

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 230 and 240

[Release Nos. 33-7767, 34-42102, IC-24124; File No. S7-26-99]

RIN 3235-AH66

Delivery of Proxy and Information Statements to Households

AGENCY: Securities and Exchange Commission.

ACTION: Proposed rule.

SUMMARY: The Commission is proposing for public comment amendments to the proxy rules under the Securities Exchange Act of 1934. The proposed amendments would permit companies and other persons to satisfy the proxy and information statement delivery requirements, with respect to two or more shareholders sharing the same address, by sending or forwarding a single proxy or information statement to these shareholders ("householding"). The proposed amendments are intended to reduce the amount of duplicative information that shareholders receive, and to lower printing and mailing costs to registrants that ultimately are borne by the shareholders. In a separate release, the Commission is adopting similar amendments to Commission rules that govern the delivery of annual and (in the case of investment companies) semiannual reports and new Rule 154 under the Securities Act of 1933 that permits issuers and broker-dealers to household prospectuses. This release proposes changes to Rule 154 and to the annual report requirements.

DATES: Comments must be received on or before January 18, 2000.

ADDRESSES: Comments should be submitted in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 5th Street, NW, Washington, DC 20549-0609. Comments also may be submitted electronically at the following E-mail address: rule-comments@sec.gov. All comment letters should refer to File No. S7-26-99; this file number should be included on the subject line if E-mail is used. Comment letters will be available for public inspection and copying in the Commission's Public Reference Room, 450 5th Street, NW, Washington, DC 20549. Electronically submitted comment letters also will be posted on the Commission's Internet web site (<http://www.sec.gov>).

FOR FURTHER INFORMATION CONTACT: Elizabeth M. Murphy, Special Counsel, at (202) 942-2900, Office of Chief Counsel, Division of Corporation

Finance, Securities and Exchange Commission, 450 5th Street, NW, Washington, DC 20549.

SUPPLEMENTARY INFORMATION: The Commission today proposes amendments to Rule 154¹ under the Securities Act of 1933 (the "Securities Act")² and Rules 14a-2,³ 14a-3,⁴ 14a-7,⁵ 14b-1,⁶ 14b-2,⁷ and 14c-3⁸ under the Securities Exchange Act of 1934 (the "Exchange Act").⁹

I. Introduction

The Commission proposes amendments to the proxy rules to reduce the amount of duplicative information shareholders receive. The proposal was prompted by amendments the Commission is adopting today in a Companion Release.¹⁰ In the Companion Release, the Commission is adopting new Securities Act Rule 154 to enable issuers and broker-dealers to satisfy prospectus delivery requirements for two or more investors sharing the same address by sending a single prospectus.¹¹ The Commission also is adopting similar amendments to the proxy rules under the Exchange Act that govern the delivery of annual reports to shareholders, and to the rules under the Investment Company Act that govern the delivery of semiannual reports to investment company investors.¹²

The purpose of the amendments to the proxy rules adopted today is to conform the provisions regarding the householding of annual reports by companies to the amendments that permit the householding of prospectuses and investment company semiannual reports. Companies are required to send an annual report to security holders in connection with the delivery of a proxy or information statement when directors are being elected.¹³ For many years, the proxy rules have included provisions stating that companies do not have to send an annual report to a shareholder of record having the same address as another shareholder of record to whom a report

is sent if the shareholder provides written consent.

With respect to prospectuses and annual reports, the Commission originally proposed to limit householding without written consent to situations in which shareholders had opened their accounts before the effective date of the new rules.¹⁴ Several commenters asserted that the proposed distinction between shareholders who must give written consent to householding and those who need not would be costly and burdensome to administer. They also stated that the distinction could confuse shareholders.

Under the amendments the Commission is adopting today, the rules no longer require companies to get written consent from shareholders to householding of prospectuses, annual reports and semiannual reports if: (1) The document is delivered to members of the same family with the same last name sharing a common home address or post office box; (2) shareholders are given advance notice of householding; and (3) shareholders do not object to householding.

The Commission did not propose to permit householding of proxy and information statements when it proposed the householding provisions adopted today. Several commenters on the proposed amendments suggested that the Commission consider further revisions to permit the householding of proxy materials. Many of these commenters noted that householding would facilitate companies' common practice of mailing the annual report together with the proxy or information statement. A few commenters further suggested that the Commission extend the proposed householding provisions expressly to permit broker-dealers and banks¹⁵ ("intermediaries") to household delivery of annual reports and proxy and information statements to beneficial owners of equity securities registered pursuant to Section 12 of the Exchange Act.¹⁶ The proxy rules currently do not include provisions that

¹ 17 CFR 230.154.

² 15 U.S.C. 77.

³ 17 CFR 240.14a-2.

⁴ 17 CFR 240.14a-3.

⁵ 17 CFR 240.14a-7.

⁶ 17 CFR 240.14b-1.

⁷ 17 CFR 240.14b-2.

⁸ 17 CFR 240.14c-3.

⁹ 15 U.S.C. 78a.

¹⁰ Release No. 33-7766 (Nov. 4, 1999).

¹¹ Rule 154 also applies to prospectus supplements.

¹² Revised Rules 30d-1 [17 CFR 270.30d-1], 30d-2 [17 CFR 270.30d-2], 14a-3 and 14c-3.

¹³ Rule 14a-3(a) [17 CFR 240.14a-3(a)].

¹⁴ Release No. 33-7475 ("Proposing Release") (Nov. 13, 1997) [62 FR 61933]. The Commission proposed to allow householding to existing shareholders as of the effective date of the new rules without written consent, due to a concern that many shareholders, while not objecting to householding, would fail to respond to requests for consent.

¹⁵ Rule 14b-2(a)(1) [17 CFR 240.14b-2(a)(1)] defines the term "bank" as a bank, association, or other entity that exercises fiduciary powers.

¹⁶ The proxy rules apply only to companies with equity securities registered under Section 12 of the Exchange Act and to investment companies registered under the Investment Company Act of 1940 ("Investment Company Act") [15 U.S.C. 80a] [17 CFR 270.20a-1].

permit intermediaries to household documents.

In light of the commentary on the Proposing Release, the Commission proposes in this release to amend the proxy rules further to permit the householding of proxy and information statements by companies.¹⁷ The Commission also proposes, for the first time, to add provisions to the proxy rules to permit intermediaries to household proxy and information statements, as well as annual reports, to beneficial shareholders. However, multiple proxy cards or voting instruction forms—one for each shareholder residing at a shared address—would have to be delivered with proxy statements that are householded. Rule 154, as adopted, does not permit the householding of combination proxy statement-prospectuses delivered for business combinations, exchange offers, or reclassifications of securities registered on Forms N-14, S-4 and F-4.¹⁸ Accordingly, the Commission now is proposing to amend Rule 154 to permit the householding of proxy statements combined with prospectuses, as discussed more fully below.

II. Discussion—Delivery of Proxy and Information Statements to a Household

A. Purpose of the Proposed Amendments

The Commission is proposing amendments to Exchange Act Rules 14a-3, 14b-1, 14b-2 and 14c-3 to permit companies and intermediaries to satisfy their respective proxy and information statement delivery requirements by sending a single copy of the proxy or information statement to two or more shareholders¹⁹ residing at

the same address. Companies, intermediaries and shareholders have complained to the Commission in the past that the distribution of multiple copies of the same document to shareholders who share the same address often inundates shareholders with unwanted mail and causes companies to incur higher printing and mailing costs. The purpose of the proposed amendments is to allow companies and intermediaries to household proxy and information statements to both record and beneficial shareholders in the same manner that, upon effectiveness of the Companion Release, will be permissible for prospectuses and annual reports to security holders.

B. Proposed Householding of Proxy and Information Statements by Companies to Record Holders

Exchange Act Rule 14a-3 requires companies to furnish their shareholders with a proxy statement before soliciting proxy voting authority from the shareholders with respect to a matter submitted to a shareholder vote.²⁰ If the solicitation relates to an annual meeting (or special meeting in lieu of the annual meeting) where directors are being elected, a company's proxy statement must be preceded or accompanied by an annual report to security holders that includes specified financial information about the company.²¹ Companies are able to deliver the proxy statement directly only to their shareholders of record; they must deliver the proxy statement to their beneficial shareholders indirectly through the intermediaries.²²

Pursuant to amendments adopted today in the Companion Release, Rule 14a-3 will permit companies to household the annual report to security holders under certain conditions. Because the current proxy rules require the annual report to accompany or precede delivery of the proxy statement, companies generally mail the annual report with the proxy statement in the

same envelope.²³ As a result, the ability of companies to reduce costs by householding the annual report would be limited by their inability also to household the proxy statement.

The proposed revisions to Rule 14a-3 would permit companies to household the proxy statement to record shareholders under the same conditions for householding prospectuses and annual reports.²⁴ Specifically, as described in more detail below, the amendments would require the company to:

- Get written or implied consent from record shareholders to householding of the proxy statement;
- Include a separate proxy card for each shareholder to whom the householded proxy statement is sent;
- Expressly undertake in the proxy or information statement to deliver upon written or oral request a separate copy of the annual report and proxy or information statement to a record shareholder residing at a shared address to which the company delivers a householded copy of each document; and
- Resume delivery of individual copies of the proxy statement within 30 days after a shareholder request (i.e., revocation of any written or implied consent).

The Commission proposes similar amendments to Rule 14c-3, which requires companies to deliver information statements to shareholders when they are taking certain corporate actions, but not soliciting proxy voting authority. Comment is solicited generally as to whether companies should be permitted to household proxy and information statements.

1. Consent

a. Implied Consent. Under the proposed changes to the proxy rules,²⁵ companies would be able to deliver a single proxy or information statement to multiple shareholders who share an address without having affirmatively to obtain written consent to householding from the shareholders, if the following conditions are met:

- Each shareholder at the shared address has the same last name as the other shareholders (or the company

¹⁷ References to "companies" throughout this release include investment companies. Funds are not required to comply with the Rule 14a-3(b) annual report requirement because they file shareholder reports under Section 30(d) of the Investment Company Act. Item 22 of Exchange Act Schedule 14A [17 CFR 240.14a-101] consolidates fund-specific proxy disclosure requirements, and requires that, unless the proxy statement is accompanied by a copy of the fund's most recent annual report, the proxy statement must state prominently that the fund will furnish without charge a copy of the annual report and the most recent semi-annual report succeeding the annual report, if any, to a shareholder upon request.

¹⁸ See 17 CFR 239.23, .25, .34.

¹⁹ Companies are permitted to household annual reports and proxy or information statements to a single shareholder holding the same securities in two or more accounts with the same address without having to comply with the householding provisions that have been adopted (with respect to annual reports) or that are being proposed (with respect to proxy and information statements). This also is true when a shareholder is acting as custodian for securities: (1) In an account created under a state Uniform Gifts to Minors Act

("UGMA") or Uniform Transfers to Minors Act ("UTMA") and the shareholder also holds the same security in his or her own account, with the same address; or (2) in two or more accounts created under a state UGMA or UTMA. The Companion Release states similarly that the delivery of a single prospectus or shareholder report under these circumstances meets the prospectus delivery requirements of the Securities Act. See Companion Release, *supra* note 10, at n.6.

²⁰ Rule 14a-3(a).

²¹ Rule 14a-3(b) [17 CFR 240.14a-3(b)].

²² In Release 33-7607 (Nov. 11, 1998) [67 FR 67331], the Commission solicited comment on whether it should revise the proxy rules to permit the optional direct delivery of proxy materials to non-objecting beneficial owners by companies.

²³ Some companies have chosen to deliver proxy statements and annual reports in electronic rather than paper format pursuant to procedures set out in Release Nos. 33-7233 (Oct. 6, 1995) [60 FR 53548] and 33-7288 (May 9, 1996) [61 FR 24644]. Section II.B.2 of this release discusses householding of electronic documents.

²⁴ Companies also would be able to household other proxy soliciting material, such as additional or revised proxy materials mailed after the proxy statement was sent to shareholders.

²⁵ Proposed Rule 14a-3(e)(1)(ii).

reasonably believes that they all are members of the same family);²⁶

- At least 90 days before beginning delivery by householding, the company sends each record shareholder at the shared address a separate written notice in plain English²⁷ of its intention to household proxy and information statements;²⁸

- The notice (or envelope containing the notice) includes the following prominent statement, or similar clear and understandable statement, in bold-face type: "Important Notice Regarding Delivery of Shareholder Documents";³⁰

- The written notice provides record shareholders who object to householding with a reply form or toll-free telephone number to express their objection;³¹

- The written notice states the duration of the consent and explains how a shareholder can revoke consent to householding;³²

- The company does not receive notice that the shareholders object to householding within the 90-day notice period;³³ and

- The company delivers householded proxy or information statements only to a residential street address or post office box.³⁴

The rules being adopted today in the Companion Release that permit householding of prospectuses and annual reports by implied consent state that shareholders must receive written notice of the company's plan to household these documents at least 60 days before householding begins. The Commission is proposing to change the 60-day notice requirement to 90 days with respect to annual reports, and proposes a 90-day period for proxy and information statements. The additional time may be necessary to avoid interfering with the company's proxy statement mailing schedule—because many companies mail the proxy statement 45 days or more before the annual meeting date, a 60-day period may not provide sufficient time for the mailing of the notice and receipt of any shareholder objections before the planned mailing date.³⁵

The Commission requests comment on whether the proposed conditions for relying on implied consent are necessary or appropriate. Should the rules require companies to get written consent to householding of proxy and information statements from members of the same family with the same last name, even though the Commission today is adopting amendments that allow householding of prospectuses and annual reports by implied consent? Should proxy statements be treated differently than information statements? Conversely, should companies be able to household proxy and information statements by implied consent to unrelated shareholders residing at a shared address? Do companies have the means reasonably to determine whether shareholders who do not share the same last name (for example, spouses with different surnames) are related to one

another? Is joint account and beneficiary information useful in this regard?³⁶

The Commission also solicits comment on whether, as proposed, companies should have to send record shareholders a separate written notice of their intention to household proxy and information statements by implied consent. Should companies be able to incorporate the notice into an unrelated shareholder communication such as an interim report or dividend check statement³⁷ Should the rules require that the separate notice also be mailed separately, or should the rules permit delivery with other investor materials, as the Commission's rules will now permit for prospectuses and investment company semiannual reports³⁸ Is 90 days an appropriate notice period, or should it be shorter or longer? Furthermore, are the proposed means by which a shareholder can object to householding appropriate? Should the rules include alternative methods by which shareholders could object?

Commenters should note that, under the proposed rules, companies would have to specify in the required written notice the types of documents they intend to household (*i.e.*, proxy and information statements). New Securities Act Rule 154 and revised Rule 14a-3(e) adopted today in the Companion Release similarly require the written notice to specify a company's intention to household prospectuses and annual reports, respectively. Therefore, companies choosing to household all of these documents (prospectuses, annual reports and proxy and information statements) may wish to consider mailing the householding notice after the Commission has considered the revisions proposed in this release. Otherwise, companies would need to mail two separate notices—one regarding an intention to household prospectuses and/or annual reports upon effectiveness of the amendments in the Companion Release and a second regarding an intention to household proxy and information statements. The second notice could not be delivered until the effective date of the proposed changes described in this release.

b. Affirmative Written Consent. A company also would be permitted to household the proxy or information statement to related or unrelated record shareholders residing at a shared address if each of the shareholders consents in writing to the company's

²⁶ Proposed Rule 14a-3(e)(1)(ii)(A). Some commenters on the householding proposals adopted in the Companion Release expressed concern about the ability to discern whether certain shareholders residing at the same address are members of the same family (*e.g.*, a husband and wife with different surnames). The Commission believes that companies relying on the rule may, in many cases, be able to base their reasonable belief on information already provided by the shareholder (*e.g.*, in an account agreement).

²⁷ Proposed Rule 14a-3(e)(1)(ii)(B) includes a note stating that the notice should be written in plain English. The proposed rule refers to Securities Act Rule 421(d)(2) [17 CFR 230.421(d)(2)]. Rule 421(d)(2) states that language must "substantially comply" with the following 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.

²⁸ The proposed notice could not be sent in the same envelope with other written material, such as an account statement, dividend check or shareholder report; under proposed Rule 14a-3(e)(1)(ii)(B)(i), it would have to be delivered separately from other communications and could not be incorporated into other material. In most cases, it is expected that companies would mail a single notice regarding its intention to household annual reports as well as proxy and information statements.

³⁰ Proposed Rule 14a-3(e)(1)(ii)(B)(7). This statement may be more effective in alerting shareholders if it appears on the envelope.

³¹ Proposed Rule 14a-3(e)(1)(ii)(B)(3). In addition to providing a reply form or toll-free telephone number, the notice also may provide supplemental methods of opting out of householding, such as sending the reply form to a facsimile telephone number or responding by e-mail. Reply forms to be returned by mail 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.

³² Proposed Rule 14a-3(e)(1)(ii)(B)(4) and (5).

³³ Proposed Rule 14a-3(e)(1)(ii)(C). If the company receives notice that one or more

shareholders objects to householding within the 90-day notice period, but there are two or more shareholders in the household who do not object, the company would be able to household to the non-objecting shareholders.

³⁴ Proposed Rule 14a-3(e)(1)(ii)(D).

³⁵ A 60-day notice period also could interfere with the time frames set forth in the shareholder communications rules regarding the delivery of proxy materials to beneficial owners. Rule 14a-13 [17 CFR 240.14a-13] requires companies to request the number of sets of materials needed by intermediaries for delivery to beneficial owners 20 business days before the company's record date. The number of sets of material needed by the intermediary will be affected by the number of shareholders receiving householded documents. The record date frequently is set at a date 60 days before the meeting date pursuant to state law requirements.

³⁶ See Companion Release, *supra* note 10, at n.17 and accompanying text.

³⁷ *Id.* at n.18.

³⁸ *Id.* at n.28.

delivery of one proxy or information statement to the shared address.³⁹

If a company solicits written consent from related or unrelated record shareholders residing at a shared address, it should specify in the request for consent the types of documents it intends to household (e.g., annual reports and/or proxy statements and/or information statements), the duration of the consent, the procedure to revoke consent, and the anticipated date that householding will begin. The company could begin householding immediately upon receipt of the written consent. If a shareholder, on his or her own initiative, requests the company to household the proxy or information statement, a company that is agreeable to the request should send a confirmation to the shareholder including the information described above.

Comment is solicited as to whether unrelated shareholders residing at a single address should have to provide written consent to householding. If so, should they be allowed to consent orally as well as in writing? If oral consent is permitted, what kind of documentation should the Commission require companies to retain as evidence of consent?

c. Duration of Consent. Companies could solicit from record shareholders a consent to householding of perpetual duration that is valid until revoked, or a consent of limited duration such as one year or a specified number of years. If companies rely on implied consent to householding, the required 90-day notice to shareholders should make it clear whether the company intends to household indefinitely or for a fixed period.⁴⁰ The Commission requests comment on whether companies should have to re-solicit implied and/or written consent to householding periodically, and if so, whether they should have to do so annually or at a different interval.⁴¹

Under the proposed rules, shareholders could revoke their consent to householding at any time, by instructing the company orally or in writing.⁴² A company could not continue to household the proxy or information statement more than 30

days after receiving such instructions. Comment is solicited as to whether 30 days is an appropriate revocation period from the perspective of both companies and shareholders, or should be shorter or longer.

2. Addressing

Under the revised rules, companies would have the flexibility to address the householded copy of the proxy or information statement either to shareholders as a group, (e.g., "ABC Corporation Shareholders," "Jane Doe and Household" or "Household of Jane Doe"), or to each of the shareholders residing at the shared address (e.g., "Jane Doe and Mary Doe"). In order to prevent householding of the proxy or information statement to shareholders with the same last name who share a business address but are not related, the proposed rules would require companies relying on implied consent to deliver the proxy or information statement to a residential street address, or to a post office box. The rules would state that a company can assume that a street address is a residence unless the company has information indicating that the address is not a residence.

For purposes of the revised rules, the term "address" would mean a street address, post office box number, an electronic mail address, facsimile telephone number, or similar destination to which paper or electronic documents are delivered. If a company has reason to believe that an address is a street address of a multi-unit building, the address also would have to include the unit number.

Because the potential benefits of householding electronic documents appear to be minimal,⁴³ the Commission is not proposing to allow electronic delivery of householded proxy and information statements in connection with implied consent to householding. The proposed rules would permit electronic delivery of householded proxy and information statements only if delivery is made to a shared electronic address (for example, a shared

electronic mail account) and all shareholders in the household give written consent to householding.⁴⁵ Comment is requested on whether the Commission should permit the electronic delivery of a householded proxy or information statement if all of the shareholders in the household have consented to householding but not all have consented to electronic delivery pursuant to procedures outlined in Commission releases.⁴⁶

Comment is solicited on the proposed address requirements. Should companies have the proposed flexibility to address householded proxy and information statements to a group of shareholders? Should shareholders have the right to specify how the householded proxy or information statement is addressed? Should companies be able to address householded annual reports, proxy statements and information statements to only one of the shareholders residing at a shared address?

Is the requirement that companies deliver the householded proxy or information statement only to addresses reasonably believed to be residences workable? Is the proposed definition of "address" appropriate? Would householding to a shared electronic address result in significant cost savings?

3. Inclusion of Multiple Proxy Cards With Single Proxy Statement

Unlike prospectuses, annual reports and information statements, the proxy statement is accompanied by a form of proxy ("proxy card"). Rule 14a-4(f)⁴⁷ states that no person conducting a proxy solicitation shall deliver a proxy card to a shareholder unless it is preceded or accompanied by a definitive proxy statement that has been filed with, or mailed for filing to, the Commission. Therefore, shareholders generally receive the proxy card in the same envelope that contains the company's proxy statement and annual report. Proxy cards are addressed based on the shareholder account titles appearing on a company's list of registered holders.

Under the proposed rules, companies would need to continue sending a separate proxy card with the householded proxy statement for each separate shareholder account with respect to which proxy authority is

³⁹ In order to satisfy the written consent requirement, a shareholder would need to consent specifically to householding of proxy and information statements.

⁴⁰ Proposed Rule 14a-3(e)(1)(ii)(B)(4).

⁴¹ Even if a company solicits "perpetual" consent to householding, if the company chooses to household its materials to all of its shareholders, it will have to solicit consent from new shareholders as they open their accounts or on an annual basis.

⁴² Proposed Rule 14a-3(e)(1)(iii).

⁴³ None of the commenters on the Proposing Release stated that householding electronically delivered documents would save money, or that investors had been requesting this form of delivery. Several commenters noted the difficulty of permitting electronic delivery of householded documents. One individual shareholder emphasized the risks involved in using electronic delivery, especially the ease with which electronic messages might be deleted by accident and the difficulty of forwarding messages from a discontinued e-mail account with an Internet provider. Furthermore, the cost of sending an electronic document or e-mail generally is very low, and therefore, sending one e-mail to a household rather than multiple e-mails would not result in significant cost savings.

⁴⁵ See Rule 14(a)(3)(e)(1)(ii)(D). One of the provisions pertaining to householding by implied consent requires delivery to a street address. All of the shareholders in the household would have to provide written consent to both electronic delivery and householding.

⁴⁶ See note 23.

⁴⁷ 17 CFR 240.14a-4(f).

being solicited. For example, if a husband and wife each holds the same company's securities in two individual accounts, a company could deliver a single proxy statement and annual report to them but would have to include two separate proxy cards in the envelope, and designate the proxy cards individually based on the two account titles. Comment is solicited on whether the Commission should permit householding of proxy statements in view of the need to include multiple proxy cards. Are there concerns that householding may interfere with shareholders' exercise of voting rights through the proxy card's execution?

4. Undertaking to Provide Additional Copies of Household Documents

The proposed rules⁴⁸ would require companies to undertake in the proxy or information statement to deliver, upon written or oral request, a separate copy of the annual report, proxy statement or information statement to a shareholder residing at a shared address to which a householded copy of the documents was delivered. The company would have to deliver the separate copy promptly after a shareholder request.

The purpose of this proposed requirement is to ensure that a shareholder who has given implied or written consent to householding, but then experiences a change in circumstances that makes sharing a householded document impractical, still has access to the annual report, proxy statement or information statement. The householding rules applicable to annual reports adopted today in the Companion Release do not include this undertaking requirement. The proposed amendments would modify those rules.

Comment is solicited as to whether the proposed undertaking is appropriate, and if so, whether the rules should mandate delivery of a separate copy of the annual report, proxy statement or information statement within a specific time period rather than promptly. Should companies have to set forth the proposed undertaking in the proxy or information statement, or should there be other alternatives? Comment also is requested on whether Securities Act Rule 154 adopted today in the Companion Release should be revised to include a similar undertaking. The proposed rules also would require companies choosing to household the annual report,⁴⁹ proxy statement and/or

information statement to include the following information in the proxy or information statement:⁵⁰

- State that only one annual report and/or proxy statement or information statement is being delivered to multiple shareholders residing at a shared address unless the registrant has received contrary instructions from one or more of the shareholders;
- Undertake to deliver promptly, upon written or oral request, a separate copy of the annual report and/or proxy statement or information statement to a shareholder residing at a shared address to which a single copy of the documents was delivered;
- Provide instructions as to how a shareholder can notify the registrant that the shareholder wishes to receive a separate annual report and/or proxy statement or information statement in the future; and
- Provide instructions as to how shareholders can request householding if they are receiving multiple copies of the annual report and/or proxy or information statement.

Comment is solicited on whether registrants should be required to provide annual disclosure about householding, as proposed. If so, should this disclosure have to appear in the proxy or information statement or could it be provided in other shareholder communications?

5. State Law Requirements Concerning Notice of Meeting

Many state corporate codes contain provisions requiring companies to provide shareholders of record with written notices of meetings and adjourned meetings. The provisions generally state that written notice of a meeting at which shareholders are required or permitted to take action must be sent to each shareholder of record a specified number of days before the meeting date. For example, the Delaware General Corporate Code states that written notice of any meeting shall be given not less than 10 nor more than 60 days before the date of the meeting to each shareholder entitled to vote at the meeting.⁵¹ This notice typically is transmitted with the proxy statement.

It is unclear whether a householded proxy statement that includes the meeting notice would satisfy state law requirements that companies deliver a notice to *each* record shareholder. Companies choosing to household the proxy statement therefore would have to consider the possible need to deliver

separately the notice of meeting to each shareholder in the household to satisfy state law requirements.

Comment is solicited on whether state law meeting notice requirements present legal and/or practical obstacles to householding of the proxy statement. Would a meeting notice incorporated in a single, householded proxy statement sent to all record holders residing at a shared address be deemed to be delivered to each such shareholder in the household in compliance with applicable state law? Would the householded proxy statement have to be addressed to each shareholder rather than generically to the group of shareholders residing at a shared address in order to satisfy state law? Would the attachment of multiple meeting notices to the householded proxy statement, each notice addressed to each shareholder sharing the address, fulfill the states' individual meeting notice requirements, or must a notice be sent separately to each record shareholder?

6. Business Combination Proxy Statement-Prospectuses

As discussed in the Companion Release, new Securities Act Rule 154 does not permit the householding of prospectuses required to be delivered in connection with business combination transactions, exchange offers and reclassifications of securities.⁵² The Proposing Release requested comment on whether companies should be permitted to household those types of prospectuses, given that they generally are accompanied by proxy cards or tender offer material that must be executed by each shareholder. Some commenters on the Proposing Release suggested that the Commission consider broadening Rule 154 to permit householding of those types of prospectuses.

Upon consideration of these comments, and because the proposals described in this release would permit the householding of proxy statements, the Commission is proposing to expand the coverage of Rule 154 to include combined proxy statement-prospectuses delivered in connection with business combinations, exchange offers or reclassifications of securities.

Companies householding the combined proxy statement-prospectuses would continue to have to include

⁴⁸ Proposed Rule 14a-3(e)(1)(i)(E) and proposed Item 22 of Schedule 14A.

⁴⁹ The proposed proxy disclosure requirement is not included in the provisions permitting householding of the annual report adopted today in the Companion Release.

⁵⁰ Proposed Item 23 of Schedule 14A and proposed Item 5 of Schedule 14C.

⁵¹ 8 Del. C. Section 222 (1998).

⁵² Rule 154 does not apply to the delivery of a prospectus filed as part of a registration statement on Form N-14, S-4 or F-4, or to the delivery of any other prospectus in connection with a business combination transaction, exchange offer or reclassification of securities. See Rule 154(e) (17 CFR 230.154(e)).

separate proxy cards that need to be executed by each individual shareholder in the household. Comment is solicited as to whether the Commission should permit companies to household combined proxy statement-prospectuses. Do shareholders perceive these prospectuses about extraordinary transactions as being more significant than proxy statements relating to routine proposals? If so, are they more likely to want to receive separate copies of the combined proxy statement-prospectus? If the revised rules do not permit companies to household combined proxy statement-prospectuses, do companies have the means to suppress householding when delivering this type of document to shareholders?

The revised rule would not affect any other applicable requirement of state or federal law concerning the delivery of any document that requires individual execution, such as a shareholder response to a tender offer. Comment is solicited on whether the Commission should permit householding of these documents.

C. Householding of Proxy and Information Statements by Intermediaries to Beneficial Owners

Exchange Act Rule 14b-1 sets forth the obligations of registered brokers and dealers in connection with the prompt forwarding of certain registrant communications to beneficial owners. Rule 14b-2 sets forth similar obligations of banks, associations and other entities that exercise fiduciary powers. The proposed amendments would revise these rules to state that broker and bank intermediaries may, on their own initiative, or at the request of a company, household the annual report, proxy statement or information statement to beneficial owners residing at a shared address if the requirements set forth in proposed Rule 14a-3(e)(1) (with respect to annual reports and proxy statements) and Rule 14c-3(c) (with respect to information statements) are met. Pursuant to the proposed change discussed above, intermediaries also would be able to household combined proxy statement-prospectuses to beneficial owners.

Under the proposed amendments, the intermediaries rather than the registrant would follow the procedures described in proposed Rule 14a-3(e)(1) and obtain implied or written consent to householding from beneficial owners.⁵³

Intermediaries using voting instruction forms to elicit information from beneficial owners as to how their shares should be voted would have to include a separate form for each beneficial owner residing at a shared address.⁵⁴ This would be similar to the requirement that registrants must include a separate proxy card for each individual record holder residing at a shared address.

Under the current proxy rules,⁵⁵ intermediaries are not required to promptly forward information to beneficial shareholders if a company does not provide assurance of reasonable reimbursement of the intermediaries' reasonable expenses, both direct and indirect, incurred in performing those obligations. The proxy rules do not include a schedule of "reasonable fees," but the NYSE rules and rules of other self-regulatory organizations do include a fee schedule. NYSE Rule 451 sets forth the maximum fees that NYSE member firms (brokers) may charge NYSE listed companies for forwarding proxy materials to beneficial owners.

In December 1996, the NYSE proposed a new reimbursement fee structure for the forwarding of proxy materials and other shareholder communications.⁵⁶ Public comment was solicited on the proposals. The Commission approved the fees on a pilot basis ("pilot fees").⁵⁷ The pilot fees have been revised several times and currently are set to expire on January 3, 2000.⁵⁸

In addition to per piece processing fees for the forwarding of proxy materials and other shareholder communications, the pilot fees include a "paper and postage elimination fee" ⁵⁹ which may be charged by intermediaries for the elimination of a paper mailing to a beneficial owner as a result of householding or electronic delivery.

to or incorporates by reference another document, such as the proxy or information statement, and does not describe the householding procedures.

⁵⁴ Intermediaries generally use voting instruction forms rather than the proxy card to facilitate automated processing of the beneficial owners' voting instructions regarding non-routine matters. The voting instruction forms contain the same information as the proxy card with respect to the items presented for shareholder vote. Once the intermediary tabulates the results from the voting instruction forms, it executes the proxy card in its own name and returns it to the company or the company's designated agent.

⁵⁵ Rules 14b-1(c)(2) and 14b-2(c)(2) [17 CFR 240.14b-1(c)(2) and 240.14b-2(c)(2)].

⁵⁶ Release 34-38058 (Dec. 18, 1996) [61 FR 68082].

⁵⁷ Release 34-38406 (Mar. 14, 1997) [62 FR 13922].

⁵⁸ Release 34-42086 (Nov. 1, 1999).

⁵⁹ The intermediary is entitled to collect \$.50 for each set of proxy materials eliminated.

Nearly all large broker and many bank intermediaries currently outsource the proxy material distribution function for beneficial shareholders to ADP Investor Communications Services ("ADP"). ADP, as agent for intermediaries, is able to charge companies for the proxy distribution services in accordance with the pilot fees, including the paper and postage elimination fee.

Under the proposed rules, intermediaries or their agents could offer shareholders the option of consenting—on an implied or written consent basis—to householding of proxy and information statements relating only to a particular company, or consenting to householding of any proxy or information statement the intermediary is required to forward to the shareholder. The proposed rules, however, would not require that shareholders be given this option of limiting their consent to a particular company. Comment is solicited on whether shareholders should have the option to limit their consent to a particular company.

The revised rules would state that intermediaries must exclude annual reports, proxy statements, and information statements that will be eliminated pursuant to householding procedures in responding to company requests concerning the number of the intermediaries' customers that are beneficial owners of the companies' securities.⁶⁰

Comment is requested on whether intermediaries should be allowed to household annual reports, proxy statements, and information statements to beneficial owners. If so, should they or their agents be allowed to household regardless of whether the company chooses to household to its record holders? Should companies be required to reimburse intermediaries or their agents for their reasonable expenses incurred in obtaining implied or written consents to householding even if the company has not directed or approved the intermediary's decision to household? Should the intermediaries be required to obtain express authorization from companies before they begin householding? Conversely, should the rules require intermediaries to household to beneficial owners at the direction of companies? If so, should the companies be required to compensate the intermediaries for their reasonable expenses incurred in connection with the solicitation of implied or written consents? Is it reasonable for intermediaries (or their agent) to collect the \$.50 paper and postage elimination

⁵³ A signature on a new bank or broker-dealer account agreement would not satisfy the written consent requirement if the agreement merely refers

⁶⁰ Proposed Rules 14b-1(c)(3) and 14b-2(c)(4).

fee currently included in the pilot fees for each paper copy of a set of proxy materials suppressed as a result of householding at the intermediary level? Should the \$.50 postage elimination fee be a one-time charge (assessed only the first time a paper copy is suppressed) or a recurrent fee? Is there any reason why the rules permitting householding by intermediaries to beneficial shareholders should differ from the rules permitting householding by companies to record shareholders?

Commenters also are asked to consider whether the rules should permit householding to record shareholders and beneficial shareholders sharing the same address. How would information about record shareholders (possessed by companies or their agents) and information about beneficial shareholders (possessed by intermediaries or their agents) be shared to facilitate householding?

The proposed rules also would amend Rule 14a-2(a)(1),⁶¹ which excepts solicitations by intermediaries from Rules 14a-3 through 14a-15 if they satisfy certain conditions.⁶² The amendments would revise the rule to indicate that the exception permits intermediaries' delivery of materials to each person separately or to a person's household.

D. Householding of Proxy Statements by Shareholders

Under the proposed rules,⁶³ shareholders who deliver a proxy statement to other shareholders also would be able to household the proxy statement to record holders if the company previously has obtained shareholder consent to householding in accordance with the procedures in proposed Rule 14a-3(e)(1).

Rule 14a-7 sets forth the obligations of companies either to provide a shareholder list to a requesting shareholder or to mail the shareholder's proxy materials. The rule provides that the company has the option to provide the list or mail the shareholder's materials, except when the company is soliciting proxies in connection with going private or roll-up transactions. In those cases, the shareholder has the option to request the list or have the company mail its materials. In addition to requiring that the company supply householding information that it previously has obtained when providing the shareholder list, the proposed amendments would require companies to share the benefit of written or implied

consents to householding that they have obtained when mailing materials on a shareholder's behalf.⁶⁴ Comment is solicited on whether shareholders should be able to household the proxy statement under the specified conditions.

The Commission is aware that intermediaries generally deliver proxy materials on behalf of soliciting parties other than the registrant under the conditions set forth in Exchange Act Rules 14b-1 and 14b-2 (for example, the soliciting party agrees to reimburse the intermediary for reasonable expenses incurred by the intermediary to forward the proxy statement to beneficial owners even though these rules are silent with respect to any such obligations). Should Rules 14b-1 and 14b-2 be revised explicitly to require intermediaries to deliver proxy or other soliciting materials on behalf of soliciting persons (or their agents) other than the registrant? Are such revisions necessary or appropriate even if the householding proposals are not adopted?

III. Delivery of Proxy Materials to Registered Investment Advisers and Investment Managers

Many of the Self-Regulatory Organizations ("SROs") have adopted rules to allow beneficial owners to:

- Designate a registered investment adviser to vote proxies and receive proxy material on behalf of the beneficial owner; and
- Allow SRO member organizations who serve as investment managers of ERISA plans to vote proxies.⁶⁵

The proposed householding rules do not include any specific provisions regarding householding of proxy materials to registered investment advisers and investment managers of ERISA plans who have been designated to vote proxies and receive proxy materials on behalf of multiple shareholder accounts. The general provisions of the rules, however, would

permit companies to solicit written consent to householding from these investment advisers and investment managers. The proposed rules also would allow companies to accommodate requests in writing from the investment advisers and investment managers that companies and/or intermediaries send them only one copy of a company's annual report and proxy statement or information statement, rather than a separate copy on behalf of each shareholder for whom they are authorized to make proxy voting decisions.

Comment is requested on whether companies and intermediaries should be able to household proxy materials to such investment advisers and investment managers without having to rely on the proposed householding rules since it is unlikely that a single person or entity making the proxy voting decision would need more than one copy of the proxy materials. Commenters who believe that the proposed householding rules should apply are asked to consider if it would be appropriate to permit householding to investment advisers and investment managers by implied consent. Additional comment is sought on whether companies and intermediaries should be allowed to household proxy material without consent or by implied consent to trustees, executors, administrators, guardians or persons who act in similar capacities and who have been vested with proxy voting authority. Finally, are there other situations not addressed by the proposed rules where it may be appropriate to allow householding without any advance consent or by implied consent?

IV. General Request for Comment

Any interested persons wishing to submit written comments on the proposed rule amendments that are the subject of this Release, to suggest additional provisions or changes to the rules, or to submit comments on other matters that might affect proposals contained in this Release, are requested to do so. The Commission also requests comment on whether the proposals, if adopted, would have an adverse effect on competition that is neither necessary nor appropriate in furthering the purposes of the Exchange Act.

The Commission requests comment on whether the proposals, if adopted, would promote efficiency, competition and capital formation. Comments will be considered by the Commission in compliance with its responsibilities under Section 2(b) of the Securities

⁶¹ 17 CFR 240.14a-2(a)(1).

⁶² Proposed Rule 14a-2(a)(1)(ii).

⁶³ See the Note to proposed Rule 14a-3(e)(1).

⁶⁴ Proposed Rules 14a-7(a)(2)(i) and (ii).

⁶⁵ See Release No. 34-34596 (Aug. 25, 1994) [59 FR 45050], Order Approving Proposed Rule Changes by the New York Stock Exchange; Release No. 34-34294 (July 1, 1994) [59 FR 35152], Order Approving Proposed Rule Changes by the American Stock Exchange; and Release No. 34-35681 (May 5, 1995) [60 FR 25749], Order Approving Proposed Rule Changes by the NASD. The SRO rules require the beneficial owner to notify the member organization in writing of the name of the investment adviser and specify that the investment adviser has been designated to receive the proxy and related materials and vote the proxy. In an Information Memo to its member organizations, the NYSE stated that the member organizations may wish to provide consolidated proxies and related materials to investment advisers designated by beneficial owners to exercise voting discretion.

Act,⁶⁷ and Sections 3(f) and 23(a) of the Exchange Act.⁶⁸ The Commission encourages commenters to provide empirical data or other facts to support their views.

V. Cost/Benefit Analysis

The Commission is sensitive to the costs and benefits imposed by its rules on affected persons and entities. The proposed rules would permit companies and intermediaries to send fewer copies of proxy and information statements to shareholders than they currently must send, and therefore, as discussed below, should result in substantial cost savings to companies. The proposed rules would be voluntary on the part of companies and intermediaries; therefore, to the extent that the proposed rules would require the printing and delivery of notices concerning householding, use of software to track householding consents, or would result in other costs of changing procedures, and the costs outweigh the benefits of householding, companies and intermediaries may decide not to rely on the rules.

Many of the commenters on the proposals adopted in the Companion Release urged the Commission to consider proposing revised rules that would permit companies and intermediaries to household proxy and information statements. Corporate commenters stated that since they generally mail the proxy statement and annual report together in the same envelope, they are unable to achieve any cost savings under the current rules that permit them to household only the annual report.

Several of the commenters stated that the elimination of duplicate proxy materials would result in significant cost savings. One commenter, a newsletter publisher and shareholder service consultant, estimated that companies could eliminate 10–30% of their annual report and proxy statement mailings by householding. Assuming a company's relatively low-cost proxy material package (including the annual report, proxy statement, notice of meeting, proxy card and return envelope) costs \$4.70, and a population of 100,000 individual investors, the commenter estimates that householding would produce savings of approximately \$47,000 to \$141,000 annually for that company. The American Society of Corporate Secretaries and New York Stock Exchange noted in their comment letters that companies' ability to household

proxy material would provide greater efficiency in the shareholder communication process without having any adverse effect on investor protection.

Shareholders also have complained to the Commission, companies and intermediaries about receipt of multiple copies of the same disclosure document. They object not only due to their own burdens associated with receipt of unnecessary extra mail, but also to the associated corporate waste and cost of delivering duplicative information.

Companies and intermediaries who rely on the proposed rules would incur costs in obtaining consents and sending notices to shareholders. It is expected that the cost savings to companies would far exceed the costs of obtaining the consents and mailing the notices. Intermediaries would be entitled to reimbursement from companies for the reasonable expenses they incur in obtaining consents to householding from the companies' beneficial shareholders. The proposed rules would require that the notice be a separate written statement and be accompanied by a reply form. The costs associated with sending the notice should be limited to the costs of printing a single page and the postage costs of delivering the notice to shareholders. The cost should be non-recurring because the notice generally will only have to be sent once to each shareholder in a household. Costs of the proposed annual disclosure about householding should be low because the disclosure will be included in the proxy or information statement.

The Commission requests comment on the costs and benefits of the proposed rules, including the cost savings estimate described above and estimates of the costs of obtaining consents and mailing the notice. For purposes of the Small Business Regulatory Enforcement Fairness Act of 1996,⁶⁹ the Commission also requests information regarding the potential impact of the proposed rules on the economy on an annual basis. Commenters are requested to include empirical data to support their views.

VI. Paperwork Reduction Act

Certain provisions of the proposed rule amendments contain "collection of information" requirements within the meaning of the Paperwork Reduction Act of 1995,⁷⁰ and the Commission has submitted them to the Office of Management and Budget ("OMB") for

review in accordance with 44 U.S.C. 3507(d) and 5 CFR 1320.11. The titles for the collections of information are: "Regulation 14A, Commission Rules 14a–1 through 14a–15 and Schedule 14A"; and "Regulation 14C, Commission Rules 14c–1 through 14c–7 and Schedule 14C." Regulations 14A and C contain currently approved collections of information under OMB control numbers 3235–0059 and 3235–0057, respectively. An agency may not sponsor or conduct, and a person is not required to respond to, an information collection unless a currently valid OMB control number is displayed.

Regulations 14A and 14C set forth proxy and information disclosure requirements. Companies that have a class of securities registered under Section 12 of the Exchange Act are subject to these requirements. When the Commission proposed rules to permit householding of the annual report,⁷¹ it submitted a request for approval of revisions to Regulations 14A and 14C to OMB. OMB has approved the revisions and they are adopted as described in the Companion Release, with some modification.

In its submission, the Commission estimated that the time required to prepare and arrange delivery of the notice (required to be mailed by companies choosing to solicit implied consent to householding of the annual report from shareholders) would be approximately 20 hours per respondent per year. Since the annual report and proxy or information statement generally are mailed to shareholders together in the same package, it is likely that companies and intermediaries would have to mail only one notice to obtain consent to householding of both the annual report and the proxy or information statement. Therefore, the Commission is not changing the 20 hour estimated increase in connection with the notice delivery requirement.

Aside from the notice requirement, the Commission also is proposing a new proxy and information statement disclosure requirement.⁷² The proposed new disclosure would require companies choosing to household proxy materials to advise shareholders how they can revoke consent to householding and how to request separate copies of a householded document. The disclosure also would tell shareholders how to request householding. It is estimated that the time to respond to this disclosure would

⁶⁷ 15 U.S.C. 77b(b).

⁶⁸ 15 U.S.C. 78c(f), 78w(a).

⁶⁹ Pub. L. No. 104–121, Title II, 110 Stat. 857 (1996).

⁷⁰ 44 U.S.C. 3501–3520.

⁷¹ Release 33–7475 (Nov. 13, 1997) [62 FR 61933].

⁷² Proposed Item 23 of Schedule 14A and proposed Item 5 of Schedule 14C.

be approximately one hour per respondent per year.

The Commission estimates that 9,892 respondents are subject to Regulation 14A and that approximately 989 of these would prepare the proposed Schedule 14A householding disclosure. The Commission estimates that the burden associated with Regulation 14A as revised per respondent would be approximately 55 hours for those subject to the proposed disclosure, and 54 hours per respondent for those not subject to the disclosure requirement, for a total annual burden of 535,157 hours. Of this total, it is estimated that 25%, or 133,789 hours of the disclosure burden, would be prepared by in-house counsel and 75%, or 401,368 hours, would be prepared by outside counsel. The estimated cost to the respondent of the disclosure prepared by outside counsel would be \$70,239,400 at an estimated hourly rate of \$175.

An estimated 253 respondents are subject to Regulation 14C and it is estimated that 25 of these would prepare the proposed Schedule 14C householding disclosure. The Commission estimates that the burden associated with Regulation 14C as revised per respondent would be approximately 55 hours for those subject to the proposed disclosure, and 54 hours per respondent for those not subject to the disclosure requirement, for a total annual burden of 13,687 hours. Of this total, it is estimated that 25%, or 3,422 hours of the disclosure burden, would be prepared by in-house counsel and 75%, or 10,265 hours, would be prepared by outside counsel. The estimated cost to the respondent of the disclosure prepared by outside counsel would be \$1,796,375 at an estimated hourly rate of \$175.

| Information collection title | Burden hours after proposed revisions | Cost after revisions |
|------------------------------|---------------------------------------|----------------------|
| Reg. 14A | 133,789 | \$70,239,400 |
| Reg. 14C | 3,422 | 1,796,375 |

Companies and intermediaries are the primary respondents. Responses to the collection of information are voluntary and will not be kept confidential. Pursuant to 44 U.S.C. 3506(c)(2)(B), the Commission solicits comment to: (i) Evaluate whether the proposed collections of information are necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (ii) evaluate the accuracy of the agency's estimate of the burden of the proposed collections of information; (iii) enhance the quality,

utility, and clarity of the information to be collected; and (iv) minimize the burden of the collections of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Persons wishing to submit comments on the collection of information requirements should direct them to the following persons: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, DC 20503; and (ii) Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 5th Street, NW, Washington, DC 20549-0609, with reference to File No. S7-26-99. OMB is required to make a decision concerning the collections of information between 30 and 60 days after publication; therefore, a comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication.

VII. Initial Regulatory Flexibility Analysis

This Initial Regulatory Flexibility Analysis has been prepared in accordance with 5 U.S.C. 603. It relates to proposed amendments to Securities Act Rule 154 and Exchange Act Rules 14a-2, 14a-3, 14a-7, 14b-1, 14b-2, 14c-3 and 14c-7. The proposed amendments to the Exchange Act rules would permit companies, banks, brokers and other persons to satisfy the proxy and information statement delivery requirements, with respect to two or more shareholders sharing the same address, by sending a single proxy or information statement to the shareholders ("householding"). The proposed changes to Rule 154 would permit issuers and other persons to household proxy-prospectuses required to be delivered in connection with business combination transactions, exchange offers and reclassifications of securities.

A. Reasons for the Proposed Action

The purpose of the proposed amendments is to allow companies, banks, brokers and other persons to send a single proxy or information statement or combined proxy-prospectus to multiple shareholders residing at a shared address. Pursuant to amendments adopted today in the Companion Release, issuers are able to household prospectuses, annual reports and semiannual reports to security holders. Because the proxy rules require the annual report to accompany or

precede delivery of the proxy or information statement, companies generally mail the annual report in the same package with the proxy or information statement. The proposed amendments would permit companies to household proxy and information statements under the same conditions for householding prospectuses and annual reports. If the amendments are adopted, companies will be able to household the entire annual meeting package to consenting shareholders. The proposed amendments are intended to reduce the amount of duplicative information that shareholders receive and lower printing and mailing costs to companies that ultimately are borne by the shareholders.

B. Objectives

The proposed amendments are designed to save costs for companies, brokers, banks and other persons, while maintaining protections for investors. The proposed rules would permit companies and others to household proxy and information statements and combined proxy-prospectuses by obtaining implied or written consent from shareholders. Companies and others may household by implied consent to shareholders residing at a shared address who are members of the same family if the shareholders are given advance written notice and the opportunity to object. Otherwise, the company must obtain written consent to householding from the shareholders. A commenter on the Proposing Release estimated that companies and others could reduce their proxy and information statement mailings by 10-30% if the proposed amendments are adopted. Reliance on the proposed householding rules would be optional; the Commission believes companies and others generally will rely on the proposed rules only to the extent that cost savings can be achieved.

C. Legal Basis

The Commission is proposing to amend Rule 154 pursuant to the authority set forth in Section 19(a) of the Securities Act.⁷³ It is proposing to amend the proxy rules under the authority set forth in Sections 12, 14 and 23(a) of the Exchange Act.⁷⁴

D. Small Entities Subject to the Rules

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

⁷³ 15 U.S.C. 77s(a).

⁷⁴ 15 U.S.C. 78l, 78n and 78w(a).

\$5 million or less.⁷⁵ Only small businesses that have securities registered under Section 12 of the Exchange Act are subject to the proxy rules. There are approximately 815 reporting companies that have assets of \$5 million or less. As stated above, the proposed householding rules would be optional.

E. Reporting, Recordkeeping, and Other Compliance Issues

The primary goal of the proposed revisions is to remove unnecessary regulatory requirements. The proposed rules, however, would require companies and other parties choosing to solicit implied consent to householding from shareholders to mail a separate written notice of the companies' intention to household proxy and information statements. The proposed rules also would require companies and other parties to undertake in the proxy or information statement to provide, upon written or oral request, a separate copy of the annual report, proxy statement or information statement to a shareholder residing at an address to which they delivered a householded copy. Additionally, companies choosing to household the annual report and proxy or information statement would have to provide instructions in the proxy or information statement as to how: (1) A shareholder can revoke consent to householding; and (2) shareholders sharing an address can request householding. It is likely that the notice generally would not exceed one page, and the proxy or information statement disclosure would be only a paragraph or two in length.

F. Duplicative, Overlapping or Conflicting Federal Rules

The Commission believes that there are no federal rules that duplicate, overlap, or conflict with, the proposed rules.

G. Significant Alternatives

The Regulatory Flexibility Act directs the Commission to consider significant alternatives that would accomplish the stated objective, while minimizing any significant adverse impact on small issuers. In connection with the proposed rules, the Commission considered the following alternatives: (a) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (b) the clarification, