SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 230, 240 and 270

[Release Nos. 33–7766, 34–42101, IC–24123; File No. S7–27–97]

RIN 3235–AG98

Delivery of Disclosure Documents to Households

AGENCY: Securities and Exchange Commission.

ACTION: Final rule.

SUMMARY: The Commission is adopting a new rule under the Securities Act of 1933 to permit issuers and broker-dealers to satisfy the Act's prospectus delivery requirements, with respect to two or more investors sharing the same address, by sending a single prospectus, subject to certain conditions. We are adopting similar amendments to the rules under the Securities Exchange Act of 1934 and the Investment Company Act of 1940 that require the delivery of shareholder reports. The rules will provide greater convenience for investors and cost savings for issuers by reducing the number of duplicate documents that investors receive.

EFFECTIVE DATE: The new rule and rule amendments will be effective December 20, 1999.

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SUPPLEMENTARY INFORMATION: The Commission today is adopting rule 154 [17 CFR 230.154] under the Securities Act of 1933 [15 U.S.C. 77a] (the ''Securities Act'')[1] and amendments to rules 14a–3, 14c–3, and 14c–7 [17 CFR 240.14a–3, 240.14c–3, 240.14c–7] under the Securities Exchange Act of 1934 [15 U.S.C. 78a] (the ''Exchange Act''), and rules 30d–1 and 30d–2 [17 CFR 270.30d–1, 270.30d–2] under the Investment Company Act of 1940 [15 U.S.C. 80a] (the ''Investment Company Act'').

I. Background

The federal securities laws generally require the delivery of prospectuses and shareholder reports to investors.[2] As a result of increased ownership of securities by individuals through different types of accounts, such as brokerage accounts, individual retirement accounts and custodial accounts for minors, duplicate copies of these documents often are mailed to a single household.[3]

To reduce the number of duplicate disclosure documents delivered to investors, the Commission proposed rules in November 1997 to permit, under certain conditions, delivery of one prospectus or shareholder report to investors who share an address (''householding'').[4] We received 51 comment letters in response to the proposal.[5] Commenters generally supported householding, but many suggested changes that would affect the scope and conditions of the rules. The Commission is adopting the proposed amendments, with certain modifications that reflect many of the issues raised by commenters.

II. Discussion

A. Delivery of Prospectuses to a Household

Under new rule 154, a prospectus is considered delivered to all investors at a shared address, for purposes of the federal securities laws, if the person relying on the rule delivers the prospectus to the shared address and the investors consent to delivery of a single prospectus.[6] The rule applies to prospectuses and to prospectus supplements.

1. Scope of the Rule

As adopted, rule 154 permits the householding of all types of prospectuses except those required to be delivered for business combinations, exchange offers, or reclassifications of securities.[7] Although the Commission did not request comment on the householding of proxy materials, many commenters suggested that we consider rule amendments to permit the householding of those materials. Today in a companion release we are proposing amendments to Exchange Act rules to permit the householding of proxy and information statements.[8] The release also proposes to expand the coverage of rule 154 to include prospectuses for business combinations, exchange offers, or reclassifications of securities.

2. Addressing to Investors

Proposed rule 154 would have required the prospectus to be addressed to one person rather than a group of persons (*e.g.*, ''The Smith Household''). The Commission expressed concern in the Proposing Release that mail addressed to a group may be less likely to be opened and read, because it might be viewed as ''junk mail.'' Several commenters argued that addressing to a group may actually increase the chance

[1] Unless otherwise noted, all references to ''rule 154'' are to 17 CFR 230.154 as adopted in this release.

[2] The Securities Act requires the delivery of prospectuses to investors who buy securities from an issuer or from underwriters or dealers who participate in a registered distribution of securities. *See* Securities Act sections 2(a)(10), 4(1), 4(3), 5(b) [15 U.S.C. 77b(a)(10), 77d(1), 77d(3), 77e(b)]; *see also* rule 174 under the Securities Act [17 CFR 230.174] (regarding the prospectus delivery obligation of dealers); rule 15c2–8 under the Exchange Act [17 CFR 240.15c2–8] (prospectus delivery obligations of brokers and dealers). The Investment Company Act requires most registered investment companies (''funds'') to send annual and semiannual reports to their investors. *See* section 30(e) [15 U.S.C. 80a–29(e)]; rules 30d–1, 30d–2 under the Investment Company Act [17 CFR 270.30d–1, 270.30d–2]. Rules under the Exchange Act require other types of issuers (such as operating companies subject to Exchange Act reporting requirements) to send annual reports to their investors. *See* rules 14a–3, 14c–3 [17 CFR 240.14a–3, 240.14c–3].

[3] *See* Delivery of Disclosure Documents to Households, Securities Act Release No. 7475 (Nov. 13, 1997) [62 FR 61933 (Nov. 20, 1997)] (''Proposing Release''), at nn.1–6 and accompanying text. The problem of delivery of duplicate documents is particularly significant in the case of open-end management investment companies (''mutual funds''), which are required to send their investors annual and semiannual reports, and which generally send investors updated prospectuses each year. *See id.* at nn.1–2 and accompanying text.

[4] *See* Proposing Release, *supra* note 3.

[5] The commenters included 29 individual investors or their representatives, 15 corporate issuers, 11 financial institutions (investment advisers, mutual fund complexes, broker-dealers and bank holding companies), 3 trade associations, 1 consultant, and 1 stock exchange. Two commenters submitted two letters each, and some comment letters were signed by more than one person. The comment letters and a summary of the comments are available for public inspection and copying in the Commission's Public Reference Room, 450 5th Street, NW, Washington, DC (File No. S7–27–97).

[6] Rule 154(a). Some commenters asked us to clarify that if a single investor holds the same security in two or more accounts with the same address, the prospectus delivery requirements of section 5 of the Securities Act are satisfied if one copy of the prospectus is delivered to the investor, without the need to rely on the rule. We agree that the delivery of a single prospectus in those circumstances meets the delivery requirements of the Securities Act. Delivery of a single shareholder report also would meet the delivery requirements of the federal securities laws for shareholder reports, in similar circumstances. In addition, we believe that delivery of a single prospectus or shareholder report is sufficient if the investor is acting as custodian for securities in one or more accounts created under a state Uniform Gifts to Minors Act (''UGMA'') or Uniform Transfers to Minors Act (''UTMA'') statute.

[7] *See* rule 154(e).

[8] *See* Delivery of Proxy and Information Statements to Households, Securities Act Release No. 33–7767 (Nov. 4, 1999) (''Companion Release'').

that the envelope containing the prospectus would be opened, and would be consistent with the idea that the prospectus was intended for all the investors. The Commission agrees that this form of address should be acceptable. The rule as adopted therefore permits addressing to investors as a group, and the group may be designated by reference to any of the investors who is receiving the prospectus (*e.g.*, ''Jane Doe and Household'' or ''Household of Jane Doe'').[9] The rule also permits addressing to individuals rather than a group if each investor is included in the address (*e.g.*, ''Jane Doe and Bob Jones'').[10]

The proposed rule also would have permitted householding only if the prospectus was addressed to a *natural* person. Some commenters pointed out that this provision would prohibit addressing a prospectus to a family business that owns securities and operates out of a household shared by individual investors. Another commenter added that it may be difficult in many cases to determine whether the investor is a natural person. We agree, and the rule as adopted does not include the natural person requirement.

Proposed rule 154 would have permitted delivery of a prospectus to *any* address of an investor who shares an address with other investors consenting to householding, even if the other investors do not share the address to which the prospectus is delivered. Some commenters opposed this provision, either because the investors who do not share the delivery address might not have access to the prospectus, or because of the extra recordkeeping involved in sending the prospectus to an unshared address. Upon further consideration, we agree that delivery to one investor at an address that is not shared creates a risk that the other investors will not have access to the prospectus, and the rule as adopted requires that the prospectus be sent to the investors' *shared* address.[11]

The proposed rule also would have permitted delivery of a prospectus to an electronic address, for example, an electronic mail account. Several commenters noted the difficulty of permitting electronic delivery of householded documents. One individual investor emphasized the risks involved in using electronic delivery, especially the ease with which electronic messages might be deleted by accident.[12] Because of these concerns, we believe that investors who are householded through electronic delivery should specifically consent to this type of delivery. The rule as adopted permits the householding of prospectuses that are delivered to investors electronically only if delivery is made to a shared electronic address and the investors give written consent to householding.[13]

3. Investor Consent

a. *Written Consent.* Rule 154 permits delivery of one prospectus on behalf of two or more investors at a shared address who have given written consent to householding.[14] The investors need not be related, and the shared address can be a residential, commercial, or electronic address.[15]

b. *Implied Consent.* Rule 154 permits delivery of one prospectus on behalf of two or more investors at a shared address without written consent, if four conditions are met.[16] First, the investors must have the same last name or the person relying on the rule must reasonably believe that they are members of the same family.[17] Second, at least 60 days before householding begins each investor must have received written notice[18] with an opportunity to respond and opt out of householding.[19] The opportunity to respond must be provided by a toll-free telephone number disclosed in the notice or a reply form that accompanies the notice.[20] Third, the investors must not opt out of householding during the 60-day period. Fourth, the person relying on the rule must deliver the prospectus to a residential street address or a post office box.[21]

The Commission proposed to limit householding without written consent to situations in which investors had opened their accounts before the effective date of the new rule. We understood that persons relying on the rule would find it difficult to obtain consent from existing investors, and

[9] *See* rule 154(a)(2).

[10] *See id.* This requirement is designed to reduce confusion about whether an individual is receiving a prospectus on behalf of other investors in the household.

[11] *See* rule 154(a)(1).

[12] The commenter also stated that there may be difficulties in forwarding messages from a discontinued e-mail account with an Internet service provider.

[13] *See* rule 154(b)(4) (limiting householding without written consent to prospectuses delivered to a post office box or a residential street address). Consent issues are discussed below.

[14] Rule 154(a). A signature on a new account application form would not satisfy the written consent requirement if the account form merely refers to or incorporates by reference another document, such as the prospectus, and does not describe the householding of prospectuses. An investor can be given the option of consenting to householding for prospectuses relating only to a particular security, or consenting to delivery of any prospectus a person is required to deliver to the investor. The rule, however, does not *require* that investors be given this option of limiting their consent to a particular security.

[15] The Proposing Release noted the general requirements for electronic delivery of documents to investors. The Commission has issued two interpretive releases expressing its views on the electronic delivery of documents, including prospectuses and investment company semiannual reports. The releases state that persons using electronic delivery of information should obtain informed consent from the intended recipient or otherwise have reason to believe that any electronic means so selected will result in satisfaction of the delivery requirements. *See* Proposing Release, *supra* note 3, at n.9; Use of Electronic Media for Delivery Purposes, Securities Act Release No. 7233 (Oct. 6, 1995) [61 FR 53458 (Oct. 13, 1995)]; Use of Electronic Media by Broker-Dealers, Transfer Agents, and Investment Advisers for Delivery of Information; Additional Examples Under the Securities Act of 1933, Securities Exchange Act of 1934, and Investment Company Act of 1940, Securities Act Release No. 7288 (May 9, 1996) [61 FR 24644 (May 15, 1996)].

[16] Rule 154(b)(1)—(4).

[17] Some commenters expressed concern about their ability to discern whether certain investors at the same address are members of the same family. We believe that persons relying on the rule may, in many cases, be able to base their reasonable belief on information already provided by investors (*e.g.*, on an account application) or on any information they may have obtained from other sources. For example, it would be reasonable to infer that two persons residing at the same address are members of the same family if they have opened a joint account or have opened an account under an UGMA or UTMA statute.

[18] The notice must be a separate written statement. *See* rule 154(b)(2). The notice, as well as the envelope containing the notice, also must contain a prominent statement such as ''Important Notice Regarding Delivery of Shareholder Documents.'' *See* rule 154(b)(2)(vi). As an alternative to this requirement, if the notice is sent in a separate mailing, the prominent statement may appear either on the envelope or on the notice itself. *Id.*

[19] The notice also must state whether the consent will be for a limited or unlimited period of time, explain how the investor can revoke consent, and explain that individual delivery will resume no later than 30 days after the investor revokes consent. *See* rule 154(b)(2)(iii)—(v). In order to make the notice understandable to investors, it should be written in plain English. *See* rule 154(b)(2) note. Securities Act rule 421(d)(2) [17 CFR 230.421(d)(2)] lists the following plain English principles: (i) Short sentences; (ii) definite, concrete, everyday words; (iii) active voice; (iv) tabular presentation or bullet lists for complex material, whenever possible; (v) no legal jargon or highly technical terms; and (vi) no multiple negatives.

[20] The reply form must be pre-addressed, and returnable by business reply mail or by another method in which the person relying on the rule pays the postage. *See* rule 154(b)(2)(ii). The notice also may list additional methods of opting out of householding, such as sending the reply form to a facsimile telephone number or responding by e-mail.

[21] Rule 154 clarifies that unless the person relying on the rule has information that indicates the address is a business address, that person can assume that the address is a residence. *See* rule 154(b)(4). The rule also provides that if the sender has reason to believe that an address is that of a multi-unit building, the address must include the unit number. *See* rule 154(d). This requirement is designed to prevent the assumption that investors who live in different apartments in an apartment building are members of the same household.

were concerned that the failure of many of those investors to respond to requests for consent would preclude the benefits of householding from being realized. In the case of new investors, however, we believed that consent could be obtained when the investor opened his or her account.[22]

Fourteen commenters, representing primarily advisers to registered investment companies (''funds'') and their trade associations, urged the Commission to eliminate the written consent requirement.[23] Some of these commenters asserted that numerous administrative and compliance difficulties would be created by distinguishing between investors who must give written consent and those who need not.[24] We also received comments from 25 individual investors who urged the Commission to adopt the rule as proposed but did not specifically address the consent requirement.[25]

In consideration of the potential benefits of householding to investors, the Commission has decided not to require written consent as a prerequisite to householding with respect to all new investors. The rule permits householding with implied consent under limited conditions (discussed above) in which investors could be presumed to need only one copy of the document delivered to the household. These investors should have adequate advance notice of householding and will be able to request individual delivery of prospectuses at any time.[26] The rule as adopted also requires that, at least once a year, persons relying on the rule for the householding of open-end management investment company prospectuses explain to investors who have provided written or implied consent how they can revoke their consent.[27]

B. Shareholder Reports

The Commission is adopting amendments to rules 30d–1 and 30d–2 under the Investment Company Act and rules 14a–3, 14c–3 and 14c–7 under the Exchange Act, to permit householding of annual and semiannual reports under substantially the same conditions as those in rule 154 with respect to prospectuses.[28] Commenters supported requiring the same conditions for householding of these two types of documents.[29]

III. Cost-Benefit Analysis

The Commission is sensitive to the costs and benefits imposed by its rules. The rules adopted today permit issuers and broker-dealers to send fewer copies of disclosure documents than they currently must send, and therefore should result in savings in printing, postage, and other delivery costs for issuers and broker-dealers. Investors will benefit from the decrease in delivery costs paid by issuers and from no longer being burdened with duplicate documents. The rules require issuers and broker-dealers who rely on the rules to comply with certain procedures, including obtaining either written consents from investors or delivering notices 60 days in advance of householding. Because exemptions provided by the rules are voluntary, the Commission expects that issuers and broker-dealers generally will rely on the rules only if the benefits of householding outweigh the costs.

In the Proposing Release, the Commission requested comment on the costs and benefits of the rules. Commenters generally supported the goals of the proposal but advocated certain changes that they believed would decrease its costs and increase its benefits. In particular, most commenters who addressed the issue stated that the rule should permit householding based on implied consent for new investors, and that obtaining written consent would be too costly in many cases. As adopted, the rules permit householding based on either implied consent or written consent for new as well as existing investors.[30] This regulatory flexibility should enable issuers and broker-dealers to minimize compliance costs associated with the rules.

Several commenters estimated the percentage of prospectuses and annual reports mailed to their investors that could be eliminated through householding. One large fund complex stated that householding would yield savings in mailing costs for its funds in the range of 5 to 21 percent, depending on the fund. Another fund and brokerage firm estimated that householding would reduce prospectus and shareholder report mailings to investors in its non-proprietary open-end funds (''mutual funds'') by approximately 9 percent, a reduction of over 2 million mail pieces and a savings of approximately $1 million, assuming production, printing and mailing costs of $.50 per piece. This firm also estimated that householding would reduce prospectus mailings to its proprietary mutual fund customers by almost half (over 1.5 million mail pieces out of 3.2 million), for a savings of approximately $750,000. A corporate issuer stated that approximately 10 percent of its shareholders of record have the same mailing address. These estimates, although they vary from one issuer to another, show that the cost savings produced by householding would be considerable. The commenters' estimates also appear to be consistent with the estimates made in the Proposing Release.

[22] *See* Proposing Release, *supra* note 3, at n.20 and accompanying text.

[23] Four commenters recommended that the rule permit householding without written consent and without implied consent under the proposed conditions. Instead, they favored permitting householding if the company were to disclose its householding policies in its prospectus and provide investors a means to opt out of householding. One of these commenters suggested that investors be informed about householding through an article in an investor newsletter. We do not believe that investor consent can reasonably be inferred from silence after disclosure in a prospectus or newsletter. The suggested approach also would not necessarily work for issuers that do not periodically deliver prospectuses or newsletters.

[24] Two of these commenters stated that distinguishing between accounts that could be householded with notice, and accounts that could be householded only with written consent, would be costly and burdensome to administer, and potentially confusing for investors.

[25] Another individual investor supported requiring written consent from all investors.

[26] We are adopting as proposed the requirement that, if an investor requests resumption of individual delivery, the person relying on the rule must resume individual delivery after 30 days. *See* rule 154(c).

[27] *Id.* Unlike other issuers, open-end management investment companies (*i.e.*, mutual funds) typically send investors updated prospectuses annually. *See supra* note 3. Persons relying on the rule can make the explanation required by the rule through any means reasonably designed to reach these investors, such as in a prospectus, shareholder report, or investor newsletter. *See* rule 154(c).

[28] One difference between the conditions for householding prospectuses and semiannual reports and the conditions for householding annual reports, is that the implied consent notice concerning annual reports must be delivered separately from other communications. *See* 17 CFR 240.14a–3(e)(1)(ii)(B)(*1*). This condition for the householding of annual reports corresponds to the proposed conditions for the householding of proxy and information statements, with which annual reports are typically delivered. *See* Companion Release, *supra* note 8, at note 28.

[29] Some mutual funds already household shareholder reports in reliance on no-action letters issued by the Commission staff. *See* Oppenheimer Funds, SEC No-Action Letter (July 20, 1994); Scudder Group of Funds, SEC No-Action Letter (June 19, 1990); Allstate Enterprises Stock Fund, Inc., SEC No-Action Letter (July 22, 1973). These funds may continue to household shareholder reports of investors whose reports are already being householded, without sending notices or obtaining written consent under rules 30d–1 and 30d–2. If the investors revoke consent to householding, however, the funds should comply with the revocation provisions of the rules. In addition, if the funds household *prospectuses*, the funds would need to comply fully with rule 154.

[30] The ability to household documents based on implied consent should help maximize the number of investors householded, because it is likely that few investors who receive notices will object to being householded. One large fund complex stated in its comment letter that when it notified approximately 3 million customers of its plans to household shareholder reports, only 1,703 (.057%) asked to continue receiving separate mailings for each account.

Based on information provided by two mutual fund complexes, the Commission estimates that a prospectus costs approximately $.45 to print and deliver, and a shareholder report costs approximately $.52 to print and deliver.[31] The Commission also estimates that the average decline in the number of prospectuses and shareholder reports delivered would be between 10 and 30 percent. As of 1997, there were approximately 170 million shareholder accounts invested in mutual funds.[32] Assuming that 80 percent of mutual fund accounts receive an updated prospectus each year, resulting in the 170 million shareholder accounts receiving a total of approximately 136 million prospectuses each year, the approximate potential benefit in reduced delivery of mutual fund prospectuses as a result of rule 154 would be between $6.1 and $18.4 million per year. Each shareholder receives two reports per year, and the approximate potential benefit from adoption of the amendments to rules 30d–1 and 30d–2 would be between $17.7 and $53.0 million per year. We note, however, that the savings from the adoption of the amendments to rules 30d–1 and 30d–2 will be reduced somewhat because many funds already household reports based on Commission staff no-action positions.[33] Therefore, it is not possible to precisely estimate the number of accounts for which householding of shareholder reports will be initiated based on the amendments to rules 30d–1 and 30d–2.

With respect to the delivery of prospectuses of issuers other than mutual funds, the benefits of rule 154 would be less than the benefits discussed above, because these companies do not send prospectuses to their shareholders on an annual basis. It is likely, however, that some broker-dealers will rely on rule 154 to deliver prospectuses of issuers other than mutual funds in cases in which the broker-dealers have obtained either written or implied consent from their customers to household documents.

With respect to the delivery of annual reports by issuers other than mutual funds, these companies probably would not realize significant savings as a result of the amendments to rules 14a–3 and 14c–3 because rules 14a–3 and 14c–7 already include provisions permitting householding of the annual report, although those rules did not permit implied consent to householding. In addition, corporate commenters on the Proposing Release stated that because they generally mail the annual report together with the proxy or information statement, their ability to household the annual report is limited by their inability under current rules to household the proxy statement. As discussed above, the Commission is proposing to permit companies to household proxy and information statements in a companion release.[34]

Persons who rely on the rules would incur costs in obtaining consents from and sending notices to investors. The principal costs associated with sending the notice should be the printing costs and postage costs. These printing and postage costs should be less than the cost of sending reports to investors, and the costs should be non-recurring because the notice generally will only have to be sent once to each investor in a household. Costs of the annual explanation concerning the right to revoke consent should be low, because the explanation can be included with other matter that is routinely sent out, such as a client newsletter.

IV. Effects on Competition, Efficiency and Capital Formation

Section 23(a) of the Exchange Act requires the Commission, in adopting rules under the Exchange Act, to consider the competitive effects of such rules, if any, and to refrain from adopting a rule that would impose a burden on competition not necessary or appropriate in furthering the purposes of the Exchange Act.[35] In addition, section 3(f) of the Exchange Act and section 2(c) of the Investment Company Act provide that when the Commission is engaged in rulemaking and is required to consider whether an action is necessary or appropriate in the public interest, it must consider, in addition to the protection of investors, whether the action will promote efficiency, competition, and capital formation.[36]

The Commission does not believe the amendments to rules 14a–3, 14c–3 and 14c–7 will impose any burden on competition. Based on the reasons stated in the cost-benefit analysis above, as well as the reasons stated elsewhere in this release, the Commission believes that those rules, as well as the amendments to rules 30d–1 and 30d–2, will promote efficiency, competition, and capital formation. The rules will enable brokers and issuers to decrease printing and mailing costs. These decreased costs should promote efficiency and capital formation. The rules may also promote competition in shareholder services.

V. Paperwork Reduction Act

Certain provisions of rule 154 and the rule amendments contain ''collection of information'' requirements within the meaning of the Paperwork Reduction Act of 1995 (''PRA'').[37] The Commission submitted the collection of information requirements contained in the rules to the Office of Management and Budget for review in accordance with 44 U.S.C. 3507(d) and 5 CFR 1320.11.[38] An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the agency displays a valid OMB control number.[39]

The rules permit delivery of a single prospectus or shareholder report to a household to satisfy the delivery requirements with respect to two or more investors in the household. A person relying on one of the rules must obtain either written or implied consent to householding from each investor. The rules require persons who wish to household with implied consent to send a notice to each investor stating that the investors in the household will receive one prospectus or report in the future unless the investors provide contrary instructions.[40] The purpose of this requirement is to give reasonable assurance that all investors have access to the prospectus or report. Preparing and sending the initial notice and the annual explanation of the right to revoke are collections of information. The Commission did not receive any comments in response to its request for comments on the Paperwork Reduction Act analysis in the Proposing Release.

Because notices will need to be sent to an investor before householding of

[31] *See* Proposing Release, *supra* note 3, at n.29 and accompanying text.

[32] *See* Investment Company Institute, 1998 Mutual Fund Fact Book 116.

[33] *See* Proposing Release, *supra* note 3, at n.5.

[34] *See supra* note 8.

[35] 15 U.S.C. 78w(a).

[36] 15 U.S.C. 78c(f), 80a–2(c).

[37] 44 U.S.C. 3501–3520.

[38] The titles for the collections of information are: ''Rule 154 under the Securities Act of 1933, Delivery of prospectuses to investors at the same address''; ''Regulation 14A, Commission Rules 14a–1 through 14a–14 and Schedule 14A''; ''Regulation 14C, Commission Rules 14c–1 through 14c–7 and Schedule 14C''; ''Rule 30d–1 under the Investment Company Act of 1940, Reports to stockholders of management companies''; and ''Rule 30d–2 under the Investment Company Act of 1940, Reports to shareholders of unit investment trusts.'' The OMB control numbers for the rules are as follows: rule 154 (3235–0495, expires 2/28/2001); rule 14a–3, contained in Regulation 14A (3235–0059, expires 1/31/2002); rules 14c–3 and 14c–7, contained in Regulation 14C (3235–0057, expires 1/31/2002); rule 30d–1 (3235–0025, expires 2/28/2001); rule 30d–2 (3235–0494, expires 2/28/2001).

[39] 44 U.S.C. 3506(c)(1)(B)(v).

[40] Under the proposed rules, implied consent could be used only for investors who had already opened an account as of the effective date of the rules. The rules as adopted also permit the use of implied consent for new investors.

that investor's documents begins, persons that choose to rely on the rule will probably send the greatest number of notices in the first year after the rule is adopted. The Commission expects that most notices will be short, one-page statements. Accordingly, the average annual number of burden hours spent preparing and arranging delivery of the notices is expected to be low. The Commission estimates 20 hours per respondent. In addition, the Commission estimates 1 hour per respondent for preparing and delivering the annual explanation of the right to revoke.

Although rule 154 is not limited to investment companies, the Commission believes that it will be used mainly by mutual funds and by broker-dealers that deliver mutual fund prospectuses. The Commission is unable to estimate the number of issuers other than mutual funds that will rely on the rule.

The Commission estimates that there are approximately 2,900 mutual funds, approximately 545 of which engage in direct marketing and therefore deliver their own prospectuses. The Commission estimates that each direct marketed mutual fund will spend an average of 20 hours per year complying with the notice requirement of the rule, for a total of 10,900 hours. The Commission estimates that each direct marketed fund will spend 1 hour complying with the explanation of the right to revoke requirement of the rule, for a total of 545 hours. The Commission estimates that as of year-end 1998 there were approximately 300 broker-dealers that carry customer accounts and, therefore, may be required to deliver mutual fund prospectuses. The Commission estimates that each affected broker-dealer will spend, on average, approximately 20 hours complying with the notice requirement of the rule, for a total of 6,000 hours. Each broker-dealer would also spend 1 hour complying with the annual explanation of a right to revoke requirement, for a total of 300 hours. Therefore, the total number of respondents for rule 154 is 845 (545 mutual funds plus 300 broker-dealers), and the estimated total hour burden is 17,745 hours (11,445 hours for mutual funds plus 6,300 hours for broker-dealers).

With respect to the amendments to rules 30d–1 and 30d–2 under the Investment Company Act, rule 30d–1 requires management investment companies to send annual and semiannual reports to their shareholders. Rule 30d–2 requires unit investment trusts (''UITs'') that invest substantially all of their assets in shares of a management investment company to send their unitholders annual and semiannual reports containing financial information on the underlying company. The amendments to rules 30d–1 and 30d–2 will permit management investment companies and UITs to household these shareholder reports under substantially the same conditions as those in rule 154.

Every registered management investment company is subject to the reporting requirements of rule 30d–1. We estimate that there are approximately 3,515 registered management investment companies. The Commission currently estimates that the hour burden associated with rule 30d–1 is approximately 181 hours per company. As discussed above, the Commission estimates that the burden associated with the notice requirement of the amendments to rules 30d–1 and 30d–2 is approximately 20 hours per company. The Commission estimates that the burden associated with the explanation of the right to revoke is 1 hour per company. Therefore, the Commission estimates that the total burden associated with rule 30d–1 is 202 hours per company, or a total of 710,030 hours. In addition, the Commission estimates that the cost of contracting for outside services associated with the rule is $63,150 per respondent (421 hours times $150 per hour for independent auditor services), for a total cost of $221,972,250 ($63,150 times 3,515 respondents).

Rule 30d–2 applies to approximately 637 UITs. The Commission estimates that the annual burden associated with rule 30d–2 is 121 hours per respondent, including the estimated 20 hours associated with the notice requirement and the 1 hour associated with the explanation of a right to revoke requirement. The total hourly burden is therefore approximately 77,077 hours. The Commission estimates that the annual financial cost of complying with rule 30d–2 (in addition to the hourly cost) is $12,000 per respondent (80 hours times $150 per hour for independent auditor services), or a total of $7,644,000.

With respect to the amendments to rules 14a–3, 14c–3 and 14c–7, those rules are included in Regulations 14A and 14C, which contain information collection requirements related to proxy and information statements. Companies that have a class of securities registered under section 12 of the Exchange Act are subject to these requirements. The Commission estimates that the time required to prepare and arrange delivery of the notice will be approximately 20 hours per respondent per year. The Commission estimates that 9,892 respondents are subject to Regulation 14A and that approximately 989 of these will deliver the notice. The Commission estimates that the burden associated with Regulation 14A as revised per registrant delivering the notice will be approximately 74 hours, and 54 hours per registrant not delivering the notice, for a total annual burden of 553,948 hours. An estimated 253 respondents are subject to Regulation 14C and it is estimated that 25 of these will deliver the notice. The estimated burden associated with Regulation 14C as revised per registrant delivering the notice is 74 hours, and 54 hours for a registrant not delivering the notice, for a total annual burden of 14,162 hours.

	Hours	Cost
Rule 154	17,745	NA
Rule 30d–1	710,030	$221,972,250
Rule 30d–2	77,077	$7,644,000
Rule 14A	553,948	NA
Rule 14C	14,162	NA

The information collection requirements imposed by the new rule and rule amendments are required for those issuers or broker-dealers that decide to rely on the rule to obtain the benefit of sending fewer documents to each household. Those issuers or broker-dealers that decide not to obtain that benefit are not required to rely on the rule. Responses to the collection of information will not be kept confidential.

VI. Summary of Final Regulatory Flexibility Analysis

The Commission has prepared a Final Regulatory Flexibility Analysis (''FRFA'') in accordance with 5 U.S.C. 604 relating to the adopted rule and amendments. A summary of the Initial Regulatory Flexibility Analysis (''IRFA''), which was prepared in accordance with 5 U.S.C. 603, was published in the Proposing Release. No comments were received on the IRFA.

The FRFA discusses the need for, and objectives of, new rule 154 and the amendments to rules 14a–3, 14c–3, 14c–7, 30d–1, and 30d–2. The FRFA states that duplicate copies of prospectuses and shareholder reports are often mailed to a household if more than one investor in the household owns the same security. The new rule and amendments are designed to reduce the number of duplicate documents delivered to investors by permitting the delivery of one prospectus or shareholder report to two or more investors who share an address.

The FRFA provides descriptions and estimates of the number of small entities

to which the rules will apply. The term ''small business'' or ''small organization'' (collectively, ''small entity''), when used with reference to an issuer other than a fund, is defined by rule 157 under the Securities Act to include an issuer that, on the last day of its most recent fiscal year, had total assets of $5 million or less and is engaged or proposing to engage in small business financing.[41] Most of these small issuers can conduct their offerings under Regulation A, which exempts offerings from the registration requirements of the Securities Act if the sum of all cash and other consideration to be received for the securities does not exceed $5 million subject to a number of conditions.[42] These issuers do not need to deliver prospectuses. Thus, the Commission estimates that among issuers other than registered investment companies, very few small issuers, as defined in rule 157 under the Securities Act, will be affected by rule 154.

As defined in rule 157, a fund generally is a small entity if it has net assets of $50 million or less as of the end of its most recent fiscal year.[43] The Commission staff estimates that there are approximately (i) 2,900 active open-end funds, of which 475 are small entities, (ii) 678 active closed-end funds, of which 115 are small entities, and (iii) 745 active registered UITs, about 81 of which are small entities. Closed-end funds and UITs will be affected by rule 154 only when they are offering their shares.

A broker-dealer generally is a small entity if it has total capital (*i.e.*, net worth plus subordinated liabilities) of less than $500,000 in its prior audited financial statements or, if it is not required to file such statements, on the last business day of the preceding fiscal year.[44] The delivery of prospectuses and shareholder reports is likely to be handled only by broker-dealers that carry public customer accounts. The Commission staff estimates that as of year-end 1998, broker-dealers carrying public customer accounts numbered approximately 300 firms, 40 of which were small businesses.

Rule 30d–1 applies to management funds (*i.e.*, open-end and closed-end funds). The staff estimates that out of approximately 3,515 active management funds, approximately 587 are considered small entities.[45] Rule 30d–2 applies to registered UITs, substantially all the assets of which consist of securities issued by a management investment company. The staff estimates that out of approximately 637 registered UITs that are subject to rule 30d–2, approximately 19 are considered small entities.

Rules 14a–3, 14c–3 and 14c–7 apply to companies that are subject to the Exchange Act reporting requirements. Rule 0–10 under the Exchange Act defines the term ''small business'' as a company whose total assets on the last day of its most recent fiscal year were $5 million or less.[46] There are approximately 815 reporting companies that have assets of $5 million or less.

Persons who rely on the rules would be required to obtain investors' written or implied consent before householding documents. Investors householded with implied consent must receive a notice 60 days in advance notifying them that their documents will be householded unless the person relying on the rule receives contrary instructions. The rule also requires that if householding is done with investors' implied consent the investors must have the same last name or be reasonably believed to be members of the same family, and the address must be a post office box or a street address reasonably believed to be a residence.

The FRFA states that in adopting the amendments, the Commission considered: (i) The establishment of differing compliance requirements that take into account the resources available to small entities; (ii) simplification of the rule's requirements for small entities; (iii) the use of performance rather than design standards; and (iv) an exemption from the rules for small entities. The FRFA states that we concluded that different requirements for small entities would be inconsistent with investor protection.

The FRFA is available for public inspection in File No. S7–27–97, and a copy may be obtained by contacting Marilyn Mann, Senior Counsel, at (202) 942–0690, Office of Regulatory Policy, Division of Investment Management, Securities and Exchange Commission, 450 5th Street, NW, Washington, DC 20549–0506.

[41] *See* 17 CFR 230.157 (1997). An issuer is considered to be engaged or proposing to engage in ''small business financing'' if it is conducting or proposing to conduct an offering of securities that does not exceed the $5 million limitation prescribed by section 3(b) of the Securities Act. The Commission last year amended certain definitions under the Securities Act, Exchange Act, and Investment Company Act for purposes of the Regulatory Flexibility Act. See Definitions of ''Small Business'' or ''Small Organization'' Under the Investment Company Act of 1940, the Investment Advisers Act of 1940, the Securities Exchange Act of 1934 and the Securities Act of 1933, Securities Act Release No. 7548 (June 24, 1998) [63 FR 35508 (June 30, 1998)]. Because the IRFA for this proposal relied on the earlier definitions (which were broader), the FRFA also relies on the earlier definitions.

[42] *See* 17 CFR 230.251–.263.

[43] *See* 17 CFR 230.157 (1997).

[44] *See* 17 CFR 240.0–10(c)(1) (1997).

[45] *See* CFR 270.0–10 (1997).

[46] *See* CFR 240.0–10 (1997).

VII. Statutory Authority

The Commission is adopting rule 154 under the authority set forth in section 19(a) of the Securities Act [15 U.S.C. 77s(a)]. The Commission is adopting amendments to rules 30d–1 and 30d–2 under the authority set forth in section 30(e) and 38(a) of the Investment Company Act [15 U.S.C. 80a–29(e) and 80a–37(a)], and amendments to rules 14a–3, 14c–3, and 14c–7 under the authority set forth in sections 12, 14 and 23(a) of the Exchange Act [15 U.S.C. 78*l*, 78n and 78w(a)].

List of Subjects

17 CFR Parts 230 and 270

Investment companies, Reporting and recordkeeping requirements, Securities.

17 CFR Part 240

Reporting and recordkeeping requirements, Securities.

Text of Rules

For the reasons set out in the preamble, Title 17, Chapter II of the Code of Federal Regulations is amended as follows:

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

1. The authority citation for Part 230 continues to read, in part, as follows:

Authority: 15 U.S.C. 77b, 77f, 77g, 77h, 77j, 77r, 77s, 77sss, 78c, 78d, 78*l*, 78m, 78n, 78o, 78w, 78*ll*(d), 79t, 80a–8, 80a–24, 80a–28, 80a–29, 80a–30, and 80a–37, unless otherwise noted.

* * * * *

2. Section 230.154 is added to read as follows:

§ 230.154 Delivery of prospectuses to investors at the same address.

(a) *Delivery of a single prospectus.* If you must deliver a prospectus under the federal securities laws, for purposes of sections 5(b) and 2(a)(10) of the Act (15 U.S.C. 77e(b) and 77b(a)(10)) or § 240.15c2–8(b) of this chapter, you will be considered to have delivered a prospectus to investors who share an address if:

(1) You deliver a prospectus to the shared address;

(2) You address the prospectus to the investors as a group (for example, ''ABC Fund [or Corporation] Shareholders,'' ''Jane Doe and Household,'' ''The Smith Family'') or to each of the investors individually (for example, ''John Doe and Richard Jones''); and

(3) The investors consent in writing to delivery of one prospectus.

(b) *Implied consent.* You do not need to obtain written consent from an investor under paragraph (a)(3) of this section if all of the following conditions are met:

(1) The investor has the same last name as the other investors, or you reasonably believe that the investors are members of the same family;

(2) You have sent the investor a notice at least 60 days before you begin to rely on this section concerning delivery of prospectuses to that investor. The notice must be a separate written statement and:

(i) State that only one prospectus will be delivered to the shared address unless you receive contrary instructions;

(ii) Include a toll-free telephone number or be accompanied by a reply form that is pre-addressed with postage provided, that the investor can use to notify you that he or she wishes to receive a separate prospectus;

(iii) State the duration of the consent;

(iv) Explain how an investor can revoke consent;

(v) State that you will begin sending individual copies to an investor within 30 days after you receive revocation of the investor's consent; and

(vi) Contain the following prominent statement, or similar clear and understandable statement, in bold-face type: ''Important Notice Regarding Delivery of Shareholder Documents.'' This statement also must appear on the envelope in which the notice is delivered. Alternatively, if the notice is delivered separately from other communications to investors, this statement may appear either on the notice or on the envelope in which the notice is delivered;

Note: to paragraph (b)(2): The notice should be written in plain English. See § 230.421(d)(2) of this chapter for a discussion of plain English principles.

(3) You have not received the reply form or other notification indicating that the investor wishes to continue to receive an individual copy of the prospectus, within 60 days after you sent the notice; and

(4) You deliver the prospectus to a post office box or to a residential street address. You can assume a street address is a residence unless you have information that indicates it is a business.

(c) *Revocation of consent.* If an investor, orally or in writing, revokes consent to delivery of one prospectus to a shared address (provided under paragraphs (a)(3) or (b) of this section), you must begin sending individual copies to that investor within 30 days after you receive the revocation. If the individual's consent concerns delivery of the prospectus of a registered open-end management investment company, at least once a year you must explain to investors who have consented how they can revoke their consent. The explanation must be reasonably designed to reach these investors.

(d) *Definition of address.* For purposes of this section, *address* means a street address, a post office box number, an electronic mail address, a facsimile telephone number, or other similar destination to which paper or electronic documents are delivered, unless otherwise provided in this section. If you have reason to believe that an address is the street address of a multi-unit building, the address must include the unit number.

(e) *Exclusion of some prospectuses.* This section does not apply to the delivery of a prospectus filed as part of a registration statement on Form N–14 (17 CFR 239.23), Form S–4 (17 CFR 239.25) or Form F–4 (17 CFR 239.34), or to the delivery of any other prospectus in connection with a business combination transaction, exchange offer or reclassification of securities.

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, 77eee, 77ggg, 77nnn, 77sss, 77ttt, 78c, 78d, 78f, 78i, 78j, 78j–1, 78k, 78k–1, 78*l*, 78m, 78n, 78o, 78p, 78q, 78s, 78u–5, 78w, 78x, 78*ll*(d), 78mm, 79q, 79t, 80a–20, 80a–23, 80a–29, 80a–37, 80b–3, 80b–4 and 80b–11, unless otherwise noted.

* * * * *

4. Section 240.14a–3 is amended by revising paragraph (e)(1) and the introductory text of paragraph (e)(2) to read as follows:

§ 240.14a–3 Information to be furnished to security holders.

* * * * *

(e)(1)(i) A registrant will be considered to have delivered an annual report to security holders of record who share an address if:

(A) The registrant delivers an annual report to the shared address;

(B) The registrant addresses the prospectus to the security holders a group (for example, ''ABC Fund [or Corporation] Shareholders,'' ''Jane Doe and Household,'' ''The Smith Family'') or to each of the security holders individually (for example, ''John Doe and Richard Jones''); and

(C) The security holders consent in writing to delivery of one annual report.

(ii) *Implied consent.* The registrant need not obtain written consent from a security holder under paragraph (e)(1)(i)(C) of this section if all of the following conditions are met:

(A) The security holder has the same last name as the other security holders, or the registrant reasonably believes that the security holders are members of the same family;

(B) The registrant has sent the security holder a notice at least 60 days before the registrant begins to rely on this section concerning delivery of annual reports to that security holder. The notice must:

(*1*) Be a separate written statement that is delivered separately from other communications;

(*2*) State that only one annual report will be delivered to the shared address unless the registrant receives contrary instructions;

(*3*) Include a toll-free telephone number or be accompanied by a reply form that is pre-addressed with postage provided, that the security holder can use to notify the registrant that he or she wishes to receive a separate annual report;

(*4*) State the duration of the consent;

(*5*) Explain how a security holder can revoke consent;

(*6*) State that the registrant will begin sending individual copies to a security holder within 30 days after receipt of revocation of the security holder's consent; and

(*7*) Contain the following prominent statement, or similar clear and understandable statement, in bold-face type: ''Important Notice Regarding Delivery of Shareholder Documents.'' Alternatively, this statement may appear on the envelope containing the notice;

Note: to paragraph (e)(1)(ii)(B): The notice should be written in plain English. See § 230.421(d)(2) of this chapter for a discussion of plain English principles.

(C) The registrant has not received the reply form or other notification indicating that the security holder wishes to continue to receive an individual copy of the annual report, within 60 days after the registrant sent the notice; and

(D) The registrant delivers the report to a post office box or to a residential street address. The registrant can assume a street address is a residence unless it has information that indicates it is a business.

(iii) *Revocation of consent.* If a security holder, orally or in writing, revokes consent to delivery of one report to a shared address, the registrant

must begin sending individual copies to that security holder within 30 days after the registrant receives the revocation.

(iv) *Definition of address.* For purposes of this section, *address* means a street address, a post office box number, an electronic mail address, a facsimile telephone number, or other similar destination to which paper or electronic documents are delivered, unless otherwise provided in this section. If the registrant has reason to believe that the address is a street address of a multi-unit building, the address must include the unit number.

(2) Notwithstanding paragraphs (a) and (b) of this section, unless state law requires otherwise, a registrant is not required to send an annual report or proxy statement to a security holder if:

* * * * *

5. In § 240.14c–3, paragraph (c) is added to read as follows:

§ 240.14c–3 Annual report to be furnished security holders.

* * * * *

(c) A registrant will be considered to have delivered an annual report to all security holders of record who share an address if the requirements set forth in § 240.14a–3(e)(1) are satisfied.

6. In § 240.14c–7, Note 2 is removed and Note 3 and Note 4 are redesignated as Note 2 and Note 3.

PART 270—RULES AND REGULATIONS, INVESTMENT COMPANY ACT OF 1940

7. The authority citation for Part 270 continues to read, in part, as follows:

Authority: 15 U.S.C. 80a–1 *et seq.*, 80a–34(d), 80a–37, 80a–39 unless otherwise noted:

* * * * *

8. Section 270.30d–1 is amended by adding paragraph (f) to read as follows:

§ 270.30d–1 Reports to stockholders of management companies.

* * * * *

(f)(1) A company will be considered to have transmitted a report to shareholders who share an address if:

(i) The company transmits a report to the shared address;

(ii) The company addresses the report to the shareholders as a group (for example, ''ABC Fund [or Corporation] Shareholders,'' ''Jane Doe and Household,'' ''The Smith Family'') or to each of the shareholders individually (for example, ''John Doe and Richard Jones''); and

(iii) The shareholders consent in writing to delivery of one report.

(2) The company need not obtain written consent from a shareholder under paragraph (f)(1)(iii) of this section if all of the following conditions are met:

(i) The shareholder has the same last name as the other shareholders, or the company reasonably believes that the shareholders are members of the same family;

(ii) The company has transmitted a notice to the shareholder at least 60 days before the company begins to rely on this section concerning transmission of reports to that shareholder. The notice must be a separate written statement and:

(A) State that only one report will be delivered to the shared address unless the company receives contrary instructions;

(B) Include a toll-free telephone number or be accompanied by a reply form that is pre-addressed with postage provided, that the shareholder can use to notify the company that he or she wishes to receive a separate report;

(C) State the duration of the consent;

(D) Explain how a shareholder can revoke consent;

(E) State that the company will begin sending individual copies to a shareholder within 30 days after the company receives revocation of the shareholder's consent; and

(F) Contain the following prominent statement, or similar clear and understandable statement, in bold-face type: ''Important Notice Regarding Delivery of Shareholder Documents.'' This statement also must appear on the envelope in which the notice is delivered. Alternatively, if the notice is delivered separately from other communications to investors, this statement may appear either on the notice or on the envelope in which the notice is delivered;

Note: to paragraph (f)(2)(ii): The notice should be written in plain English. See § 230.421(d)(2) of this chapter for a discussion of plain English principles.

(iii) The company has not received the reply form or other notification indicating that the shareholder wishes to continue to receive an individual copy of the report, within 60 days after the company sent the notice; and

(iv) The company transmits the report to a post office box or to a residential street address. The company can assume a street address is a residence unless it has information that indicates it is a business.

(3) At least once a year, the company must explain to shareholders who have consented under paragraph (f)(1)(iii) or paragraph (f)(2) of this section how they can revoke their consent. The explanation must be reasonably designed to reach these investors. If a shareholder, orally or in writing, revokes consent to delivery of one report to a shared address, the company must begin sending individual copies to that shareholder within 30 days after the company receives the revocation.

(4) For purposes of this section, *address* means a street address, a post office box number, an electronic mail address, a facsimile telephone number, or other similar destination to which paper or electronic documents are transmitted, unless otherwise provided in this section. If the company has reason to believe that the address is a street address of a multi-unit building, the address must include the unit number.

9. Section 270.30d–2 is revised to read as follows:

§ 270.30d–2 Reports to shareholders of unit investment trusts.

(a) At least semiannually every registered unit investment trust substantially all the assets of which consist of securities issued by a management company must transmit to each shareholder of record (including record holders of periodic payment plan certificates), a report containing all the applicable information and financial statements or their equivalent, required by § 270.30d–1 to be included in reports of the management company for the same fiscal period. Each of these reports must be transmitted within the period allowed the management company by § 270.30d–1 for transmitting reports to its shareholders.

(b) Any report required by this section will be considered transmitted to a shareholder of record if the unit investment trust satisfies the conditions set forth in § 270.30d–1(f) with respect to that shareholder.

Dated: November 4, 1999.

By the Commission.

Margaret H. McFarland,

Deputy Secretary.

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