LaCrosse, G. Merkl, MOCON, and SBA.

[51] See, for example, letters from FEI, Hermes, and SBA.

[52] See, for example, letters from ABA, CII, IDW, and PwC.

[53] See, for example, letters from AICPA, BDO, Davis Polk, Deloitte, and E&Y.

[54] See, for example, letters from AICPA, Grant Thorton, IDW, PwC, and Deloitte. The letter from CII, which also opposed the deferred implementation of the auditor attestation requirement, stated, in general, that smaller companies are prone to more misstatements and restatements of financial information, and make up the bulk of accounting fraud cases.

[55] See, for example, letters from IDW.

[56] See also letter from KPMG.

[57] See, for example, letters from CII and PwC.

[58] See letters from AICPA, BDO, Deloitte, E&Y, Grant Thorton, and KPMG.

[59] See paragraph 4 of Item 308T of Regulations S–K and S–B, paragraph 4 of Item 15T of Form 20–F, and Instruction 3T of General Instruction B(6) of Form 40–F.

[60] Release No. 33–8730A.

[61] See, for example, letters from E&Y and FEI.

weakness could create conflict between management and the auditor,[62] and two other commenters noted that disagreements could also arise if the auditor does not agree with management's approach or methodology for testing internal control over financial reporting.[63] As noted in the Proposing Release, during the year that non-accelerated filers are only required to provide management's report, we encourage frequent and frank dialogue among management, auditors and audit committees to improve internal controls and the financial reports upon which investors rely. We believe that management should not fear that a discussion of internal controls with, or a request for assistance or clarification from, the company's auditor will itself be deemed a deficiency in internal control or constitute a violation of our independence rules as long as management determines the accounting to be used and does not rely on the auditor to design or implement its controls.[64] We believe that open dialogue between management and auditors may help to ameliorate some of the concerns of commenters regarding disagreements between these parties in the second year of compliance with the internal control reporting provisions.

Nevertheless, as noted in the Proposing Release, we acknowledge that a company that files only a management report during its first year of compliance with the Section 404 requirements may become subject to more second-guessing as a result of separating the management and auditor reports than under the current requirements. For example, management may conclude that the company's internal control over financial reporting is effective when only management's report is filed in the first year of compliance, but the auditor may come to a contrary conclusion in its report filed in the subsequent year, and as a result, the company's previous assessment may be called into question. To further address this, we proposed a temporary amendment whereby the management report included in the non-accelerated filer's annual report during the first year of compliance would be deemed ''furnished'' rather than ''filed.'' [65]

Almost all of the commenters remarking on this aspect of the proposal supported it.[66] We are adopting this provision as proposed. Commenters also supported our corresponding proposal [67] to afford similar relief to foreign private issuers that are accelerated filers (but not large accelerated filers), that like non-accelerated filers, will only provide management's report during their first year of compliance with the internal control over financial reporting requirements. We are adopting that provision as well.[68]

We also are extending the compliance date to permit a non-accelerated filer to omit the portion of the introductory language in paragraph 4 as well as language in paragraph 4(b) of the certification required by Exchange Act Rules 13a–14(a) and 15d–14(a) [69] that refers to the certifying officers' responsibility for designing, establishing and maintaining internal control over financial reporting for the company, until it files an annual report that includes a report by management on the effectiveness of the company's internal control over financial reporting. This language is required to be provided in the first annual report required to contain management's internal control report and in all periodic reports filed thereafter.

Finally, we are clarifying that, until a non-accelerated filer becomes subject to the auditor attestation report requirement, the registered public accounting firm retained by the non-accelerated filer need not comply with the obligation in Rule 2–02(f) of Regulation S–X. Rule 2–02(f) requires every registered public accounting firm that issues or prepares an accountant's report that is included in an annual report filed by an Exchange Act reporting company (other than a registered investment company) containing an assessment by management of the effectiveness of the company's internal control over financial reporting to attest to, and report on, such assessment.

The extended compliance periods do not, in any way, alter requirements regarding internal control that already are in effect with respect to non-accelerated filers, including, without limitation, Section 13(b)(2) of the Exchange Act [70] and the rules thereunder.

III. Transition Period for Compliance With the Internal Control Over Financial Reporting Requirements by Newly Public Companies

A. Proposed Amendment and Public Comments

In the Proposing Release, we also proposed to add a transition period for newly public companies before they become subject to compliance with the internal control over financial reporting requirements. Under the rules existing prior to the amendments, after all Exchange Act reporting companies have been phased-in and are required to comply fully with the internal control reporting provisions, any company undertaking an initial public offering or registering a class of securities under the Exchange Act for the first time would have been required to comply with those provisions as of the end of the fiscal year in which it became a public company.

For many companies, preparation of the first annual report on Form 10–K, 10–KSB, 20–F or 40–F is a comprehensive process involving the audit of financial statements, compilation of information that is responsive to many new public disclosure requirements and review of the report by the company's executive officers, board of directors and legal counsel. Requiring a newly public company and its auditor to complete the management report and auditor attestation report on the effectiveness of the company's internal control over financial reporting within the same timeframe imposes an additional burden on newly public companies.

The Proposing Release also specifically recognized the burden that preparing the reports imposed on companies, including foreign companies, that become subject to Section 15(d) after filing a registration statement under the Securities Act of 1933 [71] but may be eligible to terminate their periodic filing obligations after filing just one annual report.[72] In light

[62] See letter from IDW.

[63] See, for example, letters from Davis Polk and G. Merkl.

[64] See *Commission Statement on Implementation of Internal Control Requirements*, Press Release No. 2005–74 (May 16, 2005), available at *http://www.sec.gov/news/press/2005–74.htm.*

[65] Management's report is not be deemed to be filed for purposes of Section 18 of the Exchange Act [15 U.S.C. 78r] or otherwise subject to the liabilities of that section, unless the issuer specifically states that the report is to be considered ''filed'' under the Exchange Act or incorporates it by reference into a filing under the Securities Act or the Exchange Act.

[66] Eight commenters supported the proposed revision to deem the management's report on internal control over financial reporting to be ''furnished'' rather than ''filed'' during the first year that non-accelerated filers are required to complete only management's report on internal control over financial reporting. See letters from ACB, Cravath, Deloitte, E&Y, FEI, Hermes, LaCrosse, and G. Merkl. But see letter from IDW.

[67] See, for example, letters from E&Y, FEI, Hermes, and G. Merkl.

[68] See paragraph (b) of Item 15T of Form 20–F and Instruction 3T to General Instruction B(6) of Form 40–F.

[69] 17 CFR 240.13a–14(a) and 240.15d–14(a).

[70] 15 U.S.C. 78m(b)(2).

[71] 15 U.S.C. 77a *et seq.*

[72] A transition period also would provide relief for foreign companies that become subject to the Exchange Act reporting requirements by virtue of

of the compliance burden of these requirements, we proposed to provide a transition period for newly public companies.

Specifically, we proposed that a newly public company would not need to comply with our internal control over financial reporting requirements in the first annual report that it files with the Commission.[73] Rather, the company would begin to comply with these requirements in the second annual report that it is required to file with the Commission. We stated our belief in the Proposing Release that providing additional time for a newly public company to conduct its first assessment of internal control over financial reporting would benefit investors by making implementation of the internal control reporting requirements more effective and efficient and reducing the costs that a company faces in its first year as a public company. We also expressed a belief that the proposed transition period would limit any interference by our rules with a company's business decision regarding the timing and use of resources relating to its initial U.S. listing or public offering.

We received 22 comment letters addressing our proposal on newly public companies.[74] Most of these commenters supported our efforts to reduce the burden of compliance with our internal control over financial reporting requirements by providing a transition period for those companies.[75]

B. Discussion of Final Amendment

After consideration of the public comments that were received, we are adopting the newly public company amendments substantially as proposed. We are therefore amending the rules to provide that a newly public company does not need to comply with our internal control over financial reporting requirements in the first annual report that it files with the Commission.[76] As noted, there was broad support from commenters for a transition period postponing compliance with these requirements until the second annual report filed with the Commission.[77] One commenter suggested that the transition period was of ''critical importance'' for effective and meaningful compliance with Section 404 requirements by newly public companies.[78]

Two commenters objected to the proposed relief, noting the importance of the internal control over financial reporting requirements to the Sarbanes-Oxley Act reforms.[79] We believe that the one-year transition period strikes an appropriate balance by requiring newly public companies to develop and implement effective internal controls and procedures, while allowing management some time to more cost-effectively conduct their entry into the public markets and gain efficiencies in preparation for compliance with our internal control over financial reporting requirements. As noted below, we are also requiring clear disclosure by newly public companies that they are not required to include either a report by management or an auditor's attestation report on internal control over financial reporting in their first annual report so that investors can consider that information when making their investing decisions.

One commenter sought clarification on the transition period,[80] and others suggested expanding the transition period for newly public companies to allow them more time to comply with the requirements.[81] We are adopting amendments to provide that a registrant need not comply with the internal control over financial reporting requirements ''until it either had been required to file an annual report pursuant to section 13(a) or 15(d) of the Act for the prior fiscal year or had filed an annual report with the Commission for the prior fiscal year.'' [82] The amendments require a newly public company to fully comply with the internal control over financial reporting requirements when filing its second annual report with the Commission, allowing a company at least one annual reporting period from the time it becomes a public company to prepare for compliance. A newly public company also need not comply with the provisions of Exchange Act Rule 13a–15(d) or 15d–15(d), requiring an evaluation of changes to internal control over financial reporting requirements, or comply with the provisions of Exchange Act Rule 13a–15(a) or 15d–15(a) relating to the maintenance of internal control over financial reporting until the first periodic report due after the first annual report that must include management's report on internal control over financial reporting.[83]

The amendments also permit a newly public company, during the transition period, to omit the portion of the

Exchange Act Rule 12g–3 [17 CFR 240.12g–3] in connection with a transaction which is not registered under the Securities Act that constitutes an exchange offer for the securities of, or business combination with, a company that has reporting obligations under the Exchange Act. The relief, as adopted, would thus apply to an unregistered foreign company that succeeds to the reporting obligations of a registered foreign company under Rule 12g–3 in connection with an acquisition transaction effected under, for example, Securities Act Section 3(a)(10) [15 U.S.C. 77c(a)(10)] or Securities Act Rule 802 [17 CFR 230.802].

[73] See Release No. 33–8731 (Aug. 9, 2006) [71 FR 47060].

[74] See letters from ABA, ACB, AICPA, BDO, BIO, Calix, CII, Core Mark, Cleary, Cravath, Davis Polk, Deloitte, E&Y, Grant Thornton, Graybar, Hermes, G. Merkl, NVCA, PFS, PwC, SBA and TIA.

[75] See, for example, letters from ABA, ACB, AICPA, BDO, BIO, Calix, Cravath, Cleary, Davis Polk, Grant Thornton, Graybar, Hermes, NVCA, PFS, SBA, and TIA.

[76] Instruction 1 to Item 308 of Regulations S–B and S–K, Item 15 of Form 20–F, and General Instruction B(6) of Form 40–F, and Exchange Act Rules 13a–15(a), (c) and (d) and 15d–15(a), (c) and (d). The definition of an accelerated filer was based, in part, on the requirements for registration of primary offerings for cash on Form S–3. See Section II.B.3 in Release No. 33–8128 (Sept. 5, 2002) [67 FR 58480] and Section I in Release No. 33–8644 (Dec. 21, 2005) [70 FR 76626]. In some situations, a newly formed public company may seek to use another entity's reporting history for purposes of using Form S–3. For example, a spun-off entity may attempt to use its parent's reporting history or a newly formed holding company may seek to use its predecessor's reporting history. Because of the inter-relationship between Form S–3 eligibility and accelerated filer status, we believe that, to the extent a newly formed public company seeks to use and is deemed eligible to use Form S–3 on the basis of another entity's reporting history, that company would also be an accelerated filer and therefore required to comply with Items 308(a) and 308(b) of Regulation S–K in the first annual report that it files.

[77] See n. 75 above.

[78] See letter from Cleary.

[79] See, for example, letters from CII and Deloitte.

[80] See letter from BDO. BDO sought clarification in the commentary regarding the application of the transition rules to a company that becomes an Exchange Act registrant after its year-end but before it is required to file financial statements for the year that just ended.

[81] See, for example, letters from ACB, Core-Mark and Davis Polk. Davis Polk suggested slightly expanding the deferral to require compliance after the filing of an annual report other than for a fiscal year ending before the company went public. ACB more broadly suggested extending the transition period to correspond to the timeframe for non-accelerated filers, not requiring compliance until the second annual report beginning with fiscal years ending on or after December 31, 2008. Core-Mark suggested expanding the deferral to apply to the first two annual reports filed.

[82] See n. 76 above. This transition period applies to companies conducting an initial public offering (equity or debt) or a registered exchange offer or that otherwise become subject to the Exchange Act reporting requirements. For these purposes, a newly public company that has filed a special financial report under Exchange Act Rule 15d–2 [17 CFR 240.15d–2] or that has filed a transition report on Form 10–K, 10–KSB, 20–F, or 40–F under Exchange Act Rule 13a–10 [17 CFR 240.13a–10] or Rule 15d–10 [17 CFR 240.15d–10] will have filed an annual report. As a result, a newly public company that files a special financial report or a transition report will be required to fully comply with the internal control over financial reporting requirements when filing an annual report for its next fiscal year.

[83] SEC staff provided its views on the disclosure of changes or improvements to controls made as a result of preparing for the registrant's first management report on internal control over financial reporting. See Question 9 in Management's Report on Internal Control Over Financial Reporting and Certification of Disclosure in Exchange Act Periodic Reports Frequently Asked Questions (revised October 6, 2004), at *http://www.sec.gov/info/accountants/controlfaq1004.htm.*

introductory language in paragraph 4 as well as language in paragraph 4(b) of the certification required by Exchange Act Rules 13a–14(a) and 15d–14(a) that refers to the certifying officers' responsibility for designing, establishing and maintaining internal control over financial reporting for the company, until it files an annual report that includes a report by management on the effectiveness of the company's internal control over financial reporting. This language is required to be provided in the first annual report required to contain management's internal control report and in all periodic reports filed thereafter.

One commenter suggested that if the Commission decides to provide for a transition period, prominent disclosure by the company and the auditor should be required indicating that the company is not yet required to comply with and there has been no management assessment or audit of the company's internal control over financial reporting.[84] We agree that newly public companies should include a statement in their annual report alerting investors about the company's obligations with respect to the internal control over financial reporting provisions. Therefore, we are adding a requirement that newly public companies that are relying on the transition rules must include a statement in the first annual report that they file that the report does not include management's assessment report or the auditor's attestation report.[85] This disclosure is consistent with the disclosure that non-accelerated filers and foreign private issuers will have to include in their annual reports during the year that they are not required to comply with the auditor attestation requirement.

IV. Paperwork Reduction Act

As discussed in the Proposing Release, we submitted a request for approval of the ''collection of information'' requirements contained in the amendments to the Office of Management and Budget (''OMB'') in accordance with the Paperwork Reduction Act of 1995 (''PRA'')[86] in connection with our original proposal and adoption of the rule and form amendments implementing the Section 404 requirements.[87] OMB approved these requirements. The new disclosure amendments that we are adopting today contain collection of information requirements within the meaning of PRA.

The titles for the collections of information are:[88]

(1) ''Regulation S–B'' (OMB Control No. 3235–0417);

(2) ''Regulation S–K'' (OMB Control No. 3235–0071);

(3) ''Form 10–K'' (OMB Control No. 3235–0063);

(4) ''Form 10–KSB'' (OMB Control No. 3235–0420);

(5) ''Form 20–F'' (OMB Control No. 3235–0288); and

(6) ''Form 40–F'' (OMB Control No. 3235–0381).

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information such as Form 10–K or Form 20–F unless it displays a currently valid OMB control number.

The amendments to Regulation S–B, Regulation S–K, Form 10–K, Form 10–KSB, Form 20–F and Form 40–F adopted in this release require non-accelerated filers and foreign private issuers that are accelerated filers (but not large accelerated filers) to include a statement in management's report on the company's internal control over financial reporting in the annual report in which the company is not required to include the auditor attestation requirement. The statement should disclose that the annual report does not contain a report by the company's registered public accounting firm on management's report of the company's internal control over financial reporting, and management's report was not subject to attestation by the accounting firm pursuant to temporary rules of the Commission that permit the company to provide only management's report in the annual report. The amendments we are adopting also require newly public companies to provide a similar statement in their first annual report to reflect the transition schedule we are adopting for those companies. We are requesting comment in this release with regard to the collections of information requirements for these amendments.

The requirements are designed to avoid investor confusion regarding application of the internal control over financial reporting requirements to non-accelerated filers for their fiscal years ending on or after December 15, 2007 but before December 15, 2008; to foreign private issuers that are accelerated filers (but not large accelerated filers) for their fiscal years ending on or after July 15, 2006 but before July 15, 2007; and to newly public companies for the first annual report that they are required to file. The requirements are mandatory. The respondents to the collection of information requests here will be: (1) Non-accelerated filers that do not file an auditor's attestation report for a fiscal year ending on or after December 15, 2007 but before December 15, 2008; (2) foreign private issuers filing on Form 20–F or Form 40–F that are accelerated filers (but not large accelerated filers) that do not file an auditor's attestation report for a fiscal year ending on or after July 15, 2006 but before July 15, 2007; and (3) newly public companies that do not comply with the internal control over financial reporting requirements in the first annual report filed with the Commission in accordance with the new rules.

Form 10–K prescribes information that registrants must disclose annually to the market about its business. Form 10–KSB prescribes information that registrants that are ''small business issuers'' as defined under our rules must disclose annually to the market about its business. Form 20–F is used by foreign private issuers to either register a class of securities under the Exchange Act or provide an annual report required under the Exchange Act. Form 40–F is used by foreign private issuers to file reports under the Exchange Act after having registered securities under the Securities Act and by certain Canadian registrants.

For the purposes of the Paperwork Reduction Act, we estimate that, over a 3-year period, the annual incremental burden imposed by the disclosure amendments will average 15 minutes per form. We have based our estimates of the effects that these additional disclosure requirements would have on the Forms 10–K, 10–KSB, 20–F and 40–F primarily based on our review of the most recently completed PRA submissions for those collections of information, and those requirements in those Regulations and Forms.

Form 10–K

For purposes of the PRA, we estimate that the amendments affecting the Form 10–K collection of information requirements will increase the annual paperwork burden by approximately 1,289 hours of company personnel time and a cost of approximately $171,294 for the services of outside

[84] See letter from Deloitte.

[85] See Instruction 1 to Item 308 of Regulations S–B and S–K, Item 15 of Form 20–F, and General Instruction B(6) of Form 40–F.

[86] 44 U.S.C. 3501 *et seq.* and 5 CFR 1320.11.

[87] See Section IV. of Release No. 33–8238.

[88] The paperwork burden from Regulations S–K and S–B is imposed through the forms that are subject to the requirements in those Regulations and is reflected in the analysis of those forms. To avoid a Paperwork Reduction Act inventory reflecting duplicative burdens, for administrative convenience we estimate the burdens imposed by each of Regulations S–K and S–B to be a total of one hour.

professionals.[89] Based on our research into the number of non-accelerated filers in 2004 and 2005, we estimate that approximately 6,025 annual reports filed on Form 10–K would be filed by non-accelerated filers that could be subject to the additional disclosure requirement that we are adopting for non-accelerated filers. This estimate is based on the assumption that the number of annual responses on Form 10–K is 10,041.[90] Based on our review of the number of newly public companies in 2005, we estimate that approximately 853 companies filing on Form 10–K would be subject to the additional disclosure requirement that we are adopting for newly public companies. We estimate that the incremental burden for the newly public company amendments for Form 10–K is 213 hours.

Form 10–KSB

For purposes of the PRA, we estimate that the amendments affecting the Form 10–KSB collection of information requirements will increase the annual paperwork burden by approximately 980 hours of company personnel time and a cost of approximately $130,709 for the services of outside professionals. Based on our research into the number of non-accelerated filers in 2004 and 2005, we estimate that all (4,819) of the annual reports filed on Form 10–KSB would be filed by non-accelerated filers that could be subject to the additional disclosure requirement that we are adopting for non-accelerated filers. This estimate is based on the assumption that the number of annual responses on Form 10–KSB is 4,819.[91] Based on our review into the number of newly public companies in 2005, we estimate that approximately 409 companies filing on Form 10–KSB would be subject to the additional disclosure requirement that we are adopting for newly public companies. We estimate that the incremental burden for the newly public company amendments for Form 10–KSB is 102 hours.

Form 20–F

For purposes of the PRA, we estimate that the amendments affecting the Form 20–F collection of information requirements will increase the annual paperwork burden by approximately 36 hours of company personnel time and a cost of approximately $42,809 for the services of outside professionals.[92] Based on our review into the percentage of total foreign private issuers that were non-accelerated filers in 2005, we estimate that 40% (or 471) of the annual reports filed on Form 20–F would be filed by non-accelerated filers that could be subject to the additional disclosure requirement that we are adopting for non-accelerated filers. Based on our review into the percentages of foreign private issuers that were accelerated filers (but not large accelerated filers) in 2005, we estimate that 21% (or 247) of the annual reports filed on 20–F would be accelerated filers and not large accelerated filers. These estimates are based on the assumption that the number of annual responses on Form 20–F is 1177.[93] Based on our review of the number of newly public companies in 2005, we estimate that approximately 100 companies filing on Form 20–F would be subject to the additional disclosure requirement that we are adopting for newly public companies. We estimate that the incremental burden for the newly public company amendments for Form 20–F is 25 hours.

Form 40–F

For purposes of the PRA, we estimate that the amendments affecting the Form 40–F collection of information requirements will increase the annual paperwork burden by approximately 27 hours of company personnel time and a cost of approximately $8,002 for the services of outside professionals. Based on recent research into the percentage of total foreign private issuers that are non-accelerated filers, we estimate that 40% (or 88) of the annual reports filed on Form 40–F would be filed by non-accelerated filers that could be subject to the additional disclosure requirement that we are adopting for non-accelerated filers. Based on our review into the percentages of foreign private issuers that were accelerated filers (but not large accelerated filers) in 2005, we estimate that 21% (or 46) of the annual reports filed on 40–F would be accelerated filers and not large accelerated filers. These estimates are based on the assumption that the number of annual responses on Form 40–F is 220.[94] Based on our review of the number of newly public companies in 2005, we estimate that approximately 19 companies filing on Form 40–F would be subject to the additional disclosure requirement that we are adopting for newly public companies. We estimate that the incremental burden for the newly public company amendments for Form 40–F is 5 hours.

Request for Comment

We solicit comment on the expected effects of the amendments on Regulations S–B and S–K, Form 20–F and Form 40–F under the PRA. In particular, we solicit comment on:

- How accurate are our burden and cost estimates for Forms 10–K, 10–KSB, 20–F and 40–F;
- Whether the amendments are necessary to avoid investor confusion regarding the internal control over financial reporting requirements for non-accelerated filers and newly public companies;
- Whether there are ways to enhance the quality, utility, and clarity of the information to be collected; and
- Whether there are ways to minimize the burden of the additional disclosure requirements on non-accelerated filers and newly public companies.

Any member of the public may direct to us any comments concerning these burden and cost estimates and any suggestions for reducing the burdens and costs. Persons who desire to submit comments on the collections of 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, or send an e-mail to *David_Rostker@omb.eop.gov*, and send a copy of the comments to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090, 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, 100 F Street, NE., Washington, DC 20549. Because the OMB is required to make a decision

[89] This estimate is based on the assumed 75% and 25% split of the burden hours between internal staff and external professionals, and an hourly rate of $400 for external professionals. 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.

[90] This number is based on the number of responses made in the period from October 1, 2005 through September 30, 2006.

[91] This number is based on the number of responses made in the period from October 1, 2005 through September 30, 2006.

[92] The burden allocation for Forms 20–F and 40–F, however, use a 25% internal to 75% outside professional allocation to reflect the fact that foreign private issuers rely more heavily on outside professionals for the preparation of these forms.

[93] This number is based on the number of responses made in the period from October 1, 2005 through September 30, 2006.

[94] This number is based on the number of responses made in the period from October 1, 2005 through September 30, 2006.

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.

V. Cost-Benefit Analysis

A. Benefits

The extension of the compliance dates is intended to make implementation of the internal control reporting requirements more efficient and cost-effective for non-accelerated filers. First, the extension postpones for 5 months (from fiscal years ending on or after July 15, 2007 until fiscal years ending on or after December 15, 2007) the date by which non-accelerated filers must begin to include a report by management assessing the effectiveness of the company's internal control over financial reporting. Based on our estimates, we believe that fewer than 15% of all non-accelerated filers have a fiscal year ending between July 15, 2007 and December 15, 2007.[95] In addition, under the extension, a non-accelerated filer is not required to include an auditor attestation report on management's assessment of internal control over financial reporting until it files an annual report for its first fiscal year ending on or after December 15, 2008. As a result, all non-accelerated filers are required to complete only management's assessment in their first year of compliance with the Section 404 requirements.

We believe that the following benefits will flow from an additional postponement of the dates by which non-accelerated filers must comply with the internal control reporting requirements:

- Auditors of non-accelerated filers will have more time to conform their initial attestation reports on management's assessment of internal control over financial reporting to the changes to the auditing attestation standard and other actions that the PCAOB determines to take;
- Non-accelerated filers will save opportunity costs associated with their initial audit of internal control over financial reporting while changes to the auditing standard are being considered and implemented and the PCAOB is developing, or facilitating the development of, additional guidance that will be specifically directed to auditors of smaller public companies;
- Management of non-accelerated filers are able to begin the process of assessing the effectiveness of internal control over financial reporting before their auditors attest to such assessment (and investors can begin to see and evaluate the results of their initial efforts); and
- Non-accelerated filers with a fiscal year ending between July 15, 2007 and December 15, 2007 have additional time to consider the management guidance to be issued by the Commission and the recently issued COSO guidance on understanding and applying the COSO framework, before planning and conducting their first internal control assessment.

Many public commenters on the Proposing Release and on previous occasions have asserted that the internal control reporting compliance costs are likely to be disproportionately higher for smaller public companies than larger ones, and that the audit fee represents a large percentage of those costs.[96] We acknowledge that some non-accelerated filers may incur audit fee costs in the first year that they provide management's report due to the fact that management may engage in a dialogue with their auditors regarding their assessment of the company's internal control over financial reporting. Nevertheless, we believe that the potential cost savings derived from the year that the non-accelerated filers are not required to include an auditor's attestation report on management's assessment of the effectiveness of their internal control over financial reporting will likely be substantial. The cost that a non-accelerated filer will save as a result of the extension of the auditor attestation report is likely to vary significantly.[97]

Additionally, we have previously learned from public comments, including our roundtables on implementation of the internal control reporting provisions,[98] that while companies incur increased internal costs in the first year of compliance in part due to ''deferred maintenance'' items (*e.g.*, documentation, remediation, etc.), these costs may decrease in the second year. Therefore, we believe that postponing many of the auditor costs until the second year will help non-accelerated filers smooth the significant cost spike that many accelerated filers have experienced in their first year of compliance. Many commenters agreed that the deferred implementation of the auditor attestation requirement would relieve smaller companies from regulatory costs.[99] One commenter noted that the additional time will provide time for smaller companies to not only learn from the guidance that the Commission and PCAOB plan to issue but also the experiences of larger public companies.[100]

We also are adopting amendments that provide for a transition period before a newly public company is required to comply with Section 404 requirements. We think that the benefits of the transition period for newly public companies include the following:

- Companies that are going public are able to concentrate on their initial securities offering without the additional burden of becoming subject to the Section 404 requirements soon after the offering;
- Newly public companies are able to prepare their first annual report without the additional burden of having to comply with the Section 404 requirements at the same time;
- The quality of newly public companies' first compliance efforts may improve due to the additional time that the companies have to prepare to satisfy the Section 404 requirements; and
- The transition period reduces the incentive that the previous rules created for a company that plans to go public to time its initial public offering to defer compliance with the Section 404 requirements for as long as possible after the offering.

The comments that we received generally supported the transition period for newly public companies and our rationale for adopting the amendments. Several commenters agreed that the Section 404 requirements act as a barrier to becoming a public company and increase the cost of going public.[101] Because 404 compliance costs vary by size and complexity of the company, it is difficult to quantify precisely the cost-

[95] See n. 44 above.

[96] See, for example, letters on the Proposing Release from FEI and SBA.

[97] Numerous cost surveys have been made public citing the high cost of compliance with the Section 404 requirements. For a sampling, see surveys from CRA International (Apr. 2006), FEI (Mar. 2006), Foley & Lardner LLP (June 2006), ICBA (Mar. 2005), NASDAQ and American Electronics Association (Oct. 2005), and the Business Roundtable (Mar. 2006). Note that many of these studies do not isolate the cost of the auditor's attestation; some studies discuss full audit costs or other fees. The Commission has not independently verified the reliability or accuracy of the survey data.

[98] Materials related to the Commission's 2005 Roundtable Discussion on Implementation of Internal Control Reporting Provisions and 2006 Roundtable on Second-year Experiences with Internal Control Reporting and Auditing Provisions, including the archived roundtable broadcasts, are available at *http://www.sec.gov/spotlight/soxcomp.htm*.

[99] See, for example, letters from Cravath, Hermes, LaCrosse, and SBA.

[100] See, for example, letter from FEI.

[101] See letters from ABA, Calix, Core-Mark, Cravath, Davis Polk, E&Y, and SBA.

savings that these amendments may afford to newly public companies.[102]

One commenter offered a study on companies with internal control deficiencies disclosures and their cost of capital, which we have considered in our analysis.[103] While we note that the potential costs due to a lack of assurance, we believe the counterbalancing benefits and clear disclosure to investor regarding the internal control requirements justify our actions. Another venture capital association did not anticipate a major change in the cost and effort of an initial public offering to diminish until ''the overall 404 cost-benefit ratio'' is brought into balance, as venture-backed companies would still begin the process of obtaining a clean opinion from the auditor long before the public offering.[104] While we recognize that newly public companies will still incur costs in preparation for the implementation of the internal control requirements, we believe that the savings from the transition period for these companies may still be substantial, as the newly public companies will not be required to include either management's report on the company's internal control over financial reporting or the auditor's attestation on management's report in their first annual report.

We also are adopting a requirement that requires a newly public company to disclose in the first annual report that it files that it has not included either management's report on internal control or the auditor's attestation report. Our intention is that this requirement will provide clarity to investors and the capital markets regarding the Section 404 requirements of a newly public company.

B. Costs

Under the extension, investors in companies that are non-accelerated filers will have to wait longer to review an attestation report by the companies' auditor on management's assessment of internal control over financial reporting. The extension may create a risk that, without the auditor's attestation to management's assessment process, some issuers may conclude that the company's internal control over financial reporting is effective without conducting an assessment that is as thorough, careful and as appropriate to the issuers' circumstances as they would conduct if the auditor were involved.

We received many comments on these potential costs. Several commenters believed that management's assessment of internal control would provide useful disclosure to investors even without the auditor's attestation report; [105] however, other commenters expressed concern whether management's report, absent the auditor's attestation, would provide meaningful disclosure [106] or would fail to identify a material weakness in the company's internal control over financial reporting.[107] One accounting firm noted that even though there is an increased risk that a material weakness will go undetected, the benefit that furnishing management's report provides to investors outweighs that risk.[108] One commenter also noted that if standards are revised between the first and second year of compliance with the internal control reporting requirements for non-accelerated filers, the deferred implementation of the audit attestation requirement could result in overlapping expenditures and misallocation of resources.[109] On balance, we believe that the graduated introduction of the 404 requirements will give investors more useful information at lower overall costs.

Some commenters questioned whether the sequential implementation of the management report requirement and the auditor attestation requirement would cause confusion to investors and the capital markets.[110] Several commenters, in response to the Commission's request for public comment, supported a requirement that a non-accelerated filer, during its first year of compliance with the management report requirement, should clearly disclose that management's report has not been attested to by the auditor.[111] In response to comment, we have adopted this disclosure requirement for the year that non-accelerated filers and foreign private issuers that are accelerated filers (but not large accelerated filers) are only required to provide management's report.

Another potential cost of the extension in the form of increased litigation risk may be created by the phasing-in of the auditor's attestation report on management's assessment if, in year one, management concludes that the company's internal control over financial reporting is effective, but the auditor comes to a contrary conclusion the following year, thereby calling into question management's earlier conclusion. We have mitigated the risk by adopting an amendment that the management report be furnished to, rather than filed with, the Commission in the first year of compliance.

A potential cost of the transition period for newly public companies is that investors may be subject to uncertainty as to the effectiveness of a newly public company's internal control over financial reporting for a longer period of time than under previous requirements. One commenter argued that the safeguard provided by the Section 404 requirements could be of increased importance for newly public companies and their investors, because those companies are often less sophisticated and lack the market following that provide safeguards.[112] As we noted, we are also requiring clear disclosure by newly public companies that they are not required to include either a report by management or an auditor's attestation report on internal control over financial reporting in their first annual report so that investors can consider that information when making their investing decisions.

The additional disclosure requirements that we are adopting for non-accelerated filers and foreign private issuers that are accelerated filers (but not large accelerated filers) during the year that they are only required to provide management's report on internal control and for newly public companies during the transition period may increase costs for companies, but we believe the increase should be minimal.

[102] In its comment letter, the SBA cites various data regarding Section 404 compliance costs.

[103] See letter from CII (citing Hollis Ashbaugh-Skaife *et al., The Effect of Internal Control Deficiencies on Firm Risk and Cost of Equity Capital* (April 2006)). The study found that companies with internal control deficiencies exhibit higher costs of capital and those that subsequently receive an unqualified auditor attestation report on the company's internal control over financial reporting exhibit a decrease to their market-adjusted cost of capital. Another study cited by the Hollis study found no evidence of an effect on the cost of capital for internal control disclosures. See Ogneva, Subramanyam, and Reaghunandan, *Internal Control Weaknesses and Cost of Equity: Evidence from SOX Section 404 Disclosures* (2006).

[104] See letter from NVCA.

[105] See letters from Deloitte, E&Y, FEI, Hermes, KPMG and G. Merkl.

[106] See, for example, letter from IDW.

[107] See letters from AICPA, Deloitte, Grant Thorton, IDW, and PwC.

[108] See letter from KPMG. This commenter noted that the formality and discipline that will be introduced after non-accelerated filers begin to comply with the requirement for management's report will lead to more effective management evaluations and more meaningful management disclosures.

[109] See letter from ABA.

[110] See, for example, letters from ABA, CII, and PwC.

[111] See letters from AICPA, BDO, Deloitte, E&Y, Grant Thorton, and KPMG.

[112] See letter from Deloitte.

VI. Consideration of Impact on the Economy, Burden on Competition and Promotion of Efficiency, Competition and Capital Formation

Section 23(a)(2) of the Exchange Act [113] requires us, when adopting rules under the Exchange Act, to consider the impact that any new rule would have on competition. 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. In addition, Section 2(b) of the Securities Act [114] and Section 3(f) of the Exchange Act [115] 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.

We expect that the extension of compliance dates will increase efficiency and enhance capital formation, and thereby benefit investors, by providing more time for non-accelerated filers to prepare for compliance with the Section 404 requirements and by affording these filers the opportunity to consider implementation guidance that is specifically tailored to smaller public companies. We further expect a more gradual phase-in of the management assessment and auditor attestation report requirements over a two-year period, rather than requiring non-accelerated filers to fully comply with both requirements in their first compliance year, to make the implementation process more efficient and less costly for non-accelerated filers. Some commenters on the Proposing Release argued that the sequential implementation of the management report requirement and auditor attestation requirement could make the application of the revised Auditing Standard No. 2 less efficient.[116] We have encouraged management to confer with their auditors to minimize any inefficiencies. Other commenters, however, supported the extension and believed that it would reduce compliance costs for smaller companies and provide them with additional time to develop best practices for compliance and greater efficiencies in preparing management reports.[117]

It is possible that a competitive impact could result from the differing treatment of non-accelerated filers and larger companies that already have been complying with the Section 404 requirements, but we do not expect that the extension will have any measurable effect on competition. We did not receive any comments specifically addressing the effect of the extension on competition.

The transition period for newly public companies should also increase efficiency and enhance capital formation by enabling these companies to concentrate on the initial securities offering process, if they are becoming subject to the Exchange Act reporting requirements by virtue of a public securities offering, and to prepare their first annual reports without the additional burden of complying with the Section 404 requirements. The provision of additional time for newly public companies to prepare for compliance with the internal control over financial reporting requirements may lead to increased quality of the companies' initial compliance efforts.[118] One commenter noted that given that the commitment of resources and expenditures in preparation for an initial public offering is enormous, the immediate imposition of Section 404 requirements is overly burdensome and does not provide sufficient time for careful establishment of internal control over financial reporting.[119] One commenter asserted that deferral of the Section 404 requirements may diminish the U.S. market premium based on an article that noted a study demonstrating that companies listing on U.S. markets enjoyed a valuation premium but also acknowledged that the benefits of Section 404 ''are difficult to quantify.'' [120] We believe that with the disclosure newly public companies must include in their first annual reports explaining that the management and auditor attestation reports on internal control over financial reporting are not required in the company's annual report, investors can better incorporate this information into their investing decisions. Also, a company that wishes to comply with Section 404 in their first year of reporting is not prevented from doing so under our rules.

In addition, the previous requirements would have provided an incentive for private companies to time their public offerings so as to maximize the length of time that they would have after going public before having to comply with the Section 404 requirements. The amendments we are adopting today that allow newly public companies to defer compliance with these requirements until they file their second annual report with the Commission reduce this incentive. As a result, capital formation should be enhanced by allowing companies to time their offerings to raise capital rather than to avoid a compliance requirement. In reducing regulatory burdens for newly public companies, we may also increase the attractiveness of the U.S. markets to foreign companies.[121]

VII. Final Regulatory Flexibility Analysis

This Final Regulatory Flexibility Analysis has been prepared in accordance with the Regulatory Flexibility Act [122] for amendments to rules and forms under the Securities Act and the Exchange Act that: (1) extend the compliance dates applicable to non-accelerated filers for certain internal control over financial reporting requirements and (2) provide a transition period for newly public companies before they become subject to compliance with the internal control over financial reporting requirements. Non-accelerated filers previously were scheduled to begin to comply with the management's assessment and auditor attestation report requirements on the company's internal control over financial reporting for their annual report filed for the first fiscal year ending on or after July 15, 2007. We are extending this compliance date with respect to the management's assessment portion so that a non-accelerated filer is required to begin including management's assessment in an annual report for its first fiscal year ending on or after December 15, 2007. We are extending the compliance date with respect to the auditor attestation report so that a non-accelerated filer is required to begin including an auditor's attestation report on management's assessment in the annual report that it files for its first fiscal year ending on or after December 15, 2008. In addition, we are also adopting amendments for newly public companies so that a newly public company need not comply with our internal control over financial reporting requirements until after it either had been required to file an annual report pursuant to the requirements of Section

[113] 15 U.S.C. 78w(a)(2).

[114] 15 U.S.C. 77b(b).

[115] 15 U.S.C. 78c(f).

[116] See, for example, letters from ABA, IDW, G. Merkl and PwC.

[117] See, for example, letters from Core-Mark, FEI, J. Finn, Graybar, Congressman Lynch, and Village.

[118] See also letters from ABA and Calix.

[119] See letter from ABA.

[120] See letter from CII (citing article in CFO magazine).

[121] See also letters from ACB, Cravath and Davis Polk.

[122] 5 U.S.C. 603.

13(a) or 15(d) of the Exchange Act for the prior fiscal year or had filed an annual report with the Commission for the prior fiscal year.

A. Reasons for and Objectives of the Amendments

The Commission and the PCAOB plan a series of actions that will result in the issuance of new guidance to aid companies and auditors in performing their evaluations of internal control over financial reporting. These amendments are designed to provide additional time for non-accelerated filers and newly public companies to comply with the internal control over financial reporting requirements as modified. We believe that the additional time will enhance the quality of public company disclosure concerning internal control over financial reporting.

For non-accelerated filers, we expect that extending the implementation of the management report requirement for five months will provide sufficient time for the Commission to issue final guidance to assist in management's performance of a top-down, risk-based and scalable assessment of controls over financial reporting. We are deferring the implementation of the auditor attestation report requirement for an additional year after the implementation of the management report requirement for the following reasons:

- To afford non-accelerated filers and their auditors the benefit of any changes or additional guidance regarding application of the COSO Framework;
- To both save and postpone costs associated with the auditor's attestation during the period that changes to Auditing Standard No. 2 are being considered and implemented;
- To enable management more time to prepare and gain efficiencies in the review and evaluation of the effectiveness of internal control over financial reporting; and
- To provide the Commission with additional time to consider public comment on the questions we raised on management guidance related to the appropriate role of the auditor in evaluating management's internal control assessment process.[123]

For newly public companies, we expect that the transition period which eliminates the requirement to provide management's report and the auditor's attestation report in the first annual report filed with the Commission will alleviate some of the burdens of going public. The implementation of the transition period will:

- Provide additional time and defer costs for a newly public company, allowing it to focus on its assessment of internal control over financial reporting without the additional focus of the initial public offering; and
- Allow companies, including foreign issuers, that become subject to Section 15(d) after filing a Securities Act registration statement but who may then be eligible to terminate their periodic filing obligations after filing just one annual report, to avoid the cost of preparing internal control reports.

B. Significant Issues Raised by Public Comment

In the Proposing Release, we requested comment on the number of small entity issuers that may be affected, the existence or nature of the potential impact and how to quantify the impact of the amendments. One commenter provided some data on general costs of compliance related to the Section 404 requirements.[124] For example, this commenter noted one survey included in the GAO report issued in April 2006 that surveyed 128 companies and found that fees paid by smaller companies to ''external consultants'' ranged from $3,000 to $1.4 million. These external consultants provided various forms of assistance, including assistance with developing methodologies to comply with Section 404, documenting and testing internal controls, and helping management assess the effectiveness of internal controls and remediate identified internal control weaknesses. This commenter also noted that surveys of actual Section 404 costs indicate that annual small company compliance costs approach $1,000,000 and then cited a survey from Financial Executives International showing that non-accelerated filers would each spend approximately $935,000 to comply with Section 404 requirements. Some companies provided estimates for their own compliance costs for the Section 404 requirements.[125]

C. Small Entities Subject to the Final Amendments

Exchange Act Rule 0–10(a)[126] defines an issuer, other than an investment company, to be a ''small business'' or ''small organization'' if it had total assets of $5 million or less on the last day of its most recent fiscal year. The amendments affect most issuers that are small entities. We estimate that there are approximately 2,500 issuers, other than registered investment companies, that may be considered small entities. The extension for non-accelerated filers and the transition period for newly public companies apply to any small entity that is subject to Exchange Act reporting requirements.

D. Reporting, Recordkeeping, and Other Compliance Requirements

Our amendments are designed to alleviate reporting and compliance burdens. The compliance date extension for non-accelerated filers postpones the date by which non-accelerated filers with a fiscal year end between July 15, 2007 and December 15, 2007 must begin to comply with the internal control over financial reporting requirements. In addition, for non-accelerated filers, the amendments eliminate the requirement to include an auditor's report on internal control over financial reporting in the annual report during the initial year of compliance with the internal control over financial reporting requirements. During this year, however, non-accelerated filers are required to provide a statement in their annual reports, explaining that the annual report does not include the auditor's attestation report.

The transition for newly public companies also alleviates reporting and compliance burdens by relieving a newly public company from compliance with our internal control over financial reporting requirements in the first annual report that it files with the Commission. This amendment provides all newly public companies with at least one annual reporting period before they are required to conduct the first assessment of internal control over financial reporting and allows companies that are not required to file a second annual report to exit the system without filing management or auditor reports regarding internal control over financial reporting. During the transition period, however, newly public companies are required to provide a statement in their annual reports explaining that the annual report does not include either management's report on internal control or the auditor's attestation report.

E. Agency Action To Minimize Effect on Small Entities

The Regulatory Flexibility Act directs us to consider significant alternatives that would accomplish our stated objectives, while minimizing any significant adverse impact on small entities. In connection with the

[123] Release No. 34–54122. The comment period closed on September 18, 2006, and the letters that we received on the Concept Release are available in File No. S7–11–06, at *http://www.sec.gov/comments/s7-11-06/s71106.shtml.*

[124] See letter from SBA.

[125] See, for example, letters from Core-Mark and LaCrosse.

[126] 17 CFR 240.0–10(a).

amendments, we considered the following alternatives:

- Establishing different compliance or reporting requirements or timetables that take into account the resources available to small entities;
- Clarifying, consolidating or simplifying compliance and reporting requirements under the rules for small entities;
- Using performance rather than design standards; and
- Exempting small entities from all or part of the requirements.

We have considered a variety of reforms to achieve our regulatory objectives and, where possible, have taken steps to minimize the effects of the rules and amendments on small entities without proposing a complete and permanent exemption for small entities from coverage of the Section 404 requirements. The amendments establish a different compliance and reporting timetable for non-accelerated filers and provide additional time for newly public companies to prepare to comply with the internal control over financial reporting requirements.

We received some comments suggesting alternatives to the amendments that we are adopting. For example, one commenter recommended that the Commission explore ways to provide further flexibility to smaller companies.[127] This commenter recommended that the Commission, as an alternative, exempt smaller companies from outside audit requirements. Some commenters suggested that the Commission extend the compliance date associated with the management report requirement for an even longer period of time than proposed.[128] As discussed above, the amendments are designed to provide companies that are non-accelerated filers with time to consider any guidance issued by us and other entities, such as COSO, before planning and conducting their internal control assessments, and to consider the anticipated revisions to Auditing Standard No. 2 that the PCAOB and Commission are considering. The amendments, our forthcoming management guidance, and the revisions to Auditing Standard No. 2 should make implementation of the internal control reporting requirements more effective and efficient for non-accelerated filers and newly public companies. As we implement these changes, we will consider the available information to determine whether additional flexibility is warranted, consistent with investor protection.

[127] See, for example, letter from SBA.

[128] See, for example, letters from ABA, ACB, Davis Polk, ICBA, and MOCON.

VIII. Statutory Authority and Text of the Amendments

The amendments described in this release are being adopted under the authority set forth in Sections 12, 13, 15 and 23 of the Exchange Act.

List of Subjects

17 CFR Part 210

Accountants, Accounting, Reporting and recordkeeping requirements, Securities.

17 CFR Part 228

Reporting and recordkeeping requirements, Securities, Small businesses.

17 CFR Parts 229, 240 and 249

Reporting and recordkeeping requirements, Securities.

■ For the reasons set out in the preamble, the Commission amends 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 is revised to read as follows:

Authority: 15 U.S.C. 77f, 77g, 77h, 77j, 77s, 77z–2, 77z–3, 77aa(25), 77aa(26), 78c, 78j–1, 78*l*, 78m, 78n, 78o(d), 78q, 78u–5, 78w(a), 78*ll*, 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. Section 210.2–02T is amended by:
■ a. Adding the phrase ''(but not a large accelerated filer)'' after the phrase ''that is an accelerated filer'' in paragraph (a);
■ b. Revising paragraph (b); and
■ c. Adding paragraphs (c) and (d).

The additions and revision read as follows:

§ 210.2–02T Accountants' reports and attestation reports on management's assessment of internal control over financial reporting.

* * * * *

(b) Paragraph (a) of this temporary section will expire on December 31, 2007.

(c) The requirements of § 210.2–02(f) shall not apply to a registered public accounting firm that issues or prepares an accountant's report that is included in an annual report filed by a registrant that is neither a ''large accelerated filer'' nor an ''accelerated filer,'' as those terms are defined in § 240.12b–2 of this chapter, for a fiscal year ending on or after December 15, 2007 but before December 15, 2008.

(d) Paragraph (c) of this temporary section will expire on June 30, 2009.

PART 228—INTEGRATED DISCLOSURE SYSTEM FOR SMALL BUSINESS ISSUERS

■ 3. The authority citation for Part 228 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, 77jjj, 77nnn, 77sss, 78*l*, 78m, 78n, 78o, 78u–5, 78w, 78*ll*, 78mm, 80a–8, 80a–29, 80a–30, 80a–37, 80b–11, and 7201 *et seq*., and 18 U.S.C. 1350.

* * * * *

■ 4. Section 228.308 is amended by:
■ a. adding an ''s'' to the word ''instruction'' in the descriptive heading at the end of the section;
■ b. redesignating the existing instruction to Item 308 as Instruction 2; and
■ c. adding new Instruction 1.

The addition reads as follows:

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

* * * * *

1. A small business issuer need not comply with paragraphs (a) and (b) of this Item until it either had been required to file an annual report pursuant to section 13(a) or 15(d) of the Exchange Act (15 U.S.C. 78m or 78o(d)) for the prior fiscal year or had filed an annual report with the Commission for the prior fiscal year. A small business issuer that does not comply shall include a statement in the first annual report that it files in substantially the following form: ''This annual report does not include a report of management's assessment regarding internal control over financial reporting or an attestation report of the company's registered public accounting firm due to a transition period established by rules of the Securities and Exchange Commission for newly public companies.''

* * * * *

■ 5. Section 228.308T is added to read as follows:

§ 228.308T (Item 308T) Internal control over financial reporting.

Note to Item 308T: This is a special temporary section that applies only to an annual report filed by the small business issuer for a fiscal year ending on or after December 15, 2007 but before December 15, 2008.

(a) *Management's annual report on internal control over financial reporting.* Provide a report of management on the small business issuer's internal control over financial reporting (as defined in § 240.13a–15(f) or § 240.15d-15(f) of this chapter). This report shall not be deemed to be filed for purposes of Section 18 of the Exchange Act or otherwise subject to the liabilities of that section, unless the small business issuer specifically states that the report is to be considered ''filed'' under the Exchange Act or incorporates it by reference into a filing under the Securities Act or the Exchange Act. The report must contain:

(1) A statement of management's responsibility for establishing and maintaining adequate internal control over financial reporting for the small business issuer;

(2) A statement identifying the framework used by management to evaluate the effectiveness of the small business issuer's internal control over financial reporting as required by paragraph (c) of § 240.13a–15 or § 240.15d–15 of this chapter; and

(3) Management's assessment of the effectiveness of the small business issuer's internal control over financial reporting as of the end of the small business issuer's most recent fiscal year, including a statement as to whether or not internal control over financial reporting is effective. This discussion must include disclosure of any material weakness in the small business issuer's internal control over financial reporting identified by management. Management is not permitted to conclude that the small business issuer's internal control over financial reporting is effective if there are one or more material weaknesses in the small business issuer's internal control over financial reporting.

(4) A statement in substantially the following form: ''This annual report does not include an attestation report of the company's registered public accounting firm regarding internal control over financial reporting. Management's report was not subject to attestation by the company's registered public accounting firm pursuant to temporary rules of the Securities and Exchange Commission that permit the company to provide only management's report in this annual report.''

(b) *Changes in internal control over financial reporting.* Disclose any change in the small business issuer's internal control over financial reporting identified in connection with the evaluation required by paragraph (d) of § 240.13a–15 or § 240.15d–15 of this chapter that occurred during the small business issuer's last fiscal quarter (the small business issuer's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the small business issuer's internal control over financial reporting.

Instructions to paragraphs (a) and (b) of Item 308T.

1. A small business issuer need not comply with paragraph (a) of this Item until it either had been required to file an annual report pursuant to section 13(a) or 15(d) of the Exchange Act (15 U.S.C. 78m or 78o(d)) for the prior fiscal year or had filed an annual report with the Commission for the prior fiscal year. A small business issuer that does not comply shall include a statement in the first annual report that it files in substantially the following form: ''This annual report does not include a report of management's assessment regarding internal control over financial reporting or an attestation report of the company's registered public accounting firm due to a transition period established by rules of the Securities and Exchange Commission for newly public companies.''

2. The small business issuer must maintain evidential matter, including documentation, to provide reasonable support for management's assessment of the effectiveness of the small business issuer's internal control over financial reporting.

(c) This temporary Item 308T, and accompanying note and instructions, will expire on June 30, 2009.

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

■ 6. The general authority citation for Part 229 is revised to read as follows:

Authority: 15 U.S.C. 77e, 77f, 77g, 77h, 77j, 77k, 77s, 77z–2, 77z–3, 77aa(25), 77aa(26), 77ddd, 77eee, 77ggg, 77hhh, 77iii, 77jjj, 77nnn, 77sss, 78c, 78i, 78j, 78*l*, 78m, 78n, 78o, 78u–5, 78w, 78*ll*, 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.

* * * * *

■ 7. Section 229.308 is amended by:

■ a. Adding an ''s'' to the word ''instruction'' in the descriptive heading at the end of the section;

■ b. Redesignating the existing instruction to Item 308 as Instruction 2; and

■ c. Adding new Instruction 1.

The addition reads as follows:

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

* * * * *

1. A registrant need not comply with paragraphs (a) and (b) of this Item until it either had been required to file an annual report pursuant to section 13(a) or 15(d) of the Exchange Act (15 U.S.C. 78m or 78o(d)) for the prior fiscal year or had filed an annual report with the Commission for the prior fiscal year. A registrant that does not comply shall include a statement in the first annual report that it files in substantially the following form: ''This annual report does not include a report of management's assessment regarding internal control over financial reporting or an attestation report of the company's registered public accounting firm due to a transition period established by rules of the Securities and Exchange Commission for newly public companies.''

* * * * *

■ 8. Section 229.308T is added to read as follows:

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

Note to Item 308T: This is a special temporary section that applies only to a registrant that is neither a ''large accelerated filer'' nor an ''accelerated filer'' as those terms are defined in § 240.12b–2 of this chapter and only with respect to an annual report filed by the registrant for a fiscal year ending on or after December 15, 2007 but before December 15, 2008.

(a) *Management's annual report on internal control over financial reporting.* Provide a report of management on the registrant's internal control over financial reporting (as defined in § 240.13a–15(f) or § 240.15d–15(f) of this chapter). This report shall not be deemed to be filed for purposes of Section 18 of the Exchange Act or otherwise subject to the liabilities of that section, unless the registrant specifically states that the report is to be considered ''filed'' under the Exchange Act or incorporates it by reference into a filing under the Securities Act or the Exchange Act. The report must contain:

(1) A statement of management's responsibility for establishing and maintaining adequate internal control over financial reporting for the registrant;

(2) A statement identifying the framework used by management to evaluate the effectiveness of the registrant's internal control over financial reporting as required by paragraph (c) of § 240.13a–15 or § 240.15d–15 of this chapter; and

(3) Management's assessment of the effectiveness of the registrant's internal

control over financial reporting as of the end of the registrant's most recent fiscal year, including a statement as to whether or not internal control over financial reporting is effective. This discussion must include disclosure of any material weakness in the registrant's internal control over financial reporting identified by management. Management is not permitted to conclude that the registrant's internal control over financial reporting is effective if there are one or more material weaknesses in the registrant's internal control over financial reporting.

(4) A statement in substantially the following form: ''This annual report does not include an attestation report of the company's registered public accounting firm regarding internal control over financial reporting. Management's report was not subject to attestation by the company's registered public accounting firm pursuant to temporary rules of the Securities and Exchange Commission that permit the company to provide only management's report in this annual report.''

(b) *Changes in internal control over financial reporting.* Disclose any change in the registrant's internal control over financial reporting identified in connection with the evaluation required by paragraph (d) of § 240.13a-15 or § 240.15d–15 of this chapter that occurred during the registrant's last fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting.

Instructions to paragraphs (a) and (b) of Item 308T.

1. A registrant need not comply with paragraph (a) of this Item until it either had been required to file an annual report pursuant to section 13(a) or 15(d) of the Exchange Act (15 U.S.C. 78m or 78o(d)) for the prior fiscal year or previously had filed an annual report with the Commission for the prior fiscal year. A registrant that does not comply shall include a statement in the first annual report that it files in substantially the following form: ''This annual report does not include a report of management's assessment regarding internal control over financial reporting or an attestation report of the company's registered public accounting firm due to a transition period established by rules of the Securities and Exchange Commission for newly public companies.''

2. The registrant must maintain evidential matter, including documentation, to provide reasonable support for management's assessment of the effectiveness of the registrant's internal control over financial reporting.

(c) This temporary Item 308T, and accompanying note and instructions, will expire on June 30, 2009.

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

■ 9. The general authority citation for Part 240 is revised 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, 78*l*, 78m, 78n, 78o, 78p, 78q, 78s, 78u–5, 78w, 78x, 78*ll*, 78mm, 80a–20, 80a–23, 80a–29, 80a–37, 80b–3, 80b–4, 80b–11, and 7201 *et seq.*; and 18 U.S.C. 1350, unless otherwise noted.

* * * * *

■ 10. Section 240.13a–14 is amended by adding a sentence at the end of paragraph (a) to read as follows:

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

(a) * * * The principal executive and principal financial officers of an issuer may omit the portion of the introductory language in paragraph 4 as well as language in paragraph 4(b) of the certification that refers to the certifying officers' responsibility for designing, establishing and maintaining internal control over financial reporting for the issuer until the issuer becomes subject to the internal control over financial reporting requirements in § 240.13a–15 or 240.15d–15.

* * * * *

■ 11. Section 240.13a–15 is amended by:

■ a. Revising paragraph (a); and

■ b. Revising the first sentences in paragraphs (c) and (d).

The revisions read as follows:

§ 240.13a–15 Controls and procedures.

(a) Every issuer that has a class of securities registered pursuant to section 12 of the Act (15 U.S.C. 78*l*), other than an Asset-Backed Issuer (as defined in § 229.1101 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 (e) of this section) and, if the issuer either had been required to file an annual report pursuant to section 13(a) or 15(d) of the Act (15 U.S.C. 78m(a) or 78o(d)) for the prior fiscal year or had filed an annual report with the Commission for the prior fiscal year, internal control over financial reporting (as defined in paragraph (f) of this section).

* * * * *

(c) The management of each such issuer that either had been required to file an annual report pursuant to section 13(a) or 15(d) of the Act (15 U.S.C. 78m(a) or 78o(d)) for the prior fiscal year or previously had filed an annual report with the Commission for the prior fiscal year, other than an investment company registered under section 8 of the Investment Company Act of 1940 (15 U.S.C. 80a–8), must evaluate, with the participation of the issuer's principal executive and principal financial officers, or persons performing similar functions, the effectiveness, as of the end of each fiscal year, of the issuer's internal control over financial reporting. * * *

(d) The management of each such issuer that either had been required to file an annual report pursuant to section 13(a) or 15(d) of the Act (15 U.S.C. 78m(a) or 78o(d) for the prior fiscal year or had filed an annual report with the Commission for the prior fiscal year, other than an investment company registered under section 8 of the Investment Company Act of 1940 (15 U.S.C. 80a–8), must evaluate, with the participation of the issuer's principal executive and principal financial officers, or persons performing similar functions, any change in the issuer's internal control over financial reporting, that occurred during each of the issuer's fiscal quarters, or fiscal year in the case of a foreign private issuer, that has materially affected, or is reasonably likely to materially affect, the issuer's internal control over financial reporting. * * *

* * * * *

■ 12. Section 240.15d–14 is amended by adding a sentence at the end of paragraph (a) to read as follows:

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

(a) * * * The principal executive and principal financial officers of an issuer may omit the portion of the introductory language in paragraph 4 as well as language in paragraph 4(b) of the certification that refers to the certifying officers' responsibility for designing, establishing and maintaining internal control over financial reporting for the issuer until the issuer becomes subject to the internal control over financial reporting requirements in § 240.13a–15 or 240.15d–15 of this chapter.

* * * * *

■ 13. Section 240.15d–15 is amended by:

■ a. Revising paragraph (a); and

■ b. Revising the first sentences of paragraphs (c) and (d).

The revisions read as follows:

§ 240.15d–15 Controls and procedures.

(a) Every issuer that files reports under section 15(d) of the Act (15 U.S.C. 78o(d)), other than an Asset Backed Issuer (as defined in § 229.1101 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 (e) of this section) and, if the issuer either had been required to file an annual report pursuant to section 13(a) or 15(d) of the Act (15 U.S.C. 78m(a) or 78o(d)) for the prior fiscal year or had filed an annual report with the Commission for the prior fiscal year, internal control over financial reporting (as defined in paragraph (f) of this section).

* * * * *

(c) The management of each such issuer that either had been required to file an annual report pursuant to section 13(a) or 15(d) of the Act (15 U.S.C. 78m(a) or 78o(d)) for the prior fiscal year or had filed an annual report with the Commission for the prior fiscal year, other than an investment company registered under section 8 of the Investment Company Act of 1940 (15 U.S.C. 80a–8), must evaluate, with the participation of the issuer's principal executive and principal financial officers, or persons performing similar functions, the effectiveness, as of the end of each fiscal year, of the issuer's internal control over financial reporting.

* * *

(d) The management of each such issuer that previously either had been required to file an annual report pursuant to section 13(a) or 15(d) of the Act (15 U.S.C. 78m(a) or 78o(d)) for the prior fiscal year or previously had filed an annual report with the Commission for the prior fiscal year, other than an investment company registered under section 8 of the Investment Company Act of 1940 (15 U.S.C. 80a–8), must evaluate, with the participation of the issuer's principal executive and principal financial officers, or persons performing similar functions, any change in the issuer's internal control over financial reporting, that occurred during each of the issuer's fiscal quarters, or fiscal year in the case of a foreign private issuer, that has materially affected, or is reasonably likely to materially affect, the issuer's internal control over financial reporting.

* * *

* * * * *

PART 249—FORMS, SECURITIES EXCHANGE ACT OF 1934

■ 14. 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.

■ 15. Form 20–F (referenced in § 249.220f), Part II, is amended by:

■ a. Adding an ''s'' to the word ''Instruction'' in the descriptive heading at the end of Item 15;

■ b. Redesignating the existing Instruction to Item 15 as Instruction 2;

■ c. Adding new Instruction 1 to Item 15; and

■ d. revising Item 15T.

The additions and revision 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

* * * * *

Part II

* * * * *

Item 15. Controls and Procedures

* * * * *

Instructions to Item 15

1. An issuer need not comply with paragraphs (b) and (c) of this Item until it either had been required to file an annual report pursuant to Section 13(a) or 15(d) of the Exchange Act (15 U.S.C. 78m(a) or 78o(d)) for the prior fiscal year or had filed an annual report with the Commission for the prior fiscal year. An issuer that does not comply shall include a statement in the first annual report that it files in substantially the following form: ''This annual report does not include a report of management's assessment regarding internal control over financial reporting or an attestation report of the company's registered public accounting firm due to a transition period established by rules of the Securities and Exchange Commission for newly public companies.''

* * * * *

Item 15T. Controls and Procedures

Note to Item 15T: This is a special temporary section that applies instead of Item 15 only to: (1) an issuer that is an ''accelerated filer,'' but not a ''large accelerated filer,'' as those terms are defined in § 240.12b–2 of this chapter and only with respect to an annual report that the issuer is required to file for a fiscal year ending on or after July 15, 2006 but before July 15, 2007; or

(2) an issuer that is neither a ''large accelerated filer'' nor an ''accelerated filer'' as those terms are defined in § 240.12b–2 of this chapter and only with respect to an annual report that the issuer is required to file for a fiscal year ending on or after December 15, 2007 but before December 15, 2008.

(a) *Disclosure Controls and Procedures.* Where the Form is being used as an annual report filed under section 13(a) or 15(d) of the Exchange Act, disclose the conclusions of the issuer's principal executive and principal financial officers, or persons performing similar functions, regarding the effectiveness of the issuer's disclosure controls and procedures (as defined in 17 CFR 240.13a–15(e) or 240.15d–15(e)) as of the end of the period covered by the report, based on the evaluation of these controls and procedures required by paragraph (b) of 17 CFR 240.13a–15 or 240.15d–15.

(b) *Management's annual report on internal control over financial reporting.* Where the Form is being used as an annual report filed under section 13(a) or 15(d) of the Exchange Act, provide a report of management on the issuer's internal control over financial reporting (as defined in § 240.13a–15(f) or 240.15d–15(f) of this chapter). The report shall not be deemed to be filed for purposes of section 18 of the Exchange Act or otherwise subject to the liabilities of that section, unless the issuer specifically states that the report is to be considered ''filed'' under the Exchange Act or incorporates it by reference into a filing under the Securities Act or the Exchange Act. The report must contain:

(1) A statement of management's responsibility for establishing and maintaining adequate internal control over financial reporting for the issuer;

(2) A statement identifying the framework used by management to evaluate the effectiveness of the issuer's internal control over financial reporting as required by paragraph (c) of § 240.13a–15 or 240.15d–15 of this chapter;

(3) Management's assessment of the effectiveness of the issuer's internal control over financial reporting as of the end of the issuer's most recent fiscal year, including a statement as to whether or not internal control over financial reporting is effective. This discussion must include disclosure of any material weakness in the issuer's internal control over financial reporting identified by management. Management

is not permitted to conclude that the issuer's internal control over financial reporting is effective if there are one or more material weaknesses in the issuer's internal control over financial reporting; and

(4) A statement in substantially the following form: ''This annual report does not include an attestation report of the company's registered public accounting firm regarding internal control over financial reporting. Management's report was not subject to attestation by the company's registered public accounting firm pursuant to temporary rules of the Securities and Exchange Commission that permit the company to provide only management's report in this annual report.''

(c) *Changes in internal control over financial reporting.* Disclose any change in the issuer's internal control over financial reporting identified in connection with the evaluation required by paragraph (d) of § 240.13a–15 or 240.15d–15 of this chapter that occurred during the period covered by the annual report that has materially affected, or is reasonably likely to materially affect, the issuer's internal control over financial reporting.

(d) This temporary Item 15T, and accompanying note and instructions, will expire on June 30, 2009.

Instructions to Item 15T

1. An issuer need only comply with paragraph (b) of this Item until it either had been required to file an annual report pursuant to section 13(a) or 15(d) of the Exchange Act (15 U.S.C. 78m(a) or 78o(d)) for the prior fiscal year or had filed an annual report with the Commission for the prior fiscal year. An issuer that does not comply shall include a statement in the first annual report that it files in substantially the following form: ''This annual report does not include a report of management's assessment regarding internal control over financial reporting or an attestation report of the company's registered public accounting firm due to a transition period established by rules of the Securities and Exchange Commission for newly public companies.''

2. The registrant must maintain evidential matter, including documentation, to provide reasonable support for management's assessment of the effectiveness of the issuer's internal control over financial reporting.

* * * * *

■ 16. Form 40–F (referenced in § 249.240f) is amended by revising the ''Instructions to paragraphs (b), (c), (d) and (e) of General Instruction B.(6).'' as follows:

■ a. Redesignating existing Instruction 1 as Instruction 2;

■ b. Adding new Instruction 1; and

■ c. Redesignating existing Instruction 2T as Instruction 3T;

■ d. Revising newly redesignated Instruction 3T.

The addition and revision 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) * * *

Instructions to Paragraphs (b), (c), (d) and (e) of General Instruction B.(6)

1. An issuer need not comply with paragraphs (c) and (d) of this Instruction until it either had been required to file an annual report pursuant to the requirements of section 13(a) or 15(d) of the Exchange Act (15 U.S.C. 78m(a) or 78o(d)) for the prior fiscal year or had filed an annual report with the Commission for the prior fiscal year. An issuer that does not comply shall include a statement in the first annual report that it files in substantially the following form: ''This annual report does not include a report of management's assessment regarding internal control over financial reporting or an attestation report of the company's registered public accounting firm due to a transition period established by rules of the Securities and Exchange Commission for newly public companies.''

* * * * *

3T. Paragraphs (c)(4) and (d) of this General Instruction B.6 do not apply to: (1) an issuer that is an ''accelerated filer,'' but not a ''large accelerated filer,'' as those terms are defined in § 240.12b–2 of this chapter and only with respect to an annual report that the issuer is required to file for a fiscal year ending on or after July 15, 2006 but before July 15, 2007; or (2) an issuer that is neither a ''large accelerated filer'' nor an ''accelerated filer,'' as those terms are defined in § 240.12b–2 of this chapter, with respect to an annual report that the issuer is required to file for a fiscal year ending on or after December 15, 2007 but before December 15, 2008. Management's report on internal control over financial reporting that is included in an annual report filed by the type of issuer and within the period set forth in (1) or (2) above in this Instruction 3T shall not be deemed to be filed for purposes of Section 18 of the Exchange Act or otherwise subject to the liabilities of that section, unless the issuer specifically states that the report is to be considered ''filed'' under the Exchange Act or incorporates it by reference into a filing under the Securities Act or the Exchange Act. An issuer to which this instruction applies should provide a statement in substantially the following form: ''This annual report does not include an attestation report of the company's registered public accounting firm regarding internal control over financial reporting. Management's report was not subject to attestation by the company's registered public accounting firm pursuant to temporary rules of the Securities and Exchange Commission that permit the company to provide only management's report in this annual report.''

This temporary Instruction 3T will expire on June 30, 2009.

* * * * *

■ 17. Form 10–Q (referenced in § 249.308a) is amended by adding temporary Item 4T to Part I following Item 4.

The addition reads as follows:

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

Form 10–Q

* * * * *

Part I—Financial Information

* * * * *

Item 4T. Controls and Procedures.

(a) If the registrant is neither a large accelerated filer nor an accelerated filer as those terms are defined in § 240.12b–2 of this chapter, furnish the information required by Items 307 and 308T of Regulation S–K (17 CFR 229.307 and 229.308T) with respect to a quarterly report that the registrant is required to file for a fiscal year ending on or after December 15, 2007 but before December 15, 2008.

(b) This temporary Item 4T will expire on June 30, 2009.

* * * * *

■ 18. Form 10–QSB (referenced in § 249.308b) is amended by adding temporary Item 3A(T) to Part I after Item 3A.

The addition reads as follows:

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

Form 10–QSB

* * * * *

Part I—Financial Information

Item 3A(T). Controls and Procedures

(a) Furnish the information required by Items 307 and 308T of Regulation S–B (17 CFR 228.307 and 228.308T) with respect to a quarterly report that the small business issuer is required to file for a fiscal year ending on or after December 15, 2007 but before December 15, 2008.

(b) This temporary Item 3A(T) will expire on June 30, 2009.

* * * * *

■ 19. Form 10–K (referenced in § 249.310) is amended by adding temporary Item 9A(T) to Part II following Item 9A.

The addition reads as follows:

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

Form 10–K

* * * * *

Part II

* * * * *

Item 9A(T). Controls and Procedures

(a) If the registrant is neither a large accelerated filer nor an accelerated filer as those terms are defined in § 240.12b–2 of this chapter, furnish the information required by Items 307 and 308T of Regulation S–K (17 CFR 229.307 and 229.308T) with respect to an annual report that the registrant is required to file for a fiscal year ending on or after December 15, 2007 but before December 15, 2008.

(b) This temporary Item 9A(T) will expire on June 30, 2009.

* * * * *

■ 20. Form 10–KSB (referenced in § 249.310b) is amended by adding temporary Item 8A(T) to Part II after Item 8A.

The addition reads as follows:

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

Form 10–KSB

* * * * *

Part II

* * * * *

Item 8A(T). Controls and Procedures

(a) Furnish the information required by Items 307 and 308T of Regulation S–B (17 CFR 228.307 and 228.308T) with respect to an annual report that the small business issuer is required to file for a fiscal year ending on or after December 15, 2007 but before December 15, 2008.

(b) This temporary Item 8A(T) will expire on June 30, 2009.

* * * * *

Dated: December 15, 2006.

By the Commission.

Nancy M. Morris,

Secretary.

[FR Doc. E6–21781 Filed 12–20–06; 8:45 am]

BILLING CODE 8011–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 101

[Docket No. 2000N–1596]

Uniform Compliance Date for Food Labeling Regulations

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is establishing January 1, 2010, as the uniform compliance date for food labeling regulations that are issued between January 1, 2007, and December 31, 2008. FDA periodically announces uniform compliance dates for new food labeling requirements to minimize the economic impact of label changes. On March 14, 2005, FDA established January 1, 2008, as the uniform compliance date for food labeling regulations that issued between March 14, 2005, and December 31, 2006.

DATES: This rule is effective December 21, 2006. Submit written or electronic comments by March 6, 2007.

ADDRESSES: You may submit comments, identified by Docket No. 2000N–1596, by any of the following methods:

Electronic Submissions

Submit electronic comments in the following ways:

• Federal eRulemaking Portal: *http://www.regulations.gov*. Follow the instructions for submitting comments.

• Agency Web site: *http://www.fda.gov/dockets/ecomments*. Follow the instructions for submitting comments on the agency Web site.

Written Submissions

Submit written submissions in the following ways:

• FAX: 301–827–6870.

• Mail/Hand delivery/Courier [For paper, disk, or CD-ROM submissions]: Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

To ensure more timely processing of comments, FDA is no longer accepting comments submitted to the agency by e-mail. FDA encourages you to continue to submit electronic comments by using the Federal eRulemaking Portal or the agency Web site, as described in the *Electronic Submissions* portion of this paragraph.

Instructions: All submissions received must include the agency name and Docket No. 2000N–1596 for this rulemaking. All comments received will be posted without change to *http://www.fda.gov/ohrms/dockets/default.htm*, including any personal information provided. For additional information on submitting comments, see the ''Comments'' heading of the **SUPPLEMENTARY INFORMATION** section of this document.

Docket: For access to the docket to read background documents or comments received, go to *http://www.fda.gov/ohrms/dockets/default.htm* and insert the docket number found in brackets in the heading of this document, into the ''Search'' box and follow the prompts and/or go to the Division of Dockets Management, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Louis B. Brock, Center for Food Safety and Applied Nutrition (HFS–24), Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740, 301–436–2378.

SUPPLEMENTARY INFORMATION: FDA periodically issues regulations requiring changes in the labeling of food. If the effective dates of these labeling changes were not coordinated, the cumulative economic impact on the food industry of having to respond separately to each change would be substantial. Therefore, the agency periodically has announced uniform compliance dates for new food labeling requirements (see, e.g., the **Federal Register**s of October 19, 1984 (49 FR 41019), December 24, 1996 (61 FR 67710), December 27, 1996 (61 FR 68145), December 23, 1998 (63 FR 71015), November 20, 2000 (65 FR 69666), and December 31, 2002 (67 FR 79851)). Use of a uniform compliance date provides for an orderly and economical industry adjustment to new labeling requirements by allowing sufficient lead time to plan for the use of existing label inventories and the development of new labeling materials. This policy serves consumers' interests as well because the cost of multiple short-term label revisions that would