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United States General Accounting Office
Washington, DC 20548

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February 19, 2003

The Honorable Richard C. Shelby
Chairman
The Honorable Paul S. Sarbanes
Ranking Minority Member
Committee on Banking, Housing, and Urban Affairs
United States Senate

The Honorable Michael G. Oxley
Chairman
The Honorable Barney Frank
Ranking Minority Member
Committee on Financial Services
House of Representatives

Subject: *Securities and Exchange Commission: Disclosure in Management's Discussion and Analysis About Off-Balance Sheet Arrangements and Aggregate Contractual Obligations*

Pursuant to section 801(a)(2)(A) of title 5, United States Code, this is our report on a major rule promulgated by the Securities and Exchange Commission (SEC), entitled "Disclosure in Management's Discussion and Analysis About Off-Balance Sheet Arrangements and Aggregate Contractual Obligations" (RIN: 3235-AI70). We received the rule on January 29, 2003. It was published in the Federal Register as a final rule on February 5, 2003. 68 Fed. Reg. 5982.

The final rule implements section 401(a) of the Sarbanes-Oxley Act of 2002 and requires the disclosure of off-balance sheet arrangements. The rule requires a registrant to provide an explanation of its off-balance sheet arrangements in a separately captioned subsection of the "Management's Discussion and Analysis" section of a registrant's disclosure documents.

Enclosed is our assessment of the SEC's compliance with the procedural steps required by section 801(a)(1)(B)(i) through (iv) of title 5 with respect to the rule. Our review indicates that the SEC complied with the applicable requirements.

If you have any questions about this report, please contact James W. Vickers, Assistant General Counsel, at (202) 512-8210. The official responsible for GAO evaluation work relating to the subject matter of the rule is Thomas McCool, Managing Director, Financial Markets and Community Investments. Mr. McCool can be reached at (202) 512-8678.

signed

Kathleen E. Wannisky
Managing Associate General Counsel

Enclosure

cc: Margaret H. McFarland
Deputy Secretary
Securities and Exchange Commission

ANALYSIS UNDER 5 U.S.C. § 801(a)(1)(B)(i)-(iv) OF A MAJOR RULE
ISSUED BY THE
SECURITIES AND EXCHANGE COMMISSION
ENTITLED
"DISCLOSURE IN MANAGEMENT'S DISCUSSION AND ANALYSIS
ABOUT OFF-BALANCE SHEET ARRANGEMENTS AND
AGGREGATE CONTRACTUAL OBLIGATIONS"
(RIN: 3235-AI70)

(i) Cost-benefit analysis

The SEC estimates that the final rule will impose disclosure requirements on 9,850 public companies. The estimated in-house cost of preparing, reviewing, and filing the disclosure documents is \$45,792,000 and the cost of outside professionals to comply with the requirements is estimated at \$44,795,000.

The SEC states that the anticipated benefit of the final rule is to increase transparency of a registrant's financial disclosure and enable investors to make more informed investment decisions and to allocate capital on a more efficient basis.

(ii) Agency actions relevant to the Regulatory Flexibility Act, 5 U.S.C. §§ 603-605, 607, and 609

The SEC prepared an Initial and Final Regulatory Flexibility Analysis in connection with the proposed and final rules, respectively. The analyses meet the informational requirements of the Act.

In order to reduce the burden on small entities, small entities have been excluded from the requirement to provide tabular disclosure of contractual obligations.

(iii) Agency actions relevant to sections 202-205 of the Unfunded Mandates Reform Act of 1995, 2 U.S.C. §§ 1532-1535

As an independent regulatory agency, the SEC is not subject to title II of the Unfunded Mandates Reform Act.

(iv) Other relevant information or requirements under acts and executive orders

Administrative Procedure Act, 5 U.S.C. §§ 551 *et seq.*

The final rule was issued using the notice and comment procedures contained at 5 U.S.C. 553. On November 8, 2002, the SEC published a Notice of Proposed Rulemaking in the Federal Register. 67 Fed. Reg. 68054. The SEC received

responses from 48 commenters, which are discussed in the preamble to the final rule.

Paperwork Reduction Act, 44 U.S.C. §§ 3501-3520

The final rule contains information collections that are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act. The required information regarding the 17 collections, including the burden hours, was published in the proposed rule and the manner in which the SEC arrived at the burden figures is explained in the preamble to the final rule. OMB has reviewed and approved the collections that are listed in the preamble to the final rule along with their corresponding OMB control numbers.

Statutory authorization for the rule

The final rule is promulgated under the authority contained at sections 7, 10, 19, 27A, and 28 of the Securities Act; sections 12, 13, 14, 21E, 23, and 36 of the Exchange Act; and sections 3(a) and 401(a) of the Sarbanes-Oxley Act of 2002.

Executive Order No. 12866

As the rule is promulgated by an independent regulatory agency, it is not subject to the review requirements of the order.