(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Boston Aircraft Certification Office, Engine and Propeller Directorate, FAA. Operators shall submit their requests through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Boston Aircraft Certification Office.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Boston Aircraft Certification Office.

(d) Special flight permits may be issued in accordance with 14 CFR 21.197 and 21.199 to operate the helicopter to a location where the requirements of this AD can be accomplished.

Issued in Fort Worth, Texas, on June 10, 2002.

Larry M. Kelly,

Acting Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 02–15551 Filed 6–19–02; 8:45 am]

BILLING CODE 4910–13–P

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 232, 240 and 249

[Release No. 34–46079; File No. S7–21–02]

RIN 3235–AI54

Certification of Disclosure in Companies' Quarterly and Annual Reports

AGENCY: Securities and Exchange Commission.

ACTION: Proposed rule.

SUMMARY: We propose to require a company's principal executive officer and principal financial officer to certify that, to their knowledge, the information in the company's quarterly and annual reports is true in all important respects and that the reports contain all information about the company of which they are aware that they believe is important to a reasonable investor. In addition, we propose to require a company to maintain procedures to provide reasonable assurance that the company is able to collect, process and disclose the information required in the company's quarterly and annual reports, as well as current reports on Form 8–K, and also to require periodic review and evaluation of these procedures. We believe that it is important both to the quality of disclosure and investor confidence for a company's principal executive officer and principal financial officer to provide the proposed certification and for companies to maintain procedures that enable the company to satisfy its disclosure obligations under the federal securities laws and that are subject to periodic evaluation by senior management.

DATES: Comments should be received on or before August 19, 2002.

ADDRESSES: Comments should be submitted in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Comments also may be submitted electronically at the following electronic mail address: *rule-comments@sec.gov.* All comment letters should refer to File No. S7–21–02; this file number should be included in the subject line if electronic mail is used. Comment letters will be available for public inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, DC 20549. Electronically submitted comment letters will be posted on the Commission's Internet website (*http://www.sec.gov*).[1]

FOR FURTHER INFORMATION CONTACT: Mark A. Borges, Special Counsel, or Elizabeth M. Murphy, Chief, Office of Rulemaking, at (202) 942–2910, Division of Corporation Finance, U.S. Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0312.

SUPPLEMENTARY INFORMATION: We are proposing new Rules 13a–14,[2] 13a–15,[3] 15d–14[4] and 15d–15[5] under the Securities Exchange Act of 1934 (''Exchange Act'')[6] and amendments to Forms 10–Q,[7] 10–QSB,[8] 10–K[9] and 10–KSB[10] under the Exchange Act and to Rule 302 of Regulation S–T.[11]

I. Introduction

Our system of federal securities regulation is based on full and fair disclosure. Congress, in enacting the federal securities laws, embraced full disclosure as the best way to permit markets to allocate capital. For this system to function most effectively, investors must have access to disclosure that is clear, accurate and timely.

The Exchange Act requires companies to make information publicly available to investors on a continuing basis to aid in their investment and voting decisions.[12] In addition, we permit seasoned issuers (that is, companies that have been subject to the reporting requirements of the Exchange Act for an extended period of time) to incorporate information from their Exchange Act reports into their registration statements filed under the Securities Act of 1933.[13] Therefore, investors purchasing securities from these companies in public offerings also rely on the companies' Exchange Act disclosure.

Investors depend on companies' quarterly and annual reports to present a clear picture in all important respects of the company's business and financial condition. Investors trust and rely upon a company's management to ensure that these reports are accurate. Unless this belief is well-founded, we risk an erosion of investor confidence in our securities markets.

Our existing antifraud and disclosure rules are designed to elicit full and fair corporate disclosure. Questions have arisen as to whether senior corporate officials devote sufficient attention to the preparation of their companies' quarterly and annual reports and to the internal procedures that generate the data from which they are prepared. We are concerned that investor confidence has suffered because of a real or perceived absence of such participation. We believe that it is important both to the quality of disclosure and investor confidence for senior executives to provide assurance that they have reviewed and evaluated the information contained in their companies' quarterly and annual reports. We therefore propose to require a company's principal executive officer and principal financial officer each to certify that, to his or her knowledge, the company's quarterly and annual reports are true in all important respects and that the reports contain all information about the company of which he or she is aware that he or she believes is important to a reasonable investor.[14]

[1] We do not edit personal identifying information, such as names or electronic mail addresses, from electronic submissions. You should submit only information that you wish to make availabale publicly.

[2] 17 CFR 240.13a–14.

[3] 17 CFR 240.13a–15.

[4] 17 CFR 240.15d–14.

[5] 17 CFR 240.15d–15.

[6] 15 U.S.C. 78a *et seq.*

[7] 17 CFR 249.308a.

[8] 17 CFR 249.308b.

[9] 17 CFR 249.310.

[10] 17 CFR 249.310b.

[11] 17 CFR 232.302.

[12] See Release No. 33–8089 (Apr. 12, 2002) [67 FR 19896] at n. 11. The Exchange Act reporting system contemplates an ongoing disclosure system for the purpose of ''keep[ing] reasonably current the information and documents required to be included or filed with the application or registration statement filed pursuant to Section 12.''

[13] 15 U.S.C. § 77a *et seq.*

[14] See proposed Rules 13a–14 and 15d–14. Our proposal is consistent with President Bush's objective to make corporate leaders more accountable to the investing public by requiring a company's senior executives to certify to their security holders that all of the information about

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Companies also must have internal communications and other procedures to ensure that important information flows to the appropriate collection and disclosure points on a timely basis. Given the growing size, complexity and sophistication of corporate organizations and operations and the increasing importance of timely information, we believe that it is necessary and appropriate, in furthering our investor protection mission, to propose requiring companies to maintain these procedures and to periodically evaluate them. We also believe that management should supervise these periodic evaluations and that the company's principal executive officer, principal financial officer and members of the company's board of directors should review the evaluations.[15]

II. Proposed Rules

A. Certification of Disclosure in Quarterly and Annual Reports

1. Reasons for Proposal

Investors require accurate and materially complete information to make informed investment and voting decisions and to ensure that capital is allocated efficiently to business enterprises. While our corporate disclosure system is the best in the world, it can be better. Where it is practicable, existing disclosure practices should be improved to better suit the needs of investors and to ensure the integrity and fairness of the securities markets. We believe that a company's senior management should be intimately involved in these practices and that investors would benefit from seeing evidence of that involvement.

In 1977, the ''Report of the Advisory Committee on Corporate Disclosure to the Securities and Exchange Commission,''[16] which led to the establishment of the integrated disclosure system, first advanced the idea of requiring senior executives to review the Exchange Act reports filed on behalf of the company they manage.[17] This recommendation was based on the Advisory Committee's finding that the disclosures made in Exchange Act reports tended to be of a lesser quality than the disclosures made in Securities Act filings.

In 1980, the Commission amended Form 10–K to require that this report be signed on behalf of a company by the company's principal executive officer or officers, its principal financial officer, its controller or principal accounting officer and by at least the majority of the board of directors.[18] While many commenters objected to the proposal to require directors to sign the Form 10–K, most commenters either did not address or did not object to the proposal to require executive officers to sign. The Commission adopted the proposal, including the director signature requirement, because it expected corporate officers and directors to pay more attention to the disclosures made in their companies' Form 10–K reports and to participate more fully in the preparation of these reports if they had to sign them.[19]

In our 1998 release proposing reform of the Securities Act offering process,[20] we proposed revisions to the signature sections of all registration statements and periodic reports filed under the Exchange Act to mandate that the persons required to sign those documents certify that they had read them and that they knew of no untrue statement of a material fact or omission of a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading.[21] The proposals also would have expanded the number of corporate officials required to sign Forms 10–Q and 10–QSB,[22] and other Commission filings,[23] to include the principal executive officer or officers of the company and a majority of the board of directors of the company.[24] We received several comments on these proposals. While some commenters supported the proposed certification requirement,[25] a larger number opposed it, primarily as it related to directors.[26] In addition, many commenters opposed an expansion of the signature requirements for Exchange Act reports.[27] Generally, these commenters asserted that the requirements would impose unreasonable administrative burdens[28] and expose corporate officers to increased liability.[29]

We believe that all members of a company's senior management, including members of the company's board of directors, should accept and acknowledge an active role in the disclosure that their company makes in its quarterly and annual reports and reinforce their accountability for the accuracy and completeness of this disclosure. We believe that any senior corporate official who considers his or her personal involvement in determining the disclosure to be presented in quarterly or annual reports to be an ''administrative burden,'' rather than an important and paramount duty, seriously misapprehends his or her responsibility to security holders.[30] Existing antifraud law, as well as the disclosure rules governing documents

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the company known to them that a reasonable investor would consider important in making a decision to purchase or sell a security of the company has been disclosed, completely, fairly and in an understandable format. See Remarks of President George W. Bush at the Malcolm Baldrige National Quality Award Ceremony, March 7, 2002, available at *http://www.whitehouse.gov/ news/* releases/2002/03/20020307–3.html.

[15] See proposed Rules 13a–15 and 15d–15.

[16] See *Report of the Advisory Committee on Corporate Disclosure to the Securities and Exchange Commission* (Nov. 3, 1977) (the ''Advisory Committee Report'').

[17] The Advisory Committee also suggested that the Commission require senior management to address and submit a report to the audit committee of the board of directors describing the procedures employed to ensure compliance with disclosure and accounting standards and requirements. See the Advisory Committee Report, Appendix B at pp. 50–54.

[18] See Release No. 34–17114 (Sept. 2, 1980) [45 FR 63630].

[19] *Id.* at 27.

[20] See Release No. 33–7606A (Nov. 13, 1998) [63 FR 67174]. In that release, we solicited comment on whether we should expand the existing signature requirements as well as require certification of Exchange Act reports. Comments received on that release are available through our Public Reference Room under File No. S7–30–98.

[21] *Id.* at Section XI.C.1.

[22] Id. Currently, a quarterly report on Form 10–Q or 10–QSB must be signed on the registrant's behalf by a duly authorized officer of a registrant and the principal financial officer or the chief accounting officer of the registrant. See General Instruction G to Form 10–Q and General Instruction F.2 to Form 10–QSB.

[23] These filings would have included Forms 8–A, 10, 10–SB, 20–F and 40–F. See Release No. 33–7606A at Section XI.C.1.

[24] *Id.*

[25] See, for example, the Letter dated June 30, 1999 from the North American Securities Administrators Association, the Letter dated June 29, 1999 from the Pennsylvania Securities Commission and the Letter dated June 30, 1999 from the American Federation of Labor and Congress of Industrial Organizations.

[26] See, for example, the Letter dated June 30, 1999 from the American Corporate Counsel Association, the Letter dated July 2, 1999 from the Financial Executives Institute and the Letter dated June 28, 1999 from the Ford Motor Company.

[27] See, for example, the Letter dated May 24, 1999 from Credit Suisse First Boston, the Letter dated June 30, 1999 from the John Hancock Mutual Life Insurance Company and the Letter dated June 30, 1999 from the Mortgage Bankers Association of America.

[28] See, for example, the Letter dated September 28, 1999 from the American Bar Association and the Letter dated June 30, 1999 from Charles Schwab & Co., Inc.

[29] See, for example, the Letter dated March 16, 1999 from the Association of Publicly Traded Companies and the National Venture Capital Association, the Letter dated April 7, 1999 from Diamond Home Services, Inc. and the Letter dated June 29, 1999 from Wells Fargo & Company.

[30] We note, as the Advisory Committee did, that improved Exchange Act report disclosure may improve disclosure for Securities Act purposes, since seasoned issuers generally incorporate their Exchange Act reports into their Securities Act registration statements. Consequently, investors in general stand to benefit from greater involvement by members of the company's board of directors and senior executives in the preparation of these reports.

filed with or submitted to the Commission, already place responsibility for the accuracy and completeness of disclosure, and liability for failure to satisfy disclosure requirements, on corporate management and directors.[31]

We believe that expressly requiring a company's principal executive officer and principal financial officer to certify that they have conducted this kind of review of the company's periodic reports would cause these officials to review more carefully the disclosure in their companies' quarterly and annual reports and to participate more extensively in the preparation of these reports. We expect that the quality and transparency of this disclosure would improve as a result of this type of mandated review. As discussed below, we do not believe that the proposed certification would create any untoward risk of increased individual liability for the certifying officers. Finally, unlike the 1998 proposals, we do not propose to require additional corporate officials to sign a company's quarterly and annual reports. We do, however, propose to require a company's principal executive officer to certify the company's quarterly reports.[32]

2. Description of Proposal

We propose to add an explicit certification requirement in connection with the filing of quarterly and annual reports pursuant to the Exchange Act.[33] Under our proposal, a company's principal executive officer and principal financial officer each would have to certify in an annual report that:

- He or she has read the report;
- To his or her knowledge, the information in the report is true in all important respects as of the end of the period covered by the report; and
- The report contains all information about the company of which he or she is aware that he or she believes is important to a reasonable investor as of the end of the period covered by the report.[34]

The proposed certification also would contain a statement explaining that information would be ''important to a reasonable investor'' if:

- There is a substantial likelihood that a reasonable investor would view the information as significantly altering the total mix of information in the report; and
- The report would be misleading to a reasonable investor if the information was omitted from the report.

The certification in a quarterly report would be similar, but would take account of the narrower disclosure required in these reports. Because quarterly report disclosure requirements include financial statements and management's discussion and analysis of financial condition and results of operation, the certification clearly addresses areas that we believe are important to investors.

We intend the proposed certification to reflect the current disclosure standards for ''material'' information.[35] We believe that the certification faithfully follows the standard of ''materiality'' as set out in the leading cases on the subject, *TSC Industries, Inc.* v. *Northway, Inc.*[36] and *Basic, Inc.* v. *Levinson*,[37] namely that information is material if ''there is a substantial likelihood that a reasonable shareholder would consider it important'' in making an investment decision.[38] To fulfill the materiality requirement, there must be a substantial likelihood that a fact ''would have been viewed by the reasonable investor as having significantly altered the ''total mix'' of information made available.'' [39] In addition, the certification follows the general materiality standard contained in Exchange Act Rule 12b–20.[40] The certification would, however, speak in terms of the officers' knowledge and belief. A principal executive officer or principal financial officer providing a false certification potentially could be subject to Commission action for violating Section 13(a) of the Exchange Act [41] and to both Commission and private actions for violating Section 10(b) of the Exchange Act [42] and Exchange Act Rule 10b–5.[43]

We do not believe that the proposed certification requirement would change the underlying liability standard as to materiality or create an unacceptable risk of increased liability for a company's principal executive officer and principal financial officer. These senior officers already are responsible as signatories for their company's disclosure under the Exchange Act liability provisions [44] and can be liable for material misstatements or omissions under general antifraud standards [45] and under our authority to seek redress against those who cause or aid or abet securities law violations.[46] The proposed certification requirement would reinforce the responsibility of these corporate officers to security holders for the content of companies' quarterly and annual reports.[47] Similarly, the proposed rule is not intended to affect other existing bases of liability for principal executive officers and principal financial officers or to increase, decrease or otherwise alter the potential liability of other corporate officers and directors, whether or not signatories, who are not required to provide the proposed certification.

In addition, as noted above, by its terms, the proposed certification is subjective in nature, in that it is limited

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[31] See, for example, *Howard* v. *Everex Systems, Inc.,* 228 F.3d 1057 (9th Cir. 2000); *SEC* v. *Kalvex, Inc.,* 425 F.Supp. 310 (SDNY 1975).

[32] While we propose to require the principal executive officer to sign the certification included in a quarterly report, we do not propose to require the principal executive officer to otherwise sign the report. Similarly, if a company's chief accounting officer signs the company's quarterly reports, the principal financial officer only would have to certify, but not otherwise sign, the reports.

[33] The proposal relates to Exchange Act Forms 10–Q, 10–QSB, 10–K and 10–KSB.

[34] As permitted under our rules, a registrant may satisfy its disclosure obligations under Part III of Forms 10–K and 10–KSB by incorporating the required information by reference from its definitive proxy or information statement, if that statement involves the election of directors and is filed not later than 120 days after the end of the fiscal year covered by the annual report. See General Instruction G(3) to Form 10–K and General Instruction E(3) to Form 10–KSB. For purposes of this provision, the certification in the annual report on Form 10–K or 10–KSB would be considered to cover the Part III information in a registrant's proxy or information statement as and when filed.

[35] In other words, we do not intend for the proposed certification to establish a standard of materiality that does not already exist under current law.

[36] 426 U.S. 438 (1976).

[37] 485 U.S. 224 (1988).

[38] *TSC Industries, Inc.* v. *Northway, Inc.*, at 449. See *Basic, Inc.* v. *Levinson*, at 231 (materiality with respect to contingent or speculative events will depend on a balancing of both the indicated probability that the event will occur and the anticipated magnitude of the event in light of the totality of company activity).

[39] *Id.*

[40] 17 CFR 240.12b–20. This rule states that ''[i]n addition to the information expressly required to be included in a statement or report, there shall be added such further material information, if any, as may be necessary to make the required statements, in the light of the circumstances under which they are made not misleading.''

[41] 15 U.S.C. 78m(a).

[42] 15 U.S.C. 78j(b).

[43] 17 CFR 240.10b–5. See also *Virginia Bankshares, Inc.* v. *Sandberg*, 501 U.S. 1083 (1991).

[44] See Sections 13(a) and 18 of the Exchange Act [15 U.S.C. 78m(a) and 78r].

[45] See, for example, *Howard* v. *Everex Systems, Inc.*, 228 F.3d 1057 (9th Cir. 2000) (a corporate officer who signs a Commission filing containing representations ''makes'' the statement in the filing and can be liable as a primary violator of Section 10(b) of the Exchange Act).

[46] See Sections 20, 21, 21C and 21D of the Exchange Act [15 U.S.C. 78t, 78u, 78u–3 and 78u–4].

[47] To further emphasize the importance of the proposed certification, a principal executive officer or principal financial officer would not be permitted to have the certification signed on their behalf pursuant to a power of attorney or other form of confirming authority. The certifications also would be subject to the signature requirements of our rules. See the proposed amendment to Rule 302(a) and (b) of Regulation S–T [17 CFR 232.302(a) and (b)].

to the knowledge of the principal executive officer and the principal financial officer and to their belief as to whether the information would be important to a reasonable investor. The principal executive officer or principal financial officer would not, as a result of the proposed certification requirement, have to separately inquire as to information not known to him or her by virtue of his or her certification of the contents of the company's periodic reports.[48] In summary, our proposal is consistent with an appropriate level of liability where a principal executive officer or principal financial officer fails to review his or her company's quarterly or annual reports or certifies the accuracy and completeness of these reports when, based on his or her knowledge and belief, the certification is false. We believe that these corporate officers should be involved in the approval process for these reports and that they should not approve them without first reviewing them thoroughly and thinking critically about the disclosure that they should contain. Similarly, while these corporate officers would not have to undertake a separate inquiry as to information not known to them, their critical review of a report would necessarily include other inquiries where appropriate, including, without limitation, regarding disclosures they do not understand or the materiality of information known to them.

