

collection would violate applicable foreign law in certain foreign countries shall inform the Office of Intelligence and Security (S-60), U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590 of that claim on or before the effective date of this rule, or on or before beginning service between that country and United States. Such notification shall include copies of the pertinent foreign law as well as a certified translation. Notifications will also be accepted directly from foreign governments.

(c) The U.S. Department of Transportation shall maintain an up-to-date listing of countries where adherence to all or a portion of this part is not required because of a conflict with applicable foreign law.

§ 243.17 Enforcement.

The U.S. Department of Transportation may at any time require an air carrier or foreign air carrier to produce a passenger manifest for a specified flight segment to ascertain the effectiveness of the carrier's system. In addition, it may require from any air carrier or foreign air carrier further information about collection, storage and transmission procedures at any time. If the Department finds an air carrier's or foreign air carrier's system to be deficient, it will require appropriate modifications, which must be implemented within a specified period. In addition, the offending air carrier or foreign air carrier may be subject to enforcement action.

§ 243.19 Civil and criminal penalties.

Each air carrier or foreign air carrier that violates the provisions of this part is subject to civil and/or criminal penalties for each violation as provided by 49 U.S.C. 46301, 46310 and 46316.

§ 243.21 Waivers.

The Department may waive compliance with certain requirements of this part if an air carrier or foreign air carrier has in effect a signed Memorandum of Understanding with the Department of State concerning cooperation and mutual assistance following aviation disasters abroad. Carriers that have signed such a Memorandum and that wish to take advantage of this shall submit two copies of the signed Memorandum to the Assistant Secretary for Aviation and International Affairs, U.S. Department of Transportation. The carrier will be informed by the Assistant Secretary for Aviation and International Affairs, or his or her designee, of the provisions of this part, if any, that are waived by the Department based on the Memorandum.

Such determination will be confirmed in writing to the carrier.

Issued in Washington, DC, on September 4, 1996.

Federico Peña,

Secretary.

[FR Doc. 96-23072 Filed 9-9-96; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 228, 230, 239, 240 and 249

[Release Nos. 33-7326 and 34-37624; File No. S7-23-96]

RIN 3235-AG82

Expansion of Short-Form Registration To Include Companies With Non-voting Common Equity

AGENCY: Securities and Exchange Commission.

ACTION: Proposed rules.

SUMMARY: The Securities and Exchange Commission ("Commission") today proposes amendments to rules and Forms S-3 and F-3 under the Securities Act of 1933 ("Securities Act") to include non-voting as well as voting common equity in the computation of the required \$75 million aggregate market value of common equity held by non-affiliates of the registrant.

In addition, the Commission is proposing conforming amendments to Form F-2 under the Securities Act, Forms 10-K and 10-KSB under the Securities Exchange Act of 1934 ("Exchange Act") and the definition of "Small Business Issuer" in Rule 405 and in Item 10 of Regulation S-B under the Securities Act and in Rule 12b-2 under the Exchange Act. Under the proposed revisions, the aggregate market value of voting and non-voting common equity would be included in the calculation of the amount of the required public float for issuers to qualify to use Form F-2 and to be small business issuers and in stating the amount of the public float on Forms 10-K and 10-KSB.

DATES: Comments should be received on or before October 10, 1996.

ADDRESSES: Comments should be submitted in triplicate to Jonathan G. Katz, Secretary, U.S. Securities and Exchange Commission, Mail Stop 6-9, 450 Fifth Street, NW., Washington, DC 20549. Comments also may be submitted electronically at the following E-mail address: rule-comments@sec.gov. All comment letters should refer to File Number S7-23-96. Include this file

number on the subject line if E-mail is used. Comment letters will be available for inspection and copying in the Public Reference Room at the same address. Electronically submitted comment letters will be on the Commission's Internet web site (<http://www.sec.gov>).

FOR FURTHER INFORMATION CONTACT:

Mary J. Kosterlitz, Special Counsel, (202) 942-2900, Office of Chief Counsel, Division of Corporation Finance, Securities and Exchange Commission, 450 Fifth Street, NW., Mail Stop 3-3, Washington, DC 20549.

SUPPLEMENTARY INFORMATION: The Commission is proposing amendments to Forms S-3¹ and F-3² under the Securities Act³ to include non-voting common equity in the computation of the required public float. Conforming changes are also proposed to be made to Forms, F-2,⁴ 10-K,⁵ and 10-KSB⁶ and to the definition of "small business issuer" in Rule 405⁷ and in Item 10 of Regulation S-B⁸ under the Securities Act and in Rule 12b-2⁹ under the Exchange Act.¹⁰

I. Introduction and Background

The Commission's short-form registration statements, Forms S-3 and F-3, require as one condition to eligibility for registration of a primary offering of non-investment grade securities (such as common stock) that the company have at least \$75 million of voting stock held by non-affiliates (referred to as the "public float").¹¹ Some companies, both domestic and foreign, that have significant amounts of non-voting common stock held by non-affiliates (but not significant amounts of voting stock) are not eligible to use these forms for such an offering because non-voting stock is not included in the calculation of the required public float. The revisions proposed today would make Forms S-3 and F-3 available to these issuers provided they otherwise qualify for these forms. These changes are proposed to provide additional flexibility for registered capital raising transactions by extending the availability of the short form registration statements. The proposed revisions are

¹ 17 CFR 239.13.

² 17 CFR 239.33.

³ 15 USC 77a *et seq.*

⁴ 17 CFR 239.32.

⁵ 17 CFR 249.310.

⁶ 17 CFR 249.310b.

⁷ 17 CFR 230.405.

⁸ 17 CFR 228.10.

⁹ 17 CFR 240.12b-2.

¹⁰ 15 U.S.C. 78a *et seq.*

¹¹ See General Instruction I.B.1 of Forms S-3 and F-3. General registrant requirements for Forms S-3 and F-3 eligibility are outlined in General Instruction I.A. to these forms.

consistent with the spirit of the recommendations of the Commission's Task Force on Disclosure Simplification ("Task Force Report")¹² and with requirements included in S. 1815, the Securities Investment Promotion Act of 1996.¹³

Under the integrated disclosure system, there are three basic Securities Act registration forms: Forms S-1, S-2 and S-3.¹⁴ These forms establish three categories of registrants. Although the information required for each of these forms is the same, the method of delivering the information varies depending on the category of registrant. These methods of delivering information are: (1) Provision of information physically in the prospectus; (2) delivery with the prospectus; or (3) incorporation by reference into the prospectus from Exchange Act reports. Form S-3 permits maximum reliance on Exchange Act reports, allowing eligible issuers to use this form to incorporate information into the prospectus by reference from Exchange Act filings.¹⁵ Form F-3, the corollary to Form S-3 for foreign private issuers,¹⁶ also allows eligible registrants to incorporate information by reference from Exchange Act reports.

The Commission's rules have always conditioned the availability of short form registration for primary offerings of non-investment grade securities (such as common stock) on the issuer's having a minimum amount of voting stock held by non-affiliates. The rationale for the float condition has been to assure that physical delivery of the detailed information required by longer registration forms would not be necessary because complete and current information about the issuer was already "disseminated and accounted

for by the market place."¹⁷ Float consistently has been viewed as an indicator of analyst or market following (which in turn assures a sufficient dissemination of information to allow use of short form registration).¹⁸

Throughout the development of short form registration, the Commission has not fully articulated a reason for excluding non-voting common stock from the calculation of public float.¹⁹ Because it is not clear that analyst or market following would be affected by whether or not a company's securities carry voting rights as long as the securities are common equity securities, and in light of questions raised by issuers and others that believe non-voting common stock should be included, the Commission has decided to reexamine the basis for excluding non-voting stock in calculating public float. Consequently, the Commission is proposing today to eliminate the distinction, thus making short form registration available to a broader class of issuers.

II. Discussion of Proposals

A. Changes to Forms S-3 and F-3

The proposed amendments relating to the use of Forms S-3 and F-3 for primary offerings of non-investment grade securities would change the transaction requirements outlined in the General Instructions to the Forms to provide that non-voting common equity would be included in the calculation of the \$75 million float requirement.²⁰ These changes would be accomplished by removing the term "voting stock" as it appears in these sections and substituting the phrase "shares of voting and non-voting common equity." The meaning of the term "common equity" would be as defined in Rule 405 under the Securities Act.²¹

Comment is requested concerning whether the proposed change to include non-voting shares of common equity in calculating public float is appropriate. Specifically, the Commission solicits comment as to whether the distinction between voting and non-voting common equity affects market following of companies. Does it matter if a significant amount of the securities necessary to qualify are not voting equity securities? In addition, the Commission seeks comment as to whether it is appropriate to provide short form eligibility if the only publicly held equity securities are non-voting.

The term "common equity" as used in the proposed changes to Forms S-3 and F-3 would not include either convertible securities or preferred shares, because it is not clear that such securities, standing alone, would give rise to a market following. Comment is requested, however, as to whether there are types of preferred or convertible securities that have sufficient market following that would justify their inclusion in the calculation of public float for purposes of Forms S-3 and F-3 eligibility. Commenters urging inclusion of other securities are requested to identify the characteristics of the securities and provide information about market following of issuers with such securities.

B. Conforming Changes to Other Commission Rules and Forms Referencing Public Float

The Commission also is proposing conforming changes to Forms F-2, 10-K and 10-KSB, as well as to the definition of "small business issuer" in Rule 405 and in Item 10 of Regulation S-B under the Securities Act and to Rule 12b-2 under the Exchange Act, to provide that the public float requirement is to be computed by including the aggregate market value of both voting and non-voting common equity.

Form F-2 is used by certain foreign private issuers to register securities offerings under the Securities Act.²² One Form F-2 eligibility requirement is that, in certain cases, the foreign private issuer must have an aggregate worldwide market value of voting stock held by non-affiliates of the equivalent

¹² The Task Force Report in part seeks to eliminate rules that no longer may be necessary or appropriate for investor protection and to streamline, simplify, and modernize the overall regulatory scheme without compromising or diminishing important investor protections. See March 5, 1996, Letter from Arthur Levitt printed in Report on Task Force Simplification, March 1996. See Release No. 33-7271 (March 5, 1996) [61 FR 9848]. The report is available for inspection and copying in the Commission's Public Reference Room and is posted on the Commission's Internet Web Site (<http://www.sec.gov>).

¹³ See S. 1815, 2d Sess. § 314 (1996).

¹⁴ These three classes of forms apply to domestic issuers. Foreign private issuers have three parallel Securities Act registration forms: Forms F-1, F-2 and F-3. 17 CFR 239.0-1.

¹⁵ See Release No. 33-6383 (March 3, 1982) [47 FR 11380]. Form S-3 also allows issuers to update the issuer prospectus information through incorporation by reference of future Exchange Act filings, instead of filing post-effective amendments to the registration statement. *Id.*

¹⁶ The term "foreign private issuer" is defined in Rule 405.

¹⁷ See Release No. 33-6331 (August 6, 1981) [47 FR 41902, 41904].

¹⁸ Release No. 33-6943 (July 22, 1992) [57 FR 32461]; Release No. 33-6331 (August 6, 1981) [46 FR 41902]; Release No. 33-5923 (April 11, 1978) [43 FR 16677].

¹⁹ In connection with expansion of a predecessor short form, Form S-16, the Commission analyzed the distinction between voting equity securities and non-voting debt securities. In that context, the Commission agreed that information about companies with publicly held non-voting securities may be widely available but noted that while a \$50 million float requirement (which was the amount being adopted at the time) is appropriate for voting securities, it is not necessarily indicative of general market interest in debt securities. See Release No. 5923 (April 11, 1978) [43 FR 16677].

²⁰ The amendments proposed would not alter any other requirements of Forms S-3 or F-3, including the amount of the public float.

²¹ Rule 405 defines "common equity" as "any class of common stock, or an equivalent interest, including but not limited to a unit of beneficial interest in a trust or a limited partnership interest."

²² See General Instruction I.A and I.B of Form F-2 for the eligibility requirements of Form F-2. This form allows certain foreign private issuers to provide some of the required prospectus information by supplying a copy of the issuer's most recent annual report on Form 20-F. Form F-2 is generally available for foreign private issuers with a 36 month reporting history; for issuers with less than 36 months of reporting, a \$75 million float requirement applies.

of \$75 million.²³ The proposed amendments would change the eligibility requirement outlined in the General Instruction to Form F-2 to indicate that non-voting common equity as well as voting common equity would be included in the calculation of the \$75 million float requirement.

Forms 10-K and 10-KSB each require registrants to state on the cover page the aggregate market value of voting stock held by non-affiliates. The information serves a number of purposes, including use by the Commission staff in considering form eligibility. As proposed to be amended, the forms would instead require a statement of the aggregate market value of voting and non-voting common equity held by non-affiliates.

The proposed amendments also would change the definition of "small business issuer" in Rule 405 and in Item 10 to Regulation S-B under the Securities Act and Rule 12b-2 under the Exchange Act. The current definition of "small business issuer" states that "an entity is not a small business issuer if it has a public float (the aggregate market value of the outstanding securities held by non-affiliates) of \$25,000,000 or more."²⁴ This definition does not specify what is meant by the term "outstanding securities." However, in the adopting release for the Small Business Initiatives, the Commission described public float as "the aggregate market value of the issuer's voting stock held by non-affiliates,"²⁵ and the staff of the Division of Corporation Finance has interpreted the float test for small business issuers in that manner. Consistent with the proposed changes to Forms S-3 and F-3, the proposed amendments to the small business issuer eligibility criteria would replace "securities" with "shares of voting and non-voting common equity."

Comment is requested as to whether these conforming changes to Forms F-2, 10-K and 10-KSB, Rule 405, Item 10 of Regulation S-B, and Rule 12b-2 are necessary or appropriate. Specifically, the Commission solicits comment as to whether the proposed changes regarding the use of non-voting as well as voting shares of common equity to calculate the public float for Forms F-2, 10-K, 10-KSB and for small business issuers are appropriate, and whether there is a basis for excluding non-voting common equity from the definition of public float in these contexts. The proposed changes

to the definition of small business issuer could cause some issuers that have non-voting common equity to become ineligible for the small business issuer disclosure system.²⁶ Notwithstanding this potential impact, the Commission believes that public float should be measured consistently for both larger and smaller issuers. Comment is requested, however, as to whether these proposed amendments would result in significant new burdens for small business issuers and, if so, whether the burden justifies a different public float test for small business issuer eligibility.

III. Request for Comment

Any interested person wishing to submit comment on the proposed amendments, as well as other matters that might have an impact on the proposed changes to rules and forms, is requested to do so. Comment is requested on the impact of the proposals from the point of view of the investing public, as well as the entities or persons making filings with the Commission. The Commission also requests comment on whether the proposed amendments, if adopted, would have an adverse impact on competition that is neither necessary nor appropriate in furthering the purposes of the Exchange Act. Comments responsive to this inquiry will be considered by the Commission in complying with its responsibility under Section 23(a) of the Exchange Act.²⁷

IV. Cost-Benefit Analysis

Commenters are requested to provide their views and data relating to any costs and benefits associated with these proposals to aid the Commission in its evaluation of the costs and benefits that may result from the changes proposed in this release. It is anticipated that these proposals will have a benefit to issuers with filing obligations that would become eligible to use short form registration, by decreasing their costs. It is also possible that a small number of issuers currently able to use the small business issuer disclosure system may have increased costs due to their inability to use this system. No

detrimental effects to investors are expected.

V. Summary of Initial Regulatory Flexibility Analysis

An initial regulatory flexibility analysis has been prepared in accordance with 5 U.S.C. 603 concerning the proposed amendments. The analysis notes that the amendments would revise forms and rules, which may increase the availability of Forms S-3, F-2 and F-3 and possibly decrease the availability of the small business disclosure system (Forms SB-1, SB-2, 10-SB, 10-KSB and 10-QSB) for some issuers.

As discussed more fully in the analysis, the proposals would affect persons that are small entities, as defined in the Commission's rules, because the proposed changes to the definition of small business issuer could cause some issuers that have non-voting common equity held by non-affiliates to become ineligible to use the small business disclosure system. The Commission estimates that approximately three percent of the small business issuers may become subject to more detailed reporting obligations in the future, or may otherwise be impacted by the rule proposals.²⁸ These estimates were not the product of a formal study, but were solely the result of estimates provided by the staff of the Division of Corporation Finance based on its expertise from the review of corporate filings. These estimates were thought by the Corporation Finance Division staff to reflect the maximum percent of companies that would no longer be eligible to use the small business issuer disclosure system. Instead, they would be required to file Forms S-1 or S-2 for registered securities offerings, Form 10 to register a class of securities under the Exchange Act, and Forms 10-Q and 10-K for periodic reporting under the Exchange Act. The Commission's Office of Economic Analysis is currently conducting a study to estimate the number of companies that would lose their small business status. The result of this study will be incorporated into the final Regulatory Flexibility Analysis. The Commission does not expect that the number of companies that would become ineligible to meet the definition of small business issuer would be significant. The Commission solicits comment on its preliminary estimates of the number of small entities that would be impacted by the proposed rules. The Commission also does not expect that

²³ See General Instruction I.B.2 of Form F-2.

²⁴ See Rule 405 and Item 10(a)(1) of Regulation S-B.

²⁵ See Release No. 33-6949 (July 30, 1992) [57 FR 36442].

²⁶ Under the small business issuer disclosure system, eligible companies may use Forms SB-1 and SB-2 for registration under the Securities Act, Form 10-SB for registration under the Exchange Act, and Forms 10-KSB and 10-QSB for periodic reporting under the Exchange Act. These forms generally allow more streamlined disclosure than the Securities Act and Exchange Act forms for issuers that are not small business issuers. In addition, some Commission forms that are not limited to small business issuers permit specified streamlined disclosures. See, e.g., General Instruction D.3. to Form S-4, General Instruction C.3. to Form 8-K and Note G to Schedule 14A.

²⁷ 15 U.S.C. 78w(a).

²⁸ See estimates in Section VI, "Paperwork Reduction Act," *infra*.

materially increased reporting, recordkeeping and compliance burdens would result from the changes. The Commission, however, also seeks comment as to whether these proposed amendments would result in significant new burdens for small entities, and, if so, whether the burden justifies a different public float test for small business eligibility. The analysis also indicates that there are no current federal rules that duplicate, overlap or conflict with the rules and forms to be amended.

As stated in the analysis, several possible significant alternatives to the proposals were considered, including, among others, establishing different compliance or reporting requirements for small entities or exempting them from all or part of the proposed requirements. As discussed more fully in the analysis, the nature of these amendments do not lend themselves to separate treatment, nor would they impose significant additional burdens on small entities.

Written comments are encouraged on any aspect of the analysis. Such comments will be considered in the preparation of the Final Regulatory Flexibility Analysis if the proposed amendments are adopted. A copy of the analysis may be obtained by contacting Mary J. Kosterlitz, Office of Chief Counsel, Division of Corporation Finance, Mail Stop 3-2, 450 Fifth Street, N.W., Washington, D.C. 20549.

VI. Paperwork Reduction Act

Certain provisions of the proposed amendments to Forms S-3, F-2 and F-3, Rule 405 and Item 10 of Regulation S-B under the Securities Act and Rule 12b-2 under the Exchange Act contain "collection of information" requirements within the meaning of the Paperwork Reduction Act of 1995 (the "Act") (44 U.S.C. 3501 *et seq.*). The Commission has submitted its proposed revisions to the information collections required by these provisions to the Office of Management of Budget ("OMB") for review in accordance with 44 U.S.C. § 3507(d) and 5 CFR 1320.11. The titles of the affected information collections are "Form S-1," "Form S-2," "Form S-3," "Form F-1," "Form F-2," "Form F-3," "Form SB-1," "Form SB-2," "Form 10-K," "Form 10-Q," "Form 10-KSB," "Form 10-QSB," "Form 10," and "Form 10-SB."

The collections of information contained in the fourteen forms at issue are required for the registration of various securities for sale to the public under the Securities Act and periodic reporting obligations under the Exchange Act. The likely respondents to

each form are, respectively: (i) For Form S-1, generally all issuers registering offerings of securities under the Securities Act that are not eligible to use other forms; (ii) for Form S-2, generally issuers that have been reporting companies for three years and that have filed Exchange Act reports timely for the past 12 calendar months; (iii) for Form S-3, issuers that have been Exchange Act reporting companies for 12 months, have timely filed Exchange Act reports for 12 months, and if making primary offerings of non-investment grade securities, generally have a public float of at least \$75 million; (iv) for Form F-1, generally all foreign private issuers (as defined in Rule 405 under the Securities Act) registering securities under the Securities Act that are not eligible to use other forms; (v) for Form F-2, generally foreign private issuers that have filed Exchange Act reports for 36 months or, in some instances, that have a public float of at least \$75 million; (vi) for Form F-3, generally foreign private issuers that have been Exchange Act reporting companies for 12 months (and have filed at least one annual report on the appropriate form), have timely filed Exchange Act reports for 12 months, and if making primary offerings of non-investment grade securities, have a public float of at least \$75 million; (vii) for Form SB-1, generally small business issuers (as defined in Rule 405 under the Securities Act) registering up to \$10 million of securities under the Securities Act in a continuous 12 month period to be sold for cash; (viii) for Form SB-2, generally small business issuers registering securities offerings under the Securities Act; (ix) for Form 10-K, generally all issuers reporting under the Exchange Act filing annual reports that are not foreign private issuers or small business issuers; (x) for Form 10-Q, generally all issuers reporting under the Exchange Act filing quarterly reports that are not foreign private issuers or small business issuers; (xi) Form 10, generally all issuers registering under the Exchange Act that are not foreign private issuers or small business issuers; (xii) for Form 10-KSB, generally small business issuers reporting under the Exchange Act filing annual reports; (xiii) for Form 10-QSB, generally small business issuers reporting under the Exchange Act filing quarterly reports; and (xiv) Form 10-SB, generally small business issuers registering under the Exchange Act. The estimated burden for responding to the collections of information in each form is not expected to change. Those estimates per respondent are as follows: (i) For Form

S-1: 1,267 burden hours; (ii) for Form S-2: 470 burden hours; (3) for Form S-3: 398 burden hours; (iv) for Form F-1: 1,868 burden hours; (v) for Form F-2: 559 burden hours; (vi) for Form F-3: 166 burden hours; (vii) for Form SB-1: 710 burden hours; (viii) for Form SB-2: 876 burden hours; (ix) for Form 10-K: 1,723 burden hours; (x) for Form 10-Q: 144 burden hours; (xi) for Form 10-KSB: 1,216 burden hours; (xii) for Form 10-QSB: 131 burden hours; (xiii) for Form 10: 95 burden hours; and (xiv) for Form 10-SB: 90 burden hours.

It is expected that the Commission's proposal to include non-voting as well as voting common equity in computing the required public float for use of Forms S-3, F-2, and F-3 would increase the number of issuers able to use these forms, and proportionately decrease the number of issuers that use Forms S-1, S-2 and F-1. The result would be a net overall reduction in reporting or recordkeeping burden, since Forms S-3 and F-3 provide for short form registration. The Commission's proposal to amend the definition of "small business issuer" in Rule 405 and in Item 10 of Regulation S-B under the Securities Act and in Rule 12b-2 under the Exchange Act so that the \$25 million public float maximum includes the aggregate market value of non-voting as well as voting common equity could reduce the number of issuers that would qualify as small business issuers. The result would be a commensurate decrease in the number of issuers filing Form SB-1 and SB-2. Such issuers instead would use Form S-1 or S-2. The proposal to change the definition of small business issuer in Rule 12b-2 under the Exchange Act would also result in a decrease in the number of issuers filing Forms 10-KSB, 10-QSB, and 10-SB. Such issuers would instead use Forms 10-K, 10-Q and 10, respectively.

It is estimated for the purposes of the Act that approximately 1,164 Form S-1s, 111 Form S-2s, 2,059 Form S-3s, 178 Form F-1s, 4 Form F-2s, 143 Form F-3s, 17 Form SB-1s, and 393 Form SB-2s, 6,019 Form 10-Ks, 28,934 Form 10-Qs, 887 Form 10-KSBs, 5,443 Form 10-QSBs, 82 Form 10s, and 88 Form 10-SBs are filed each year.²⁹ If the proposed amendments to Forms S-3, F-2 and F-3 were adopted it is estimated that: (1) The number of Form S-3s filed per year will increase by approximately 103 with an estimated per year increase burden of 40,994 hours in the aggregate; (2) the number of F-2s filed per year

²⁹ These estimates are based on the number of such filings made in fiscal year 1995 and assume that there are no increases or decreases each year.

will increase by 1 with an estimated increase burden of 559 hours; (3) the number of F-3s filed per year will increase by 7 with an estimated increase burden of 1,162 hours in the aggregate; (4) the number of S-1s filed per year will decrease by 92 with an estimated decrease burden of 116,564 hours in the aggregate; (5) the number of S-2s filed per year will decrease by 11 with an estimated decrease burden of 7,370 hours in the aggregate; and (6) the number of F-1s filed per year will decrease by 8 with an estimated decrease burden of 14,944 hours in the aggregate.³⁰ The total net decrease in burden is estimated at 96,162 hours.

If the proposed amendments to Rule 405 and Item 10 of Regulation S-B were adopted it is estimated that: (1) The number of Form SB-1s filed per year would decrease by approximately 1 with an estimated decrease in burden of 710 hours; (2) the number of Form SB-2s filed per year would decrease by approximately 12 with an estimated decrease in burden of 10,512 hours in the aggregate; the number of Form S-1s filed per year would increase by 12 with an estimated increase in burden of 15,204 hours in the aggregate; and the number of Form S-2s filed per year would increase by 1 with an estimated increase in burden of 470 hours. The total net increase in burden would be 4,452 hours.

If the proposed amendment to Rule 12b-2 under the Exchange Act is adopted it is estimated that: (1) The number of Form 10-KSBs filed per year would decrease by approximately 27 with an estimated per year decrease burden of 32,832 hours in the aggregate; (2) the number of Form 10-QSBs filed per year would decrease by approximately 163 with an estimated per year decrease burden of 21,353 hours in the aggregate; (3) the number of Form 10-SBs filed per year would decrease by approximately 3 with an estimated per year decrease burden of 270 hours in the aggregate; (4) the number of Form 10-Ks filed per year would increase by approximately 27 with an estimated per year increase burden of 46,521 hours in the aggregate; (5) the number of Form 10-Qs would increase by approximately 163 with an estimated per year increase burden of 23,472 hours in the aggregate; and (6) the number of Form 10s filed per year would increase by approximately 3 with

an estimated per year increase burden of 285 hours in the aggregate. The total net increase in burden is estimated at 15,823 hours.

Thus, it is anticipated that the adoption of the proposed amendments to Form S-3, F-2 and F-3 will decrease burden by an estimated 96,162 hours and the adoption of the proposed amendments to Rule 405 and Item 10 of Regulation S-B will increase burden by an estimated 4,552 hours. It is anticipated that the adoption of the proposed amendments to Rule 12b-2 under the Exchange Act will increase burden by an estimated 15,823 burden hours. Consequently, it is estimated that the adoption of all of the proposed amendments will result in a total decrease in burden of 75,787 hours.

In accordance with 44 U.S.C. 3506(c)(2)(B), the Commission solicits comments on the following: whether the proposed changes in the collections of information are necessary for the proper performance of the functions of the agency, including whether the information would have practical utility; on the accuracy of the Commission's estimate of the burden of each collection of information as well as the proposed changes to the collections of information; on the quality, utility and clarity of the information to be collected; and whether the burden of the collections of information on those who are to respond, including through the use of automated collection techniques or other forms of information technology, may be minimized.

Persons desiring to submit comments on the collection of information requirements should direct them to the Office of Management and Budget Attention: Desk Officer for the Securities and Exchange Commission, Office of the Information and Regulatory Affairs, Washington, D.C. 20503, with reference to File No. S7-23-96. The Office of Management and Budget is required to make a decision concerning the collection of information between 30 and 60 days after publication, so a comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication.

VII. Statutory Basis For the Proposals

The amendments to the Commission's rules and forms are proposed pursuant to Sections 6, 7, 8, 10, 19(a), and 27A of the Securities Act and Sections 12, 13, 14, 15(d), 21E, 23(a) and 35A of the Exchange Act.

List of Subjects in 17 CFR Parts 228, 230, 239, 240 and 249

Reporting and recordkeeping requirements, Securities.

Text of the Proposals

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

PART 228—INTEGRATED DISCLOSURE SYSTEM FOR SMALL BUSINESS ISSUERS

1. The authority citation for part 228 continues to read as follows:

Authority: 15 U.S.C. 77e, 77f, 77g, 77h, 77j, 77k, 77s, 77aa(25), 77aa(26), 77ddd, 77eee, 77ggg, 77hhh, 77jjj, 77nnn, 77sss, 78l, 78m, 78n, 78o, 78w, 78ll, 80a-8, 80a-29, 80a-30, 80a-37, 80b-11, unless otherwise noted.

§ 228.10 [Amended]

2. By amending § 228.10(a)(1) by removing the word "securities" in the *Provided however* sentence immediately following § 228.10(a)(1)(iv) and adding the words "shares of voting and non-voting common equity" in its place.

PART 230—GENERAL RULES AND REGULATIONS, SECURITIES ACT OF 1933

3. The authority citation for part 230 continues to read in part as follows:

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

§ 230.405 [Amended]

* * * * *

4. By amending § 230.405 the definition of "*Small Business Issuer*" by removing the words "outstanding securities" in the *Provided however* clause and adding the words "outstanding voting and non-voting common equity" in their place.

PART 239—FORMS PRESCRIBED UNDER THE SECURITIES ACT OF 1933

5. The authority citation for part 239 continues to read in part as follows:

Authority: 15 U.S.C. 77f, 77g, 77h, 77j, 77s, 77sss, 78c, 78l, 78m, 78n, 78o(d), 78w(a), 78ll(d), 79e, 79f, 79g, 79j, 79l, 79m, 79n, 79q, 79t, 80a-8, 80a-29, 80a-30 and 80a-37, unless otherwise noted.

§§ 239.13, 239.32, 239.33 [Amended]

* * * * *

6. 17 CFR part 239 is amended by removing the words "voting stock" and adding, in their place, the words "shares of voting and non-voting common equity" in the following sections:

- (a) 17 CFR 239.13(b)(1)
- (b) 17 CFR 239.32(b)(2)(i)
- (c) 17 CFR 239.33(b)(1)

7. By revising the Instruction to § 239.13(b)(1) to read as follows:

³⁰ The Commission estimates that approximately three percent of the small business issuers may become subject to more detailed reporting obligations in the future, or may otherwise be impacted by the rule proposals. See Section V, "Summary of Initial Regulatory Flexibility Analysis," *supra*.

§ 239.13 Form S-3, for registration under the Securities Act of 1933 of securities of certain issuers offered pursuant to certain types of transactions.

* * * * *

(b) Transaction requirements. * * *

(1) Primary and secondary offerings by certain registrants. * * *

Instruction to Paragraph (b)(1)

For the purposes of this Form, "common equity" is as defined in Securities Act Rule 405 (§ 230.405 of this chapter). The aggregate market value of the registrant's outstanding voting and non-voting common equity shall be computed by use of the price at which the common equity was last sold, or the average of the bid and asked prices of such common equity, in the principal market for such common equity as of a date within 60 days prior to the date of filing. See the definition of "affiliate" in Securities Act Rule 405.

* * * * *

8. By amending Form S-3 (referenced in § 239.13) by revising the Instruction to General Instruction I.B.1 to read as follows:

(Note: The text of Form S-3 does not and the amendments will not appear in the Code of Federal Regulations.)

Form S-3

* * * * *

General Instructions

I. Eligibility Requirements for Use of Form S-3

* * * * *

B. Transaction Requirements * * *

1. Primary Offerings by Certain Registrants. * * *

Instruction. For the purposes of this Form, "common equity" is as defined in Securities Act Rule 405 (§ 230.405 of this chapter). The aggregate market value of the registrant's outstanding voting and non-voting common equity shall be computed by use of the price at which the common equity was last sold, or the average of the bid and asked prices of such common equity, in the principal market for such common equity as of a date within 60 days prior to the date of filing. See the definition of "affiliate" in Securities Act Rule 405.

* * * * *

9. By revising Instruction 1 to § 239.32(b)(2) to read as follows:

§ 239.32 Form F-2, for registration under the Securities Act of 1933 for securities of certain foreign private issuers.

* * * * *

(b) * * *

(2) * * *

Instructions to Paragraph (b)

1. For the purposes of this Form, "common equity" is as defined in Securities Act Rule 405 (§ 230.405 of this chapter). The aggregate

market value of the registrant's outstanding voting and non-voting common equity shall be computed by use of the price at which the common equity was last sold, or the average of the bid and asked prices of such common equity, in the principal market for such common equity as of a date within 60 days prior to the date of filing. See the definition of "affiliate" in Securities Act Rule 405.

* * * * *

10. By amending Form F-2 (referenced in § 239.32) by revising the Instruction to General Instruction I.B.2.1. to read as follows:

(Note: The text of Form F-2 does not and the amendments will not appear in the Code of Federal Regulations.)

Form F-2

* * * * *

General Instructions

I. Eligibility Requirements For Use of Form F-2

* * * * *

B. * * *

2. * * *

Instructions. 1. For the purposes of this Form, "common equity" is as defined in Securities Act Rule 405 (§ 230.405 of this chapter). The aggregate market value of the registrant's outstanding common equity shall be computed by use of the price at which the voting and non-voting common equity was last sold, or the average of the bid and asked prices of such common equity, in the principal market for such common equity as of a date within 60 days prior to the date of filing. See the definition of "affiliate" in Securities Act Rule 405.

* * * * *

11. By revising the Instruction to paragraph (b)(1) of § 239.33 to read as follows:

§ 239.33 Form F-3, for registration under the Securities Act of 1933 of securities of certain foreign private issuers offered pursuant to certain types of transactions.

* * * * *

(b) Transaction requirements. * * *

(1) Primary offerings by certain registrants. * * *

Instruction to Paragraph (b)(1)

For the purposes of this Form, "common equity" is as defined in Securities Act Rule 405 (§ 230.405 of this chapter). The aggregate market value of the registrant's outstanding voting and non-voting common equity shall be computed by use of the price at which the common equity was last sold, or the average of the bid and asked prices of such common equity, in the principal market for such common equity as of a date within 60 days prior to the date of filing. See the definition of "affiliate" in Securities Act Rule 405.

* * * * *

12. By amending Form F-3 (referenced in § 239.13) by revising the General Instruction I.B.1 to read as follows:

(Note: The text of Form F-3 does not appear in the Code of Federal Regulations.)

Form F-3

* * * * *

General Instructions

I. Eligibility Requirements For Use of Form F-3

* * * * *

B. Transaction Requirements

* * * * *

1. Primary Offerings by Certain Registrants. * * *

Instruction. For the purposes of this Form, "common equity" is as defined in Securities Act Rule 405 (§ 230.405 of this chapter). The aggregate market value of the registrant's outstanding voting and non-voting common equity shall be computed by use of the price at which the common equity was last sold, or the average of the bid and asked prices of such common equity, in the principal market for such common equity as of a date within 60 days prior to the date of filing. See the definition of "affiliate" in Securities Act Rule 405.

* * * * *

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

13. The authority citation for part 240 continues to read, in part, as follows:

Authority: 15 U.S.C. 77c, 77d, 77g, 77j, 77s, 77eee, 77ggg, 77nnn, 77sss, 77ttt, 78c, 78d, 78i, 78j, 78l, 78m, 78n, 78o, 78p, 78q, 78s, 78w, 78x, 78ll(d), 79q, 79t, 80a-20, 80a-23, 80a-29, 80a-37, 80b-3, 80b-4 and 80b-11, unless otherwise noted.

* * * * *

§ 240.12b-2 [Amended]

14. By amending § 240.12b-2 the definition of "Small Business Issuer" by removing the words "outstanding securities" in the *Provided however* clause and adding the words "outstanding voting and non-voting common equity" in their place.

PART 249—FORMS, SECURITIES EXCHANGE ACT OF 1934

15. The authority citation for part 249 continues to read in part as follows:

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

* * * * *

16. By amending the front page of Form 10-K (referenced in § 249.310) by

revising the paragraph before the "Note" to read as follows:

(Note: The text of Form 10-K does not and the amendments will not appear in the Code of Federal Regulations.)

Form 10-K

* * * * *

State the aggregate market value of the voting and non-voting common equity held by non-affiliates of the registrant. The aggregate market value shall be computed by reference to the price at which the common equity was sold, or the average bid and asked prices of such common equity, as of a specified date within 60 days prior to the date of filing. (See definition of affiliate in Rule 405, 17 CFR 230.405.)

* * * * *

17. By amending the front page of Form 10-KSB (referenced in § 249.310b) by revising the paragraph before the "Note" to read as follows:

(Note: The text of Form 10-KSB does not, and the amendments will not appear in the Code of Federal Regulations.)

Form 10-KSB

* * * * *

State the aggregate market value of the voting and non-voting common equity held by non-affiliates computed by reference to the price at which the common equity was sold, or the average bid and asked price of such common equity, as of a specified date within the past 60 days. (See definition of affiliate in Rule 12b-2 of the Exchange Act.)

* * * * *

By the Commission.

Dated: August 30, 1996.

Margaret H. McFarland,
Deputy Secretary.

[FR Doc. 96-22726 Filed 9-9-96; 8:45 am]

BILLING CODE 8010-01-P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Part 1910

[Docket No. S-052]

RIN 1218-AB55

Exit Routes (Means of Egress)

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Proposed Rule.

SUMMARY: The Occupational Safety and Health Administration (OSHA) is proposing to revise Subpart E of Part 1910, Means of Egress. The purpose of this revision is to rewrite the existing

requirements of Subpart E in plain English so they will be more understandable to employers, employees, and others who use them. This revision does not in any way change the regulatory obligations of employers or the safety and health protections provided to employees. To further the plain English goal, OSHA is also proposing to change the name of Subpart E from "Means of Egress" to "Exit Routes."

OSHA is proposing two alternative plain English versions of this revision to Subpart E. The first version is organized in the traditional OSHA regulatory format. The second version uses a question and answer format. OSHA invites interested parties to comment on the content and effectiveness of the proposed changes and on the plain English version of Subpart E that they prefer.

DATES: Comments and requests for hearings must be postmarked no later than November 12, 1996.

ADDRESSES: Comments and requests for hearings must be submitted in quadruplicate to the OSHA Docket Office, Docket No. S-052, Room N-2625, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, DC 20210. (Telephone: 202-219-7894). Comments of 10 pages or less may be faxed to the Docket Office, if followed by hard copy mailed within two days. The OSHA Docket Office fax number is (202)-219-5046.

FOR FURTHER INFORMATION CONTACT: Ms. Anne Cyr, OSHA Office of Information and Consumer Affairs, Room N-3647, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, DC 20210. Telephone (202)-219-8148.

SUPPLEMENTARY INFORMATION:

I. Background

In 1971, acting under section 6(a) of the Occupational Safety and Health Act of 1970 (OSH Act), 29 U.S.C. § 655(a), OSHA adopted hundreds of national consensus standards as occupational safety and health standards. Over the ensuing twenty-five years, OSHA has become aware that these standards may be overly wordy, difficult to understand, repetitive, and internally inconsistent. Complaints about OSHA's technical, "nitpicky" standards have been repeated too many times to recount.

To make OSHA standards more "user-friendly," President Clinton, as part of the Administration's Reinventing Government initiative, together with Secretary of Labor Robert Reich and Assistant Secretary Joe Dear, has committed the Agency to reviewing

OSHA's standards "to determine which should be rewritten in plain English." OSHA's first "plain English" initiative is a proposed revision of Subpart E of Part 1910, which addresses means of egress (exit routes). In revising Subpart E, the goal of OSHA is to make its standards more understandable to those who use them. Toward this goal, the proposed revisions to Subpart E reorganize the text, remove internal inconsistencies among sections, and eliminate duplicate requirements.

In addition, the requirements of Subpart E have been rewritten using simple, straightforward, easy to understand, terms. The proposed rules are performance-oriented and shorter than the existing standards. They reduce the number of subparagraphs, and contain fewer cross-references to other OSHA standards. Each of the two proposed versions of Subpart E includes a detailed table of contents, which is intended to make the standards easier to use.

Both proposed versions leave unchanged the regulatory obligations placed on employers by Subpart E and the safety and health protections that it provides to employees. OSHA believes, however, that the revised Subpart E, which is more performance oriented than the existing Subpart, will make more compliance options available to employers.

Since OSHA is not proposing to change the substantive requirements of Subpart E, the Agency believes that the significant risk test described by the Supreme Court in *American Petroleum Institute v. Industrial Union Department* [448 U.S. 607(1980)] does not apply to this rulemaking. Further, OSHA has concluded that this rulemaking neither requires technological changes nor imposes increased costs. In fact, the proposed rule may decrease compliance costs by providing employers with more flexible compliance options. Accordingly, OSHA has determined that an analysis of the technological and economic feasibility of the standard is not necessary.

Finally, although OSHA recognizes that some portions of Subpart E may warrant updating, the Agency is not proposing to update the requirements of Subpart E at this time. Instead, the proposal addresses only one aspect of Subpart E: the overly technical language of the existing requirements. At a later date, the Agency will consider whether substantive revisions to these requirements are warranted.