

SEC PROPOSES RULES ON DISCLOSURE OF INTERNAL CONTROLS, CODES OF ETHICS AND FINANCIAL EXPERTS ON AUDIT COMMITTEES

The Securities and Exchange Commission (“SEC”) recently proposed rules¹ to implement Sections 404, 406 and 407 of the Sarbanes-Oxley Act of 2002 (the “Act”) that would require public companies to include the following disclosures in their annual reports filed with the SEC under the Securities Exchange Act of 1934 (the “Exchange Act”):

- The number and names of the company’s audit committee members that the board of directors has determined are “financial experts,” and whether they are independent of management,
- whether or not (and if not, why not) the company has adopted a code of ethics governing its chief executive officer and senior financial officers, and
- a management report assessing the effectiveness of the company’s internal controls and procedures for financial reporting and an accountant attestation of such report.

The SEC has requested comments on these proposed rules on or before November 29, 2002. The Act requires the SEC to issue final rules regarding the disclosure of codes of ethics and audit committee “financial experts” by January 26, 2003. Absent any special transition provisions, these rules could therefore apply to fiscal year 2002 annual reports. Rules regarding the internal control report would be effective beginning with annual reports filed for fiscal years ending on or after September 15, 2003.

Foreign companies will generally be subject to the proposed new disclosure requirements. Asset-backed issuers will generally be exempt. Registered investment companies will generally not be required to provide management internal control reports and associated accountant attestations but will otherwise be subject to the new requirements regarding the disclosure of codes of ethics and audit committee “financial experts.”

Financial Experts on the Audit Committee

Disclosure Requirement

Section 407 of the Act directs the SEC to establish rules that would require companies to disclose in their periodic reports whether or not at least one member of their audit committee is a

¹ SEC Release Nos. 33-8138; 34-46701 (October 22, 2002).

“financial expert.” In implementing this Section, the SEC is proposing to require public companies to disclose in their annual reports²:

1. The number and names of the company’s audit committee members that the board of directors has determined are “financial experts”; and
2. Whether the financial expert or experts are “independent” within the meaning of Section 301 of the Act.

Companies must provide an explanation if they do not have an audit committee member who qualifies as a financial expert or if the financial expert is not independent.

Foreign private issuers and registered investment companies would also be required to include this disclosure in their annual reports.

Commentary:

- Section 301 of the Act requires the SEC to direct the national securities exchanges and national securities associations to prohibit the listing of securities of companies whose audit committee members are not all “independent.” To be considered “independent” under Section 301, a director may not accept any consulting, advisory or other compensatory fee from the company (other than board or committee fees) and may not be an affiliate of the company or its subsidiaries. The SEC is mandated by the Act to issue rules under Section 301 by April 26, 2003, but no rules have yet been proposed. Thus, the SEC is proposing to require boards of directors to affirmatively determine the “independence” of their audit committee’s financial expert or experts on the basis of a Section 301 definition that is likely to be the subject of future regulatory interpretation.
- The New York Stock Exchange (“NYSE”) and the Nasdaq Stock Market (“Nasdaq”) have proposed new corporate governance rules, including extensive provisions regarding the composition and operation of listed companies’ audit committees.³ Both the NYSE and Nasdaq proposals include a definition of “independence” which does not parallel the Section 301 definition.⁴ The NYSE and Nasdaq proposals also

² The requirement is applicable to annual reports on Form 10-K, Form 10-KSB (small business issuers), Form 20-F (foreign private issuers) and Form 40-F (Canadian issuers). The required disclosure would be included in Part III of the annual reports on Form 10-K and 10-KSB and may be incorporated by reference to a company’s proxy statement that involves election of directors that is filed no later than 120 days after the end of the fiscal year covered by the annual report.

³ The NYSE and Nasdaq’s proposed rules are available on their respective websites along with summary descriptions of their proposals. Both sets of proposed rules have been submitted to the SEC, but have not yet been published by the SEC for comment.

⁴ The NYSE’s proposal would, for example, deem employees of a company, or family members of such employees, not to be “independent.” Nasdaq’s proposal would, for example, prohibit audit committee members from owning or controlling 20% or more of the company’s voting stock.

deliberately omit any new provision⁵ regarding the inclusion of “financial experts” on audit committees until the SEC formally defines the term.

- The NYSE and Nasdaq current rules relating to audit committee “financial experts” do not apply to foreign private issuers. This is expected to change in light of the SEC’s proposals.

Definition of “Financial Expert”

A financial expert is a person who, through education and experience as a public accountant or auditor, or a principal financial officer, controller, or principal accounting officer, of a company that was required to file periodic reports at the time the person was in such position, or experience in one or more positions that involve the performance of similar functions (or that results, in the judgment of the board of directors, in the person’s having similar expertise and experience), has the following “attributes”:

- a. An understanding of generally accepted accounting principles and financial statements;
- b. Experience applying such generally accepted accounting principles in connection with the accounting for estimates, accruals, and reserves that are generally comparable to the estimates, accruals and reserves, if any, used in the filing company’s financial statements;
- c. Experience preparing or auditing financial statements that present accounting issues that are generally comparable to those raised by the filing company’s financial statements;
- d. Experience with internal controls and procedures for financial reporting; and
- e. An understanding of audit committee functions.

The entire board of directors of a company must determine if an audit committee member meets the standard for designation as a “financial expert.” The SEC has noted that the board should consider the following “factors” in making this determination:

- a. Accounting and financial education of a person, including any advanced degrees in these fields;
- b. Whether the person is a certified public accountant, or the equivalent, in good standing, and the length of time that the person actively has practiced as a certified public accountant, or the equivalent;

⁵ Both the NYSE and Nasdaq currently require audit committees to include a member with financial experience and expertise. See below under “Definition of Financial Expert.”

- c. Whether the person is certified or otherwise identified as having accounting or financial experience by a recognized private accounting standards body, whether that person is in good standing with the recognized private body, and the length of time that the person has been actively certified or identified as having this expertise;
- d. Whether the person has served as a principal financial officer, controller or principal accounting officer of a company that files periodic reports under the Exchange Act, and if so, for how long;
- e. The person's specific duties while serving as a financial officer;
- f. The person's level of familiarity and experience with all applicable laws and regulations regarding the preparation of financial statements that must be included in periodic reports filed under the Exchange Act;
- g. The level and amount of the person's direct experience reviewing, preparing, auditing or analyzing financial statements that must be included in periodic reports filed under the Exchange Act;
- h. The person's past or current membership on one or more audit committees of companies that, at the time the person held such membership, were required to file periodic reports filed under the Exchange Act;
- i. The person's level of familiarity and experience with the use and analysis of financial statements of public companies;
- j. Whether the person has any other relevant qualifications or experience that would assist him or her in understanding and evaluating the company's financial statements and other financial information and to make knowledgeable and thorough inquiries whether:
 - o The financial statements fairly present the financial condition, results of operations and cash flows of the company in accordance with generally accepted accounting principles; and
 - o The financial statements and other financial information, taken together, fairly present the financial condition, results of operations and cash flows of the company; and
- k. In the case of a foreign private issuer, the person's level of experience in respect of public companies in the foreign private issuer's home country, generally accepted accounting principles used by the issuer, and the reconciliation of financial statements with U.S. generally accepted accounting principles.

The SEC has emphasized that the above factors do not form a mechanical checklist against which each audit committee member must be reviewed and “satisfaction of any specific number of factors would be neither necessary nor sufficient for a person to be considered a financial expert.” However, to qualify as a financial expert, the person would have to possess *all* of the qualifying “attributes.”

- The SEC noted that its proposed definition is more “detailed and rigorous” than the current rules of the NYSE and Nasdaq. In particular, the SEC noted that its proposed rules would require a financial expert to “have experience preparing or auditing financial statements of a company that files reports” with the SEC and “experience with internal controls and procedures for financial reporting (or similar expertise and experience in the board of directors’ judgment).”
- According to the SEC, previous service on an audit committee or experience as a financial officer should not be automatically determinative. In each case, the board of directors must determine if an audit committee member has the “requisite attributes and the right mix of education and experience.”