While the proposed certification would be in addition to, and thus not alter, the current signature requirements for quarterly and annual reports, it would require a company's principal executive officer to sign the certification included in the company's quarterly reports on Form 10–Q or 10–QSB. Our current rules do not expressly require a company's principal executive officer to sign a quarterly report.[49] The proposed certification is intended to ensure that both the principal executive officer and principal financial officer read and sign the report. Thus, under our proposal, the principal executive officer would have to sign a certification each time the company files a quarterly report.[50] We believe that this proposed change is warranted in view of this officer's leadership role in the company and the importance of the information contained in the report.

Questions regarding the objectives of the proposed certification requirement:

- Would the proposed certification cause the principal executive officer and principal financial officer to be more involved in the preparation of quarterly and annual reports? Given that the principal executive officer and principal financial officer already are responsible for a company's disclosure pursuant to the Exchange Act, would the proposed certification have the desired effect?
- Would the proposed certification improve the quality of quarterly and annual reports? Are there other ways that we can improve the quality of these reports in lieu of, or in addition to, the proposed certification requirement?
- Would the proposed certification contribute to investor confidence in the accuracy and completeness of the information contained in quarterly and annual reports?

Questions regarding the form of the proposed certification:

- Is it necessary to have both the principal executive officer and the principal financial officer certify the quarterly and annual reports? Should additional or different corporate officers be required to make the proposed certification? Should all of the signatories to quarterly and annual reports be required to make the proposed certification?
- Should the same corporate officials that currently must sign a company's annual reports be required to sign the company's quarterly reports? If not, should at least a company's principal executive officer be required to sign the company's quarterly reports? Is it incongruous to require a company's principal executive officer and principal financial officer to certify, but not also require them to sign, the company's quarterly reports?
- Should the proposed certification in an annual report be considered to cover the information required by Part III of Forms 10–K and 10–KSB that is typically incorporated by reference from a proxy or information statement as and when filed? [51]
- Should the proposed certification requirement extend to amendments to quarterly and annual reports? Currently, an amendment to a quarterly and annual report need only be signed on behalf of a company by a duly authorized representative of the company.[52] Should we require the same individuals that must sign the reports to also sign any related amendments? Alternatively, should we specify the persons required to sign amendments to quarterly and annual reports?
- Should the proposed certification requirement extend to other documents and reports filed pursuant to the Exchange Act, such as registration statements on Forms 10 and 10–SB,[53] current reports on Form 8–K [54] and the portions of proxy and information statements not incorporated by reference into annual reports?
- Does the form of the proposed language of the certification result in a standard for disclosure that is comparable to that enunciated in *TSC Industries, Inc.* v. *Northway, Inc.* and *Basic, Inc.* v. *Levinson?* Is that standard of disclosure appropriate? What alternative formulation, if any, would be more appropriate?

Questions regarding the potential liability consequences of the proposed certification requirement:

- Should we specifically provide in the proposed rule that the certification is not intended to extend the concept of ''materiality'' beyond that imposed by Exchange Act Rules 10b–5 and 12b–20?
- As proposed, a false certification could give rise to Commission action under Sections 13(a) or 15(d). Is this appropriate?
- As proposed, a false certification could give rise to a cause of action under Exchange Act Rule 10b–5. Should there be circumstances where a false certification should not give rise to Rule 10b–5 liability? Should we specifically provide an exemption from Rule 10b–5 liability? If so, under what circumstances or conditions?

B. Internal Controls and Procedures

1. Reasons for Proposal

In carrying out their responsibilities to provide accurate and complete information to security holders, it is necessary for companies to ensure that their internal communications and other procedures operate so that important information flows to the appropriate collection and disclosure points in a timely manner. In order for a company's management to be in a position to evaluate whether the company's periodic and current reports provide

[48] This is not meant to change the current duty of inquiry by corporate officers and directors in connection with the discharge of their duties. See, for example, *In re W.R. Grace & Co.*, Release No. 34–39157 (Sept. 30, 1997); *In re Cooper Companies, Inc.*, Release No. 34–35082 (Dec. 12, 1994); *SEC* v. *Starr Broadcasting Group, Inc.*, Release No. 34–8667 (Feb. 7, 1979).

[49] Forms 10–Q and 10–QSB currently require the report to be signed on a registrant's behalf by a duly authorized representative of the registrant and by the principal financial officer or the principal accounting officer of the registrant. See General Instruction G of Form 10–Q and General Instruction F.2 of Form 10–QSB. The registrant may or may not choose to have its principal executive officer sign as its ''duly authorized representative.''

[50] We do not believe that this would change the officer's potential liability with respect to the quarterly report.

[51] See note 34 above.

[52] Exchange Act Rule 12b–15 [17 CFR 240.12b–15].

[53] 17 CFR 249.210 and 249.210b.

[54] 17 CFR 249.308.

appropriate disclosure of the company's business and financial performance and condition, the company must have sufficient procedures to bring potentially material information to the attention of management and others responsible for disclosure.

Currently, reporting companies are required to establish and maintain systems of internal procedures and controls with respect to their financial information.[55] Our proposal has a complementary focus; it is intended to ensure that a company maintains commensurate procedures for gathering, analyzing and disclosing all information that is required to be included in its periodic and current reports.

2. Description of Proposal

We propose to require every company subject to the reporting requirements of Section 13(a) or Section 15(d)[56] of the Exchange Act to:

- Maintain sufficient procedures to provide reasonable assurance that the company is able to collect, process and disclose, within the time periods specified in our rules and forms, the information, including non-financial information, required to be disclosed in its periodic and current reports filed pursuant to the Exchange Act; and
- Before the filing of its annual report on Form 10–K or 10–KSB,
  - Conduct an evaluation of the effectiveness of the design and operation of these procedures under the supervision of company management;[57] and
  - Ensure that those conducting the evaluation communicate the results of the evaluation to the company's principal executive officer and principal financial officer and board of directors.

As previously discussed, these procedures are intended to cover a broader range of information than are covered by a company's internal procedures and controls for the processing and disclosure of financial information. For example, the procedures would ensure timely collection and evaluation of information potentially subject to disclosure under the requirements of Regulation S–K or S–B.[58] The procedures also should capture information that is relevant to an assessment of the need to disclose developments and risks that pertain to the company's businesses.[59] They also would cover information that must be evaluated in the context of the disclosure requirement of Exchange Act Rule 12b–20. We believe that most companies already maintain internal systems, either formal or informal, for gathering this information to satisfy their Exchange Act reporting obligations, typically in conjunction with their internal financial procedures and controls. The proposed rule would enhance investor confidence that these systems are adequate and are regularly monitored and evaluated to ensure that shortcomings are corrected. The proposed rule also would help to ensure that a company's systems grow and evolve with its business and are capable of producing quarterly, annual and current reports that are accurate and reliable.[60]

We are not proposing to require any particular procedures for conducting this evaluation. Instead, we would rely on each company to develop a process that is consistent with its business and internal management and supervisory practices. We do recommend, however, that a company create a committee with responsibility for considering the materiality of information and determining disclosure obligations on a timely basis. It seems logical that such a committee would report to senior management, including the principal executive officer and the principal financial officer. Officers and employees of the company who have an interest in and the expertise to serve on the committee could include:

- The principal accounting officer or the controller;
- The general counsel or other senior legal official with responsibility for disclosure matters who reports to the general counsel;
- The principal risk management officer;
- The chief investor relations officer (or an officer with equivalent responsibilities); and
- Such other officers or employees, including individuals associated with company's business units, as the company deems appropriate.

Questions regarding the proposed internal procedures and controls:

- How do companies currently ensure that required information is reported in an accurate and timely manner? What is the role of senior management in this process?
- To what extent do companies already have committees of senior management or other procedures in place to identify and consider disclosure issues?
- Should the proposed rule require a company to establish a formal committee to identify and consider disclosure issues? If yes, should the proposed rule specify the composition of the committee? Would it be preferable for companies to establish committees that are comparable in terms of their composition?
- To what extent do companies already have committees of senior management or other procedures in place to identify and consider performance-related issues?
- Should the proposed rule set out specific procedures that companies should follow in conducting the annual evaluation of the effectiveness of the design and operation of a company's internal communications and reporting system? If so, what type of procedures are appropriate?
- What other mechanisms would ensure adequate procedures for collecting, processing and disclosing information on a timely basis?
- Should the annual evaluation contemplated by the proposed rule be replaced or accompanied by a duty of inquiry on the part of a company's principal executive officer and principal financial officer?

C. Certification as to Review of Evaluation of Reporting Procedures in Annual Reports

In the case of an annual report on Form 10-K or 10-KSB, in addition to the statements described above, a company's principal executive officer and principal financial officer would have to certify that they have reviewed the results of their company's evaluation of the procedures maintained by the company to collect, process and disclose the information required in the periodic and current reports filed by the company.[61] The proposed certification would ensure that a company's senior executives give appropriate attention to the company's means for communicating important information within the organization and for ensuring that its procedures for transmission of this information as part of the

[55] See Section 13(b)(2) of the Exchange Act [15 U.S.C. 78m(b)(2)] and Rules 13b2–1 and 13b2–2 [17 CFR 240.13b2–1 and 240.13b2–2].

[56] 15 U.S.C. 78m(a) and 78o(d).

[57] The annual evaluation should identify, at a minimum, any material weakness in the company's procedures, any other deficiency that would significantly adversely affect the company's ability to collect, process or disclose required information on a timely basis and any material changes in these procedures, including any corrective actions, that the company has taken or is taking with regard to the identified weaknesses or deficiencies.

[58] 17 CFR 229.10 *et seq.* or 17 CFR 228.10 *et seq.*

[59] For example, for some businesses, an assessment and evaluation of operational and regulatory risks may be necessary.

[60] Accordingly, a company that failed to maintain adequate procedures, review them and otherwise comply with the rule could be subject to Commission action for violating Section 13(a) of the Exchange Act even where the failure did not lead to flawed disclosure.

[61] See proposed Rules 13a-14(c) and 15d-14(c).

company's reporting process are both reliable and timely. For example, these procedures may identify categories of information that are relevant to the disclosure required about a company's principal business activities and provide timeframes for the internal dissemination of this information so that it reaches the appropriate decision-makers.

Although we propose to require only the principal executive officer and principal financial officer to certify that they have reviewed the results of their company's evaluation of its internal procedures, we believe that it would be beneficial if the company's board of directors also participates in the review of this evaluation. Not only will the company benefit from the different perspectives and experience of the directors, this participation should aid individual directors in fulfilling their fiduciary responsibilities to the company.

Question regarding certification of review of evaluation of procedures:

- Would the proposed certification cause the principal executive officer and principal financial officer to be more involved in the oversight of a company's internal reporting system?
- Should the certification be expanded to include a statement regarding the substance or results of the evaluation of a company's internal procedures?
- Should we require directors to also certify that they have reviewed the evaluation of procedures? Rather than the full board, should a company's audit committee be required to certify that it has reviewed the results of the evaluation of the company's system of internal procedures and controls with respect to the financial information included in a company's periodic and current reports?
- The Corporate Accountability and Listing Standards Committee appointed by the New York Stock Exchange to review its current listing standard has recommended a certification requirement for the chief executive officer of listed companies.[62] Consistent with this recommendation, should we require a company to certify that it has established procedures for verifying the accuracy and completeness of the information provided to investors and that those procedures have been carried out?

D. Application to Small Entities and Foreign Registrants

The proposed rules generally do not distinguish between large and small companies. Because of the importance of the certification requirement, we believe that it would be appropriate to apply the proposed rules to all companies that file Exchange Act reports. Although we don't believe that the proposed rules would impose a significant burden on small companies, we nevertheless request comment on whether we should exclude a company considered to be a ''small business issuer'' under our rules[63] from the proposed rules or make other accommodations for companies based on their size.

The proposed rules would not apply to foreign private issuers subject to the reporting requirements of Section 13(a) or 15(d) of the Exchange Act.[64] Form 20–F,[65] the disclosure document used by foreign private issuers for annual reporting obligations under the Exchange Act, does not impose signature requirements similar to those required on Form 10–K.[66] Form 20–F need only be signed on behalf of the company by any authorized officer (which generally would include the principal executive officer or principal financial officer). Unlike Form 10–K, it does not have to be signed by the company's principal executive officer or officers, principal financial officer, controller or principal accounting officer and a majority of the board of directors. Furthermore, foreign private issuers are not required to file quarterly reports on Form 10–Q or Form 10–QSB.[67]

In addition, mandatory requirements regarding internal procedures raise several issues, since those requirements may be inconsistent with the laws or practices of the foreign private issuers' home jurisdiction and stock exchange requirements. For these reasons, applying the proposed rules to foreign private issuers would raise additional issues that do not exist for domestic companies. Therefore, we do not propose to apply the certification and procedural requirements to foreign private issuers at this time. Nonetheless, we are interested in soliciting comment on whether we should apply the proposed rules to foreign registrants.

Questions regarding the scope of the proposed rules:

- Should we exclude small entities from the proposed rules?
- If so, should we limit the exclusion to ''small business issuers'' as defined under our rules, or is some other threshold more appropriate?
- Should we subject foreign private issuers to proposed Rules 13a–14 and 15d–14?
- Should we require Form 20–F (whether used as a registration statement or an annual report under the Exchange Act) to be signed by a company's principal executive officer or officers, its principal financial officer, its controller or principal accounting officer and by at least a majority of the board of directors?
- Should we subject foreign private issuers to proposed Rules 13a–15 and 15d–15? Would requiring foreign private issuers to maintain procedures as contemplated by the proposed rules conflict or unduly interfere with the legal obligations or internal operations of foreign companies?
- What impact would the proposed rules have on the willingness of foreign companies to raise capital in the public U.S. capital markets, to list on U.S. markets and to register their securities under the Securities Act or the Exchange Act?

III. General Request for Comment

We are proposing these rules to improve the quality and reliability of the disclosure contained in companies' periodic and current reports filed pursuant to the Exchange Act. We solicit comment, both specific and general, upon each aspect of the proposed rules. If you would like to submit written comments on the proposed rules, to suggest changes or to

[62] Under this recommendation, the chief executive officer of each listed company would certify each year that the company has established procedures for verifying the accuracy and completeness of the information provided to investors; that those procedures have been carried out; and that, based on his or her assessment of the adequacy of those procedures and of the diligence of those carrying them out, he or she has no reasonable cause to believe that the information provided to investors is not accurate and complete in all material respects. The chief executive officer would further be required to certify that he or she has reviewed with the board those procedures and the company's compliance with them. See *Report of the NYSE Corporate Accountability and Listing Standards Committee* (June 6, 2002), at 23, available at http://www.nyse.com/abouthome.html?query=/about/report.html.

[63] For purposes of the Exchange Act, a ''small business issuer'' is a U.S. or Canadian issuer that is not an investment company with revenues and a public ''float'' (the aggregate market value of the issuer's outstanding common equity held by non-affiliates) of less than $25 million. See Exchange Act Rule 12b–2 [17 CFR 240.12b–2].

[64] The definition of a ''foreign private issuer'' is set forth in Exchange Act Rule 3b–4 [17 CFR 240.3b–4].

[65] 17 CFR 249.220f.

[66] See General Instruction D to Form 20–F.

[67] Instead, a foreign private issuer is required to file, on Form 6–K [17 CFR 249.306], copies of all information that the issuer makes or is required to make public under the laws of its jurisdiction of incorporation, files or is required to file under the rules of any stock exchange and which is made public by the exchange, or otherwise distributes or is required to distribute to its security holders. See Exchange Act Rule 13a–16 [17 CFR 240,13a–16].

submit comments on other matters that might affect the proposed rules, we encourage you to do so.

We also solicit comment on the following general aspects of the proposed rules:

- What is the current level of principal executive officer and principal financial officer participation in the preparation of periodic and current reports?
- What is the current level of principal executive officer and principal financial officer participation in the review and evaluation of the company's internal information collection and reporting procedures?
- What level of participation would ensure adequate disclosure to investors?
- Would the proposed certification requirement be useful to investors, other users of corporate disclosure and readers of corporate financial statements? If not, how can we improve proposed certification to achieve that goal?
- In addition to the requirements we propose, are there particular aspects of a company's preparation and filing of its periodic and current reports that the proposed rules should specifically require companies to address? If so, what are they?
- Is additional disclosure or regulation necessary or appropriate concerning the role of the principal executive officer and the principal financial officer in preparing Exchange Act reports?
- Are there aspects of the proposed rules that we should eliminate? Are there aspects that we should supplement? We solicit comment on the desirability of adopting some, but not all, sections of the proposed rules.

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

IV. Paperwork Reduction Act

The proposed new rules and amendments to existing rules and forms contain ''collection of information'' requirements within the meaning of the Paperwork Reduction Act of 1995 (''PRA'').[68] We are submitting the proposal to the Office of Management and Budget (''OMB'') for review in accordance with the PRA.[69] The titles for these collections of information are ''Form 10–K,'' ''Form 10–KSB,'' ''Form 10–Q'' and ''Form 10–QSB.'' An agency may not conduct or sponsor, and a person is not required to respond to, an information collection unless it displays a currently valid OMB control number.

Form 10–K (OMB Control No. 3235–0063) prescribes information that a registrant must disclose annually to the market about its business. Form 10–KSB (OMB Control No. 3235–0420) prescribes information that a registrant that is a ''small business issuer'' as defined under our rules must disclose annually to the market about its business.

Form 10–Q (OMB Control No. 3235–0070) prescribes information that a registrant must disclose quarterly to the market about its business. Form 10–QSB (OMB Control No. 3235–0416) prescribes information that a registrant that is a ''small business issuer'' as defined under our rules must disclose quarterly to the market about its business.

A. Summary of Proposed Rules

Proposed Rules 13a–14 and 15d–14,[70] if adopted, would require a company's principal executive officer and principal financial officer to certify that, to his or her knowledge, the information in the company's quarterly and annual reports is true in all important respects as of the end of the relevant reporting period and that the reports contain all information about the company of which he or she is aware that he or she believes is important to a reasonable investor as of the end of the relevant reporting period. This certification requirement would become part of the ''collection of information'' required by Forms 10–Q, 10–QSB, 10–K and 10–KSB because a company's principal executive officer and principal financial officer would have to review the reports in order to provide the proposed certification.

Proposed Rules 13a–15 and 15d–15,[71] if adopted, would require a company to maintain sufficient procedures to provide reasonable assurance that the company is able to collect, process and disclose the information required to be in the company's periodic and current reports, and to periodically review and evaluate these procedures. While we believe that companies generally maintain these types of procedures already, the annual evaluation and certification of these procedures involves new requirements. These procedures would become part of the ''collection of information'' required by Forms 10–Q, 10–QSB, 10–K and 10–KSB because a company would have to conduct an evaluation of its internal reporting procedures and the company's principal executive officer and principal financial officer would have to certify that they have reviewed the results of the evaluation.

Compliance with the proposed rules would be mandatory. Under our rules for the retention of manual signatures, companies would have to maintain the certification statements for five years.[72] The information required by the proposed rules would not be kept confidential.

B. Reporting and Cost Burden Estimates

The compliance burden estimates for the proposed collections of information are based on several assumptions. The reporting requirements of Section 13 of the Exchange Act apply to entities that have a class of securities registered under Section 12 of the Exchange Act.[73] The reporting requirements of Section 13 also apply, via Section 15(d) of the Exchange Act, to entities with an effective registration statement under the Securities Act that are not otherwise subject to the registration requirements of Section 12 of the Exchange Act. We estimate that there are approximately 13,200 entities that fit these descriptions.[74]

Proposed Rule 13a–14 would require a company's and to make certain representations about the contents of those reports in the certification that must be included in the quarterly and annual reports. The compliance burden associated with proposed Rules 13a–14 and 15d–14 would be the reporting burden associated with having a company's principal executive officer and principal financial officer read and think critically about each quarterly and annual report to be filed by the company so that these individuals could make the required certification. We estimate that the proposed certification requirement would result in an increase of five burden hours [75] per company in connection with preparing each quarterly report on Form 10–Q or 10–QSB and the annual report on Form 10–K or 10–KSB.

Proposed Rule 13a–15 would require a company to maintain sufficient

[68] 44 U.S.C. 3501 *et seq.*

[69] 44 U.S.C. 3507(d) and 5 CFR 1320.11.

[70] References to proposed Rule 13a–14 in this section also refer to proposed Rule 15d–14.

[71] References to proposed Rule 13a–15 in this section also refer to proposed Rule 15d–15.

[72] See the proposed amendment to Rule 302(b) of Regulation S–T [17 CFR 232.302(b)].

[73] 15 U.S.C. 78*l*.

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

[75] This estimate is based on consultations with several law firms and other persons who regularly assist registrants in preparing and filing quarterly and annual reports with the Commission.

procedures to collect, process and disclose the information required in its periodic and current reports filed with the Commission. We expect that companies already maintain procedures, whether formal or informal, to comply with their Exchange Act disclosure obligations and for their own internal purposes. We do not believe that the proposed evaluation requirement would result in any change in either the reporting or cost burden associated with preparing quarterly reports on Form 10–Q or 10–QSB and annual reports on Form 10–K or 10–KSB.

Based on a burden hour estimate of 20 hours per respondent per year,[76] we estimate that, in the aggregate, all respondents will incur 263,460 burden hours[77] to comply with the proposed rules. The total burden hours of complying with Form 10–Q and Form 10–QSB, revised to include the burden hours expected from the proposed rules, is estimated to be 3,162,715 hours for Form 10–Q, an increase of 133,730 hours[78] from the current annual burden of 3,028,985 hours, and 1,302,998 hours for Form 10–QSB, an increase of 58,040 hours[79] from the current annual burden of 1,244,958 hours. The total burden hours of complying with Form 10–K and Form 10–KSB, revised to include the burden hours expected from the proposed rules, is estimated to be 12,356,382 hours for Form 10–K, an increase of 46,920 hours[80] from the current annual burden of 12,309,462 hours, and 3,443,254 hours for Form 10–KSB, an increase of 18,945 hours[81] from the current annual burden of 3,424,309 hours.

C. Request for Comment

We request comment in order to: (a) Evaluate whether the proposed amendments to our existing information collections are necessary for the proper performance of the functions of the Commission, including whether the information will have practical utility; (b) evaluate the accuracy of our estimate of the burden of the proposed amendments; (c) determine whether there are ways to enhance the quality, utility and clarity of the information to be collected; and (d) evaluate whether there are ways to minimize the burden of the proposed amendments on those who respond, including through the use of automated collection techniques or other forms of information technology.[82]

Any member of the public may direct to us any comments concerning the accuracy of these burden estimates and any suggestions for reducing the burdens. Persons who desire to submit comments on the proposed 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, and send a copy of the comments to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street NW, Washington, DC 20549–0609, with reference to File No. S7–21–02. Requests for materials submitted to the OMB by us with regard to this collection of information should be in writing, refer to File No. S7–21–02 and be submitted to the Securities and Exchange Commission, Records Management, Office of Filings and Information Services, 450 Fifth Street NW, Washington, DC 20549. Because the OMB is required to make a decision concerning the collections of information between 30 and 60 days after publication, your comments are best assured of having their full effect if the OMB receives them within 30 days of publication.

V. Costs And Benefits

We propose to require a company's principal executive officer and principal financial officer to certify that, to his or her knowledge, the information in the company's quarterly and annual reports is true in all important respects as of the end of the relevant reporting period and that the reports contain all information about the company of which he or she is aware that he or she believes is important to a reasonable investor as of the end of the relevant reporting period. In addition, we propose to require a company to maintain sufficient procedures to provide reasonable assurance that the company is able to collect, process and disclose the information required in the company's periodic and current reports, and to periodically review and evaluate these procedures. These proposals would help ensure that information about a company's business and financial condition is adequately reviewed by the company's senior executives, thereby enhancing investor confidence in the quality of the company's disclosures.

A. Benefits

We believe that investor confidence in corporate disclosure has suffered because of a belief that senior corporate officials may not devote sufficient attention to the preparation of their companies' quarterly and annual reports and the internal procedures that generate the data from which they are prepared. Requiring a company's principal executive officer and principal financial officer to certify the contents of these reports should help reinforce for these officers the importance of these reports and reinvigorate their participation in the preparation of these reports. The proposed rule also should refocus these officers on assessing whether the reports accurately reflect the company's business and financial condition as of the date of the report.

In addition, the proposed rules should help to ensure that companies maintain sufficient internal procedures to provide reasonable assurance that they can collect, process and disclose the information that is required in periodic and current reports required under the Exchange Act. To the extent that companies do not maintain adequate procedures, the proposed rules should lead to the development, or enhancement and modernization, of these procedures. The proposed annual evaluation of these procedures should ensure that companies devote adequate resources and attention to the maintenance of their reporting systems. Additionally, the required evaluation should help to identify potential weaknesses and deficiencies in advance of a system breakdown, thereby ensuring the continuous, orderly and timely flow of information within the company and, ultimately, to investors and the marketplace.

The proposed rules also would require companies' principal executive officers to provide a certification in connection with quarterly reports. In view of the fact that principal executive officers may not always be directly involved in the preparation of these reports, any duly authorized representative of the company may sign. The proposed certification requirement should lead to greater involvement of principal executive officers in the preparation of these reports.

By emphasizing the importance of the role of senior management in the reporting process, the proposed rules should help to bolster investor confidence in the quality of the disclosure in companies' Exchange Act reports. This, in turn, should help to bolster investor confidence in the

[76] Three quarterly reports and one annual report × five hours each = 20 hours.

[77] 13,173 companies × 20 hours = 263,460 hours.

[78] 26,746 quarterly reports × five hours = 133,730 hours.

[79] 11,608 quarterly reports × five hours = 58,040 hours.

[80] 9,384 annual reports × five hours = 46,920 hours.

[81] 3,789 annual reports × five hours = 18,945 hours.

[82] Comments are requested pursuant to 44 U.S.C. 3506(c)(2)(B).

securities markets. These benefits are difficult to quantify.

B. Costs

While the proposed amendments may lead to some additional costs for companies, we believe that these costs should be minimal. The proposed certification requirement would require a company's principal executive officer and principal financial officer to read the company's quarterly and annual reports and to make the required certification. We assume that these corporate officers already read the company's annual report, so this should impose no additional burden. To the extent that a corporate officer would need to spend additional time thinking critically about the overall context of his or her company's disclosure, the company would incur costs. For purposes of the PRA,[83] we estimate that the paperwork burden would be approximately 263,500 hours.

The required certification of quarterly and annual reports by the principal executive officer and the principal financial officer creates a new legal obligation for these individuals, but does not change the standard of legal liability. We believe that the potential, incremental cost of litigation arising from signing a certification is justified by the benefit to security holders of knowing that the principal executive officer has been involved in the preparation of this report.

We believe that most reporting companies already maintain internal procedures for identifying and processing the information needed to satisfy their disclosure obligations under the Exchange Act. The proposed rule does not dictate that companies follow any particular procedure. Some companies may need to institute appropriate procedures. Other companies may need to enhance existing informal or ad hoc procedures. These incremental costs are difficult to quantify. We do not have data to quantify the cost of implementing, or upgrading and strengthening existing, internal reporting procedures, and we seek comments and supporting data on these costs.

The proposed annual evaluation of the internal reporting procedures would result in costs for companies. Many companies may already regularly monitor and evaluate their procedures. Because the size and scope of these internal systems is likely to vary among companies, it is difficult to provide an accurate cost estimate. For purposes of the PRA,[84] we estimate that the paperwork burden would be approximately 263,500 hours. Assuming a cost of $200.00 per hour, we believe that the total cost would be approximately $4,000 per year for each company.[85] Thus, we believe that the aggregate cost of the proposed rules would be approximately $52,700,000 each year.[86]

C. Request for Comments

We request comment on all aspects of this cost-benefit analysis, including identification of any additional costs or benefits of, or suggested alternatives to, the proposed rules. Commenters are requested to provide empirical data and other factual support for their views to the extent possible.

VI. Initial Regulatory Flexibility Analysis

This Initial Regulatory Flexibility Analysis, or IRFA, has been prepared in accordance with the Regulatory Flexibility Act.[87] It involves proposed rules under the Exchange Act that would require a company's principal executive officer and principal financial officer to certify that, to his or her knowledge, the information in the company's quarterly and annual reports is true in all important respects as of the end of the relevant reporting period and that the reports contain all information about the issuer of which he or she is aware that he or she believes is important to a reasonable investor as of the end of the relevant reporting period. In addition, the proposed rules would require a company to maintain procedures to provide reasonable assurance that the company is able to collect, process and disclose the information required in the company's periodic and current reports, and also to require periodic review and evaluation of these procedures.

A. Reasons for, and Objectives of, Proposed Rules

The purpose of the proposed rules is to improve the quality of corporate disclosure and to promote investor confidence in the quality of the disclosure contained in quarterly and annual reports. By improving the quality of disclosure, the proposed rules would enhance investor confidence in the fairness and integrity of the securities markets.

B. Legal Basis

We are proposing the rules under the authority set forth in Sections 10(b), 13, 15(d) and 23(a) of the Exchange Act.

C. Small Entities Subject to the Proposed Rules

The proposed rules would affect small entities that are subject to the reporting requirements of Section 13(a) or 15(d) of the Exchange Act. For purposes of the Regulatory Flexibility Act, the Exchange Act[88] defines the term ''small business,'' other than an investment company, to be an issuer that, on the last day of its most recent fiscal year, has total assets of $5 million or less.[89] We estimate that there are approximately 2,500 companies subject to the reporting requirements of Section 13(a) or 15(d) of the Exchange Act that are not investment companies and that have assets of $5 million or less.[90]

D. Reporting, Recordkeeping and Other Compliance Requirements

The proposed rules would require companies to include a certification in their quarterly and annual reports, signed by the company's principal executive officer and principal financial officer, stating that, to their knowledge, the information contained in the report is true in all important respects and that they believe the reports contain all information about the company of which they are aware that is important to a reasonable investor. In addition, the proposed rules would require companies, including ''small businesses,'' to maintain sufficient procedures to provide reasonable assurance that the company is able to collect, process and disclose the information required in periodic and current reports filed with the Commission, and to periodically review and evaluate these procedures. Consequently, the proposed rules would increase the costs associated with compliance with companies' Exchange Act reporting obligations.

E. Duplicative, Overlapping or Conflicting Federal Rules

We believe that there are no rules that duplicate, overlap or conflict with the proposed rules, except as follows. Our rules require that designated corporate officials sign quarterly and annual reports.[91] The proposed rules would

[83] See Section IV above.

[84] See Section IV above.

[85] 20 hours × $200 per hour = $4,000.

[86] 263,460 hours × $200 = $52,692,000. See note 77 above.

[87] 5 U.S.C. § 603.

[88] 17 CFR 240.0–10(a).

[89] A similar definition is provided under Securities Act Rule 157 [17 CFR 230.157].

[90] This estimate is based on filings with the Commission.

[91] Annual reports must be signed by a registrant and on a registrant's behalf by its principal

Continued

add a certification by a company's principal executive officer and principal financial officer to these signature requirements. While the proposed certification involves an additional signature requirement,[92] we believe that any potential duplication is warranted as the proposed certification should cause these officials to review more carefully the disclosure in their companies' quarterly and annual reports and to participate more extensively in the preparation of these reports. We expect that the quality and transparency of this disclosure would improve as a result of this type of mandated review.

Section 13(b)(2)(B) of the Exchange Act[93] requires companies that are subject to the reporting requirements of Section 13(a) or 15(d) to devise and maintain a system of internal accounting controls sufficient to provide reasonable assurances that the transactions and information are recorded as necessary to permit the preparation of the company's financial statements. Proposed Rules 13a–15 and 15d–15 are intended to address the company's procedures for collecting and processing the non-financial information that is required to be disclosed in periodic and current reports files pursuant to the Exchange Act.

F. Agency Action To Minimize Effect on Small Entities

The Regulatory Flexibility Act directs us to consider significant alternatives that would accomplish the stated objectives, while minimizing any significant adverse impact on small entities. In that regard, we are considering the following alternatives: (a) Establishing different compliance or reporting requirements that take into account the resources of small entities, (b) clarifying, consolidating or simplifying compliance and reporting requirements under the rules for small entities and (c) exempting small entities from all or part of the proposed rules. The proposed rules are intended to help ensure that information about a company's business and financial condition is adequately reviewed by the company's senior executives, thereby enhancing investor confidence in the quality of the company's disclosures. We solicit comment as to whether small business issuers should be excluded from the proposed rules.

The proposed certification requirement should result in minimal cost for companies. It is possible that a failure to comply with this requirement could be harmful to small entities because it may lead investors to conclude that an entity has inadequate management and reporting controls and, consequently, presents an unacceptable investment risk. The proposed certification requirement involves a design standard in that the form and content of the certification is dictated by the proposed rules and could be comparable for all companies, including small, as well as large, entities.

The annual evaluation of information collection and reporting procedures contemplated by the proposed rules involves a performance standard. The proposed rules do not mandate how companies should conduct this evaluation. This flexibility will enable small and large entities to develop approaches for the evaluation that are appropriate to their individual circumstances.

G. Request for Comments

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

VII. Consideration of Impact on the Economy

For purposes of the Small Business Regulatory Enforcement Fairness Act of 1996, or ''SBREFA,'' [94] we must advise the Office of Management and Budget as to whether the proposed rules constitute a ''major'' rule. Under SBREFA, a rule is considered ''major'' where, if adopted, it results or is likely to result in:

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

Where a rule is ''major,'' its effectiveness will generally be delayed for 60 days pending Congressional review. We request comment on the potential impact of the proposed rules on the economy on an annual basis. Commenters are requested to provide empirical data and other factual support for their views to the extent possible.

VIII. Consideration of Burden on Competition

Section 23(a)(2) of the Exchange Act[95] requires us, when adopting rules under the Exchange Act, to consider the impact that any new rule would have on competition. In addition, Section 23(a)(2) prohibits us from adopting any rule that would impose a burden on competition not necessary or appropriate in furtherance of the purposes of the Exchange Act.

The proposed rules are intended to enhance investor confidence in the quality of the information available to them in quarterly and annual reports filed pursuant to the Exchange Act. We do not believe that the proposed rules would impose any burden on competition. Companies would incur some costs in complying with the proposed rules. These costs would include conducting an annual evaluation of the company's procedures to collect, process and disclose, on a timely basis, the information required in periodic and current reports filed by the company pursuant to the Exchange Act. We request comment on whether the proposed rules, if adopted, would impose a burden on competition. Commenters are requested to provide empirical data and other factual support for their views to the extent possible.

IX. Promotion of Efficiency, Competition and Capital Formation

Section 3(f) of the Exchange Act[96] requires us, when engaging in rulemaking where we are required to consider or determine whether an action is necessary or appropriate in the public

executive officer or officers, its principal financial officer, its controller or principal accounting officer and by at least the majority of the board of directors. See General Instruction D(2)(a) of Form 10–K and General Instruction C.2 of Form 10–KSB. Quarterly reports must be signed on a registrant's behalf by a duly authorized representative of the registrant and by the principal financial officer or the principal accounting officer of the registrant. See General Instruction G of Form 10–Q and General Instruction F.2 of Form 10–QSB.

[92] Except in the case of a certification of a quarterly report by a company's principal executive officer. Currently, a quarterly report on Form 10–Q or 10–QSB need not be signed by a registrant's principal executive officer. See General Instruction G to Form 10–Q and General Instruction F.2 to Form 10–QSB.

[93] 15 U.S.C. 78m(b)(2)(B).

[94] Public Law 104–121, Title II, 110 Stat. 857 (1996) (codified in various sections of 5 U.S.C., 15 U.S.C. and as a note to 5 U.S.C. 601).

[95] 15 U.S.C. 78w(a)(2).

[96] 15 U.S.C. 78c(f).

interest, to consider, in addition to the protection of investors, whether the action will promote efficiency, competition and capital formation. The proposed rules are intended to enhance investor confidence in the quality of the information available to them in quarterly and annual reports filed pursuant to the Exchange Act. We believe that by requiring a company's principal executive officer and principal financial officer to certify that, to their knowledge, the information contained in these reports is true in all important respects and that they believe the reports contain all information about the company of which they are aware that is important to a reasonable investor, investor confidence in the securities markets will be enhanced, thereby leading to a more efficient market.

We do not believe that the proposed rules would impose any burden on competition. Companies would incur some costs in complying with the proposed rules. These costs would include conducting an annual evaluation of the company's procedures to collect, process and disclose, on a timely basis, the information required in periodic and current reports filed by the company pursuant to the Exchange Act. We request comment on whether the proposed rules, if adopted, would impose a burden on competition. Commenters are requested to provide empirical data and other factual support for their views to the extent possible.

X. Statutory Authority

The rules and amendments contained in this release are being proposed under the authority set forth in Sections 10(b), 13, 15(d) and 23(a) of the Exchange Act.

Text of Proposed Rules and Amendments

List of Subjects in 17 CFR Parts 232, 240 and 249

Securities.

In accordance with the foregoing, Title 17, Chapter II, of the Code of Federal Regulations is proposed to be amended as follows:

PART 232—GENERAL RULES AND REGULATIONS FOR ELECTRONIC FILINGS

1. The authority citation for Part 232 continues to read as follows:

Authority: 15 U.S.C. 77f, 77g, 77h, 77j, 77s(a), 77sss(a), 78c(b), 78*l*, 78m, 78n, 78o(d), 78w(a), 78*ll*(d), 79t(a), 80a–8, 80a–29, 80a–30 and 80a–37.

2. By amending § 232.302 by revising paragraphs (a) and (b) to read as follows:

§ 232.302 Signatures.

(a) Required signatures to or within any electronic submission (including, without limitation, signatories within the certifications required by §§ 240.13a–14 and 240.15d–14 of this chapter) must be in typed form rather than manual format. Signatures in an HTML document that are not required may, but are not required to, be presented in an HTML graphic or image file within the electronic filing, in compliance with the formatting requirements of the EDGAR Filer Manual. When used in connection with an electronic filing, the term ''signature'' means an electronic entry in the form of a magnetic impulse or other form of computer data compilation of any letters or series of letters or characters comprising a name, executed, adopted or authorized as a signature. Signatures are not required in unofficial PDF copies submitted in accordance with § 232.104.

(b) Each signatory to an electronic filing (including, without limitation, each signatory to the certifications required by §§ 240.13a–14 and 240.15d–14 of this chapter) shall manually sign a signature page or other document authenticating, acknowledging or otherwise adopting his or her signature that appears in typed form within the electronic filing. Such document shall be executed before or at the time the electronic filing is made and shall be retained by the filer for a period of five years. Upon request, an electronic filer shall furnish to the Commission or its staff a copy of any or all documents retained pursuant to this section.

* * * * *

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

3. The authority citation for Part 240 continues to read, in part, 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, 79q, 79t, 80a–20, 80a–23, 80a–29, 80a–37, 80b–3, 80b–4 and 80b–11, unless otherwise noted.

* * * * *

3. By adding § 240.13a–14 to read as follows:

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

(a) Each annual and quarterly report filed pursuant to section 13(a) of the Act (15 U.S.C. 78m(a)) must include the certification described in paragraph (b) of this section. Each principal executive officer and principal financial officer of the issuer at the time of filing of the report each must sign the certification.

(b) The certification included in each report specified in paragraph (a) of this section must contain the following provisions:

(1) A statement of the officer certifying that he or she has read the [specify the report in which the certification is included];

(2) A statement of the officer certifying that to his or her knowledge, the information in the report is true in all important respects as of the last day of the period covered by the report;

(3)(i) In annual reports, a statement of the officer certifying that the report contains all information about the issuer of which he or she is aware that he or she believes is important to a reasonable investor as of the last day of the period covered by the report; or

(ii) In quarterly reports, a statement of the officer certifying that the report contains all information about the issuer of which he or she is aware that he or she believes is important to a reasonable investor, in light of the subjects required to be addressed in the report, as of the last day of the period covered by the report; and

(4) A statement that, for purposes of the certification required by paragraph (a) of this section, information is ''important to a reasonable investor'' if:

(i) There is a substantial likelihood that a reasonable investor would view the information as significantly altering the total mix of information in the report; and

(ii) The report would be misleading to a reasonable investor if the information was omitted from the report.

(c) The certification included in each annual report filed pursuant to section 13(a) of the Act (15 U.S.C. 78m(a)) also must contain a statement that each officer signing this certification has reviewed the results of the evaluation of the issuer's internal reporting procedures undertaken pursuant to § 240.13a–15(b) and (c).

5. By adding § 240.13a–15 to read as follows:

§ 240.13a–15 Issuer's internal procedures related to preparation of required reports.

(a) Every issuer that has a class of securities registered pursuant to section 12 of the Act (15 U.S.C. 78*l*) must maintain sufficient procedures to provide reasonable assurances that the issuer is able to collect, process and disclose, within the time periods specified in the Commission's rules and forms, the information required to be disclosed in the periodic and current reports filed by it under the Act.

(b) Within the 12-month period immediately preceding the filing of each

annual report pursuant to section 13(a) of the Act (15 U.S.C. 78m(a)), an evaluation must be carried out under the supervision of the issuer's management of the effectiveness of the design and operation of the procedures of the issuer maintained in accordance with paragraph (a) of this section. Without limiting the subjects that the evaluation must cover, at a minimum the evaluation must identify any material weakness in the procedures, any other deficiency that would significantly adversely affect the issuer's ability to collect, process or disclose on a timely basis required information and any material changes in these internal procedures and controls, including any corrective actions that have been or are being taken with regard to identified weaknesses and deficiencies.

(c) Before the filing of the annual report, each principal executive officer and principal financial officer of the issuer and the board of directors of the issuer must review the results of the evaluation described in paragraph (b) of this section.

6. By adding § 240.15d–14 to read as follows:

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

(a) Each annual and quarterly report filed pursuant to section 15(d) of the Act (15 U.S.C. 78o(d)) must include the certification described in paragraph (b) of this section. Each principal executive officer and principal financial officer of the issuer at the time of filing of the report each must sign the certification.

(b) The certification included in each report specified in paragraph (a) of this section must contain the following provisions:

(1) A statement of the officer certifying that he or she has read the [specify the report in which the certification is included];

(2) A statement of the officer certifying that to his or her knowledge, the information in the report is true in all important respects as of the last day of the period covered by the report;

(3)(i) In annual reports, a statement of the officer certifying that the report contains all information about the issuer of which he or she is aware that he or she believes is important to a reasonable investor as of the last day of the period covered by the report; or

(ii) In quarterly reports, a statement of the officer certifying that the report contains all information about the issuer of which he or she is aware that he or she believes is important to a reasonable investor, in light of the subjects required to be addressed in the report, as of the last day of the period covered by the report; and

(4) A statement that, for purposes of the certification required by paragraph (a) of this section, information is ''important to a reasonable investor'' if:

(i) There is a substantial likelihood that a reasonable investor would view the information as significantly altering the total mix of information in the report; and

(ii) The report would be misleading to a reasonable investor if the information was omitted from the report.

(c) The certification included in each annual report filed pursuant to section 15(d) of the Act (15 U.S.C. 78o(d)) also must contain a statement that each officer signing this certification has reviewed the results of the evaluation of the issuer's internal reporting procedures undertaken pursuant to § 240.15d–15(b) and (c).

7. By adding § 240.15d–15 to read as follows:

§ 240.15d–15 Issuer's internal procedures related to preparation of required reports.

(a) Every issuer that is required to file reports pursuant to section 15(d) of the Act (15 U.S.C. 78o(d)) must maintain sufficient procedures to provide reasonable assurances that the issuer is able to collect, process and disclose, within the time periods specified in the Commission's rules and forms, the information required to be disclosed in the periodic and current reports filed by it under the Act.

(b) Within the 12-month period immediately preceding the filing of each annual report pursuant to section 15(d) of the Act (15 U.S.C. 78o(d)), an evaluation must be carried out under the supervision of the issuer's management of the effectiveness of the design and operation of the procedures of the issuer maintained in accordance with paragraph (a) of this section. Without limiting the subjects that the evaluation must cover, at a minimum the evaluation must identify any material weakness in the procedures, any other deficiency that would significantly adversely affect the issuer's ability to collect, process or disclose on a timely basis required information and any material changes in these internal procedures and controls, including any corrective actions that have been or are being taken with regard to identified weaknesses and deficiencies.

(c) Before the filing of the annual report, each principal executive officer and principal financial officer of the issuer and the board of directors of the issuer must review the results of the evaluation described in paragraph (b) of this section.

PART 249—FORMS, SECURITIES EXCHANGE ACT OF 1934

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

Authority: 15 U.S.C. 78a *et seq.*, unless otherwise noted.

* * * * *

9. By amending Form 10–Q (referenced in § 249.308a) by revising General Instruction G and by adding a Certifications section after the Signatures section to read 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

* * * * *

General Instructions

* * * * *

G. Signature and Filing of Report

If the report is filed in paper pursuant to a hardship exemption from electronic filing (see Item 201 *et seq.* of Regulation S–T (17 CFR 232.201 *et seq.*), three complete copies of the report, including any financial statements, exhibits or other papers or documents filed as a part thereof, and five additional copies which need not include exhibits must be filed with the Commission. At least one complete copy of the report, including any financial statements, exhibits or other papers or documents filed as a part thereof, must be filed with each exchange on which any class of securities of the registrant is registered. At least one complete copy of the report filed with the Commission and one such copy filed with each exchange must be manually signed on the registrant's behalf by a duly authorized officer of the registrant and by the principal financial or chief accounting officer of the registrant. (See Rule 12b–11(d) (17 CFR 240.12b–11(d).) Copies not manually signed must bear typed or printed signatures. In the case where the principal executive officer, principal financial officer or chief accounting officer is also duly authorized to sign on behalf of the registrant, one signature is acceptable provided that the registrant clearly indicates the dual responsibilities of the signatory. In addition, each principal executive officer and principal financial officer of the registrant must provide the certification required by Rule 13a–14 (17 CFR 240.13a–14) or Rule 15d–14 (17 CFR 240.15d–14).

* * * * *

Signatures

* * * * *

Certifications*

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

1. I have read this quarterly report on Form 10–Q of [identify registrant];

2. To my knowledge, the information in this report is true in all important respects as of [specify last date of the period covered by the report]; and

3. This report contains all information about the company of which I am aware that I believe is important to a reasonable investor, in light of the subjects required to be addressed in this report, as of [specify last date of the period covered by the report].

For purposes of this certification, information is ''important to a reasonable investor'' if:

(a) There is a substantial likelihood that a reasonable investor would view the information as significantly altering the total mix of information in the report; and

(b) The report would be misleading to a reasonable investor if the information is omitted from the report.

Date: _____

_____

[Signature] [Title]

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

10. By amending Form 10–QSB (referenced in § 249.308b) by revising General Instruction F and by adding a Certifications section after the Signatures section to read 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

* * * * *

GENERAL INSTRUCTIONS

* * * * *

F. Signature and Filing of Report

1. If the report is filed in paper pursuant to a hardship exemption from electronic filing (see Item 201 *et seq.* of Regulation S–T (17 CFR 232.201 *et seq.*), file three ''complete'' copies and five ''additional'' copies of the report with the Commission and file at least one complete copy with each exchange on which any class of securities of the small business issuer is registered. A ''complete'' copy includes financial statements, exhibits and all other papers and documents. An ''additional'' copy excludes exhibits.

2. Manually sign at least one complete copy of the report filed with the Commission and with each exchange; other copies should have typed or printed signatures. (See Rule 12b–11(d) (17 CFR 240.12b–11(d).) In the case where the principal executive officer, principal financial officer or chief accounting officer is also duly authorized to sign on behalf of the small business issuer, one signature is acceptable provided that the issuer clearly indicates the dual responsibilities of the signatory. Each principal executive officer and principal financial officer of the small business issuer must provide the certification required by Rule 13a–14 (17 CFR 240.13a–14) or Rule 15d–14 (17 CFR 240.15d–14).

* * * * *

Signatures

* * * * *

Certifications*

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

1. I have read this quarterly report on Form 10–QSB of [identify small business issuer];

2. To my knowledge, the information in this report is true in all important respects as of [specify last date of the period covered by the report]; and

3. This report contains all information about the company of which I am aware that I believe is important to a reasonable investor, in light of the subjects required to be addressed in this report, as of [specify last date of the period covered by the report].

For purposes of this certification, information is ''important to a reasonable investor'' if:

(a) There is a substantial likelihood that a reasonable investor would view the information as significantly altering the total mix of information in the report; and

(b) The report would be misleading to a reasonable investor if the information was omitted from the report.

Date: _____

[Signature] [Title]

* Provide a separate certification for each principal executive officer and principal financial officer of the small business issuer. See Rules 13a–14 and 15d–14.

11. By amending Form 10–K (referenced in § 249.310) by revising General Instruction D.(2)(a) and by adding a Certifications section after the Signatures section and before the reference to ''Supplemental information to be furnished with reports filed pursuant to Section 15(d) of the Act by registrant which have not registered securities pursuant to Section 12 of the Act'' to read 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

* * * * *

General Instructions

* * * * *

D. Signature and Filing of Report

(1) * * *

(2)(a) The report must be signed by the registrant, and on behalf of the registrant by its principal executive officer or officers (who also must provide the certification required by Rule 13a–14 (17 CFR 240.13a–14) or Rule 15d–14 (17 CFR 240.15d–14)), its principal financial officer (who also must provide the certification required by Rule 13a–14 (17 CFR 240.13a–14) or Rule 15d–14 (17 CFR 240.15d–14)), its controller or principal accounting officer, and by at least the majority of the board of directors or persons performing similar functions. Where the registrant is a limited partnership, the report must be signed by the majority of the board of directors of any corporate general partner who signs the report.

* * * * *

Annual Report Pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934

* * * * *

Signatures

* * * * *

Certifications*

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

1. I have read this annual report on Form 10–K of [identify registrant];

2. To my knowledge, the information in this report is true in all important respects as of [specify last date of the period covered by the report];

3. This report contains all information about the company of which I am aware that I believe is important to a reasonable investor as of [specify last date of the period covered by the report]; and

4. I have reviewed the results of the evaluation of the procedures maintained by the company to collect, process and disclose, in a timely manner, the information required to be disclosed in the company's quarterly and annual reports.

For purposes of this certification, information is ''important to a reasonable investor'' if:

(a) There is a substantial likelihood that a reasonable investor would view the information as significantly altering

the total mix of information in the report; and

(b) The report would be misleading to a reasonable investor if the information was omitted from the report.

Date: _____

_____

[Signature] [Title]

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

* * * * *

12. By amending Form 10–KSB (referenced in § 249.310b) by revising General Instruction C.2. and by adding a Certifications section after the Signatures section and before the reference to ''Supplemental information to be furnished with reports filed pursuant to Section 15(d) of the Act by registrant which have not registered securities pursuant to Section 12 of the Act'' to read 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

* * * * *

General Instructions

* * * * *

C. Signature and Filing of Report

1. * * *

2. Who must sign. The small business issuer, its principal executive officer or officers (who also must provide the certification required by Rule 13a–14 (17 CFR 240.13a–14) or Rule 15d–14 (17 CFR 240.15d–14)), its principal financial officer (who also must provide the certification required by Rule 13a–14 (17 CFR 240.13a–14) or Rule 15d–14 (17 CFR 240.15d–14)), its controller or principal accounting officer and at least a majority of the board of directors or persons performing similar functions. If the small business issuer is a limited partnership, then the general partner and a majority of its board of directors if a corporation must sign the report. Any person who occupies more than one of the specified positions must indicate each capacity in which he or she signs the report. See Rule 12b–11 concerning manual signatures under powers of attorney.

* * * * *

Signatures

* * * * *

Certifications *

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

1. I have read this annual report on Form 10–KSB of [identify small business issuer];

2. To my knowledge, the information in this report is true in all important respects as of [specify last date of the period covered by the report];

3. This report contains all information about the company of which I am aware that I believe is important to a reasonable investor as of [specify last date of the period covered by the report]; and

4. I have reviewed the results of the evaluation of the procedures maintained by the company to collect, process and disclose, in a timely manner, the information required to be disclosed in the company's quarterly and annual report.

For purposes of this certification, information is ''important to a reasonable investor'' if:

(a) There is a substantial likelihood that a reasonable investor would view the information as significantly altering the total mix of information in the report; and

(b) The report would be misleading to a reasonable investor if the information was omitted from the report.

Date: _____

_____

[Signature] [Title]

* Provide a separate certification for each principal executive officer and principal financial officer of the small business issuer. See Rules 13a–14 and 15d–14.

* * * * *

Dated: June 14, 2002.

By the Commission.

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 02–15571 Filed 6–19–02; 8:45 am]

BILLING CODE 8010–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 880

[Docket No. 01P–0120]

RIN 0910–ZA20

Medical Devices; Needle-Bearing Devices; Request for Comments and Information

AGENCY: Food and Drug Administration, HHS.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: The Food and Drug Administration (FDA) is issuing this document to invite interested persons to submit information to assist the agency in determining what additional actions, if any, the agency should take to protect healthcare workers from needlestick injuries from medical devices. FDA is taking this action because it is concerned about the significant health risk posed by needlestick and other percutaneous injuries. The agency is also responding to a petition.

DATES: Submit written comments or information by September 18, 2002.

ADDRESSES: Submit written comments or information to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to http://www.fda.gov/dockets/ecomments.

FOR FURTHER INFORMATION CONTACT: Timothy A. Ulatowski, Center for Devices and Radiological Health (HFZ–480), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301–443–8879.

SUPPLEMENTARY INFORMATION: Blood and other potentially infectious materials have long been recognized as a potential threat to the health of employees who are exposed to these materials by percutaneous contact (penetration of the skin). Injuries from contaminated needles and other sharps have been associated with the increased risk of disease from infectious agents. The primary agents of concern are the human immunodeficiency virus (HIV), hepatitis B virus (HBV), and hepatitis C virus (HCV). (Ref. 1)

I. Previous FDA Actions

FDA has taken several actions to address the risk of sharps injuries to healthcare workers and others from devices and continues to monitor this issue.

- On April 16, 1992, FDA issued a safety alert warning of the risk of needlestick injuries from the use of hypodermic needles as a connection between two pieces of intravenous (IV) equipment. The safety alert urged that needleless systems or recessed needle systems be used in place of hypodermic needles to access IV lines. The agency noted that hypodermic needles should only be used in situations where there is a need to penetrate the skin. FDA also outlined various device characteristics that have the potential to reduce the risk of needlestick injuries.
- In March 1995, FDA issued a guidance document entitled ''Supplementary Guidance on the Content of Premarket Notification [510(k)] Submissions for Medical Devices With Sharps Injury Prevention