Designation as a “financial expert” does not increase the responsibilities of the audit committee “financial expert” or decrease the responsibilities of the other audit committee members or the board of directors. Furthermore, the SEC has made clear that a director is determined to be an “expert” solely for the purposes of assisting the audit committee and not intended to impose the higher level of due diligence that is required under Section 11 of the Securities Act of 1933 for experts such as outside auditors.

Commentary:

- The qualifying “attributes” focus, in part, on the person’s sophistication with respect to the financial issues of “generally comparable” companies. It is not clear whether this is a reference to the specific company’s size, industry or position in the capital markets. For example, experience with the financial statements of an investment company might not qualify an audit committee member as a “financial expert” with respect to an operating company. The qualifying “factors,” on the other hand, appear to be more universal standards of education and experience.
- The NYSE’s rules currently require that at least one audit committee member have “accounting or related financial management expertise, as the Board of Directors interprets such qualification in its business judgment.”⁶ Nasdaq rules require an audit committee to have at least one member that has past employment experience in finance or accounting, a professional certification in accounting, or comparable experience or “background” that demonstrates the person’s financial sophistication, including being or having been a chief executive officer, chief financial officer or

⁶ NYSE Rule 303.01.

other senior corporate officer with financial oversight responsibilities.⁷ It is not clear, however, whether company boards of directors will now be prepared to designate as “financial experts” persons having only a financial “background” rather than taking the “safer” route of seeking candidates who are accountants by training with significant experience auditing the financial statements of public companies.

Code of Ethics

Disclosure Requirement

Section 406 of the Act requires the SEC to direct public companies to disclose in their periodic reports whether or not they have adopted a code of ethics for their senior financial officers as well as the immediate disclosure on Form 8-K or via the Internet of any change in, or waiver of, a provision of such code of ethics.

In implementing this Section, the SEC has proposed to require companies to disclose in their annual reports⁸ whether they have adopted a written code of ethics that applies to their principal executive officer, principal financial officer, principal accounting officer or controller, or persons performing similar functions. If a company has not adopted such a code of ethics, it would have to disclose the reasons why not. Foreign private issuers and registered investment companies would also be required to make this disclosure in their annual reports.

- The code of ethics envisioned by the SEC would have to govern a company’s CEO as well as its senior financial officers. Companies are encouraged, but not required, by the SEC to apply their code of ethics to as broad a range of employees and affiliates as possible.
- In addition to providing the required disclosure, a company would have to file a copy of its code of ethics as an exhibit to its annual report.

Code of Ethics Standards

A code of ethics is a codification of standards reasonably designed to deter wrongdoing and to promote:

1. Honest and ethical conduct, including the ethical handling of actual or apparent conflicts of interest between personal and professional relationships;

⁷ NASD Rule 4350(d)(2).

⁸ The requirement is applicable to annual reports on Form 10-K, Form 10-KSB (small business issuers), Form 20-F (foreign private issuers) and Form 40-F (Canadian issuers). The required disclosure would be included in Part III of the annual reports on Form 10-K and 10-KSB.

2. Avoidance of conflicts of interest, including disclosure to an appropriate person or persons identified in the code of any material transaction or relationship that reasonably could be expected to give rise to such a conflict;⁹
3. Full, fair, accurate, timely, and understandable disclosure in reports and documents that a company files with, or submits to, the SEC and in other public communications made by the company;
4. Compliance with applicable governmental laws, rules and regulations;
5. The prompt internal reporting to an appropriate person or persons identified in the code of violations of the code; and
6. Accountability for adherence to the code.

While a company's code of ethics must address each of these standards, the SEC has not mandated any specific language or procedures nor the types of sanctions that companies should impose for ethics code violations, noting that ethics codes will vary from company to company.

Immediate Disclosure of Amendments and Waivers

If a company either (1) makes a change to its code of ethics or (2) grants a waiver of an ethics code provision, the proposed rules would require disclosure on Form 8-K within two business days of the change or grant of waiver. Alternatively, the company may make the required disclosure via a posting on its website, including the text of the change to its code of ethics.

- A company may utilize the Internet option only after it has disclosed in its most recent annual report the company's website address and intention to disclose such events on its website.
- Disclosure on a company's website would also be required to be made within two business days. The disclosure would be required to remain available on the website for at least 12 months. Companies would be required to retain the disclosure for inspection by the SEC for 5 years.

Foreign private issuers will be required to disclose changes to, or waivers of, their codes of ethics in their annual reports and file the text of any change as an exhibit to their annual report. They will also have the option of making the required disclosure promptly on a Form 6-K or on their websites.

Registered investment companies will be subject to similar rules.¹⁰ Currently, the Investment Company Act of 1940 requires investment companies and their investment advisers and principal

⁹ The SEC recommends that the person appointed to handle conflicts of interest should have "sufficient status within the company to engender respect for the code and the authority to adequately deal with the persons subject to the code regardless of their stature in the company." These considerations would also apply to the person or persons appointed to receive reports of code violations.

underwriters to adopt codes of ethics designed to prevent fraud resulting from personal trading in securities. The proposed rules would require registered investment companies to disclose annually whether they, their investment advisers and their principal underwriters¹¹ have adopted written codes of ethics that comply with the standards described above.¹² Changes to, or waivers of, such codes of ethics would require immediate disclosure on SEC filings or via the investment company's website.

Commentary:

- Although the SEC's proposed rules do not require companies to adopt codes of ethics, or to amend their existing codes, they would only be able to disclose having a qualified code if it complies with the SEC's standards. Companies with pre-existing codes of ethics should therefore review their codes to ensure that they comply with the proposed standards.
- In their recently proposed corporate governance rules, the NYSE and Nasdaq have included requirements that listed companies adopt codes of business conduct and ethics.¹³ These proposals are likely to undergo some revision in the wake of the SEC's proposal. In particular, the standards to be addressed in the code are likely to be amended to conform more closely with the SEC's proposed standards. Additionally, it is likely that the requirement will also be applied by the NYSE and Nasdaq to foreign private issuers.
- The SEC proposal does not clarify whether a company's failure to enforce its ethics code would be deemed a de-facto "waiver" that requires disclosure.

Report on Internal Controls

Internal Control Report

Section 404 of the Act instructs the SEC to direct public companies to include in their annual reports an "internal control report" of management that assesses the effectiveness of the company's internal controls and procedures for purposes of financial reporting. Section 404 also requires management's internal control report to be attested to, and reported on, by the company's registered public accounting firm.

¹⁰ The proposed rules would apply to all registered investment companies, regardless of whether they are required to file reports under the Securities Exchange Act of 1934.

¹¹ In the case of unit investment trusts, the disclosure would relate to codes of ethics of the trust's sponsor, depositor, trustee or principal underwriter.

¹² A copy of the code of ethics would have to be filed as an exhibit to the investment company's annual report.

¹³ The NYSE's code would be applicable to directors, officers and employees, and waivers granted to directors and executive officers would require prompt disclosure.

In implementing this Section, the SEC has proposed that companies' annual reports¹⁴ include an internal control report of management that contains:

- A statement of management's responsibilities for establishing and maintaining adequate internal controls and procedures for financial reporting;
- conclusions about the effectiveness of these internal controls and procedures based on management's evaluation as of the end of the company's most recent fiscal year; and
- a statement that the company's registered public accounting firm has attested to, and reported on, management's evaluation of the company's internal controls and procedures.

The SEC did not propose any specific language or content for management's internal control report, asserting that management should tailor the report to their company's particular circumstances.

Foreign private issuers will be required to include management's internal control report in their annual reports. However, registered investment companies are exempt from this requirement.¹⁵

Internal Controls and Procedures

In its proposal, the SEC noted that "internal controls and procedures" are processes designed to provide reasonable assurance that:

- a company's transactions are properly authorized;
- a company's assets are safeguarded against unauthorized or improper use; and
- a company's transactions are properly recorded and reported

to permit the preparation of the company's financial statements in conformity with generally accepted accounting principles.

Section 103 of the Act contemplates that such internal controls and procedures will be formalized by the Public Company Accounting Oversight Board ("PCAOB") being established under the Act.¹⁶ Pending formalization of internal controls and procedures by the PCAOB, the

¹⁴ The requirement is applicable to annual reports on Form 10-K, Form 10K-SB (small business issuers), Form 20-F (foreign private issuers) and Form 40-F (Canadian issuers).

¹⁵ Section 405 of the Act.

¹⁶ Section 103 contemplates that the internal controls and procedures to be formulated by the PCAOB will be designed to

SEC has proposed defining the term “internal controls and procedures” in accordance with Section 319 of the American Institute of Certified Public Accountants’ (“AICPA”) Codification of Statements on Auditing Standards. The SEC noted that the AICPA standard was used because it is widely understood by the accounting profession and public companies.

Accountant Attestation and Report

The SEC has proposed that every registered public accounting firm that issues or prepares an accountant’s report for a company, other than an investment company, must examine, attest to, and report separately on, management’s internal control report concerning the effectiveness of the company’s internal controls and procedures.

- The accountant attestation must be dated, signed manually, identify the period covered by the report, indicate the scope of the accountant’s examination, and clearly state the opinion of the accountant as to whether the company’s disclosure about the effectiveness of its internal controls and procedures is fairly stated in all material respects, or must include an opinion to the effect that an overall opinion cannot be expressed. If an overall opinion cannot be expressed, the accountant must explain why.
- The accountant attestation report must be filed together with management’s internal control report in the company’s annual report.

Commentary:

- Although there is some literature¹⁷ and precedent for auditor attestation of, and reports on, internal controls and auditors typically review and report to audit committees on internal controls in conjunction with their auditing work, the accountant attestation report contemplated under the Act and the SEC’s proposal represents a new type of report, certainly in terms of scope of effort and potential exposure for accountants. Section 404(b) of the Act notes that the accountant attestation reports are to be made in accordance with standards for attestation engagements “issued or adopted by the PCAOB,” further suggesting that an entirely new set of standards and procedures are contemplated. The SEC’s proposal with respect to accountant attestation reports is therefore effectively conditioned upon the PCAOB first establishing standards for the contemplated reports. Any PCAOB proposal is likely to attract significant comment from the U.S. accounting industry as

-
- ensure maintenance of records that in reasonable detail accurately and fairly reflect the transactions and dispositions of the company’s assets,
 - provide reasonable assurance that transactions are recorded as necessary to permit preparation of financial statements in accordance with generally accepted accounting principles, and
 - provide reasonable assurance that receipts and expenditures of the company are being made only in accordance with authorizations of management and directors of the company.

¹⁷ See Section 501 of the AICPA’s Statement on Standards for Attestation Engagements.

well as from foreign accounting firms and organizations that may be impacted by the proposed standards. Such standards are likely to result in significant changes to auditing practices and procedures.

Evaluation, Disclosure and Certification

In August, the SEC issued rules¹⁸ requiring that:

- companies establish, maintain and, on a quarterly basis, evaluate the effectiveness of, their “disclosure controls and procedures” for the reporting of material, non-financial information,
- companies disclose the conclusions of these evaluations, along with any significant changes in the company’s internal controls, in the company’s periodic reports, and
- the CEO and CFO of such companies certify, among other things, having conducted these evaluations. This certification was mandated under Section 302 of the Act.

Although the Section 302 certification dealt with both financial and non-financial controls and procedures, the other parts of the SEC’s prior mandate related primarily to non-financial information. Accordingly, the SEC has now proposed requiring management to also evaluate, on a quarterly basis with the participation of its principal executive and financial officers, the effectiveness of the design and operation of the company’s internal controls and procedures *for financial reporting*. The proposed rules would require that such combined financial and non-financial evaluations be made “as of the end of the period covered by the report.”¹⁹

- Conclusions of both of these evaluations and any significant changes to the company’s internal controls and procedures made during the reporting period, including any actions taken to correct significant deficiencies and material weaknesses in the company’s internal controls, must be disclosed in the company’s quarterly and annual reports. Year-end financial evaluations and corrective actions may be disclosed in the management internal control report described above.

Foreign private issuers will be required to conduct these evaluations annually and make the required disclosures in their annual reports. Although registered investment companies need not include in their annual reports a management internal control report or an accountant attestation report, they must nonetheless conduct an evaluation of their non-financial controls and

¹⁸ SEC Release No. 33-8124 (August 28, 2002). See Willkie Farr & Gallagher Client Memorandum on Section 302 Certification, dated September 6, 2002.

¹⁹ This would modify the current requirement that the non-financial evaluations be conducted within the 90-day period prior to the filing date of the periodic report.

procedures and disclose the conclusions of this evaluation along with any significant changes to their financial controls in their applicable periodic reports.

In connection with the proposed rules regarding internal controls and procedures, the SEC has also proposed conforming changes to the Section 302 certification. The text of the amended certification is attached as Exhibit A (with the proposed changes underscored).

- The new form of certification would be applicable in conjunction with a company's first annual report which includes an internal control report by management. Until then, the existing form of the Section 302 certification would remain in effect.

Commentary:

- In conjunction with their Section 302 certifications, many companies have already instituted procedures for evaluating their financial as well as their non-financial controls. Such companies would be wise to continue these procedures even though the proposed SEC requirement for certification of financial controls and procedures is first scheduled to take effect for fiscal years ending on or after September 15, 2003 (see below).²⁰

Transition

The SEC has proposed to delay the effectiveness of its final rules under Section 404 in order to allow all relevant parties time to prepare for compliance. Accordingly, these rules would only take effect beginning with annual reports filed for fiscal years ending on or after September 15, 2003. In the interim, companies and their accountants should together evaluate their internal controls and procedures for financial reporting to prepare for the eventual inclusion of management's internal control report in their annual reports. Companies should discuss with their accountants the changes to auditing practices and procedures likely to be required as a result of the required accountant attestation reports.

* * * * *

If you wish to obtain additional information regarding these new proposals or other initiatives, assistance in developing a detailed program to help ensure compliance or copies of any of our previous client memoranda, please contact John S. D'Alimonte (212-728-8212, jd'alimonte@willkie.com), Yaacov M. Gross (212-728-8225, ygross@willkie.com), Jeffrey S. Hochman (212-728-8592, jhochman@willkie.com), or the partner who regularly works with you.

²⁰ The SEC proposals are ambiguous as to when the requirement for quarterly disclosure of the evaluation of financial controls and procedures will take effect. We are attempting to clarify this issue with the SEC. Companies that have not yet begun to develop a process for evaluation of their financial controls and procedures should consider beginning such efforts.

WILLKIE FARR & GALLAGHER

Willkie Farr & Gallagher is headquartered at 787 Seventh Avenue, New York, NY 10019-6099. Our telephone number is (212) 728-8000, and our facsimile number is (212) 728-8111. Our website is located at www.willkie.com.

November 8, 2002

EXHIBIT A

CERTIFICATIONS*

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

1. I have reviewed this [quarterly/annual report] on Form [identify applicable form] of [identify registrant];
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officers and I are responsible for establishing and maintaining disclosure controls and procedures and internal controls and procedures for financial reporting (as defined in Exchange Act Rules 13a-14 and 15d-14) for the registrant and we have:
 - a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the issuer, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
 - b) Designed such internal controls and procedures for financial reporting, or caused such internal controls and procedures for financial reporting to be designed under their supervision, to provide reasonable assurances that the registrant's financial statements are fairly presented in conformity with generally accepted accounting principles;
 - c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and internal controls and procedures for financial reporting as of the end of the period covered by this report ("Evaluation Date");
 - d) Presented in this report our conclusions about the effectiveness of the disclosure controls and procedures and internal controls and procedures for financial reporting based on our evaluation as of the Evaluation Date;
 - e) Disclosed to the registrant's auditors and the audit committee of the board of directors (or persons fulfilling the equivalent function):

- (i) All significant deficiencies and material weaknesses in the design or operation of internal controls and procedures for financial reporting which could adversely affect the registrant's ability to record, process, summarize and report financial information required to be disclosed by the registrant in the reports that it files or submits under the Act (15 U.S.C. 78a et seq.), within the time periods specified in the U.S. Securities and Exchange Commission's rules and forms; and
- (ii) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal controls and procedures for financial reporting; and
- f) Indicated in this report any significant changes in the registrant's internal controls and procedures for financial reporting or in other factors that could significantly affect internal controls and procedures for financial reporting made during the period covered by this report, including any actions taken to correct significant deficiencies and material weaknesses in the registrant's internal controls and procedures for financial reporting.

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. The required certification must be in the exact form set forth above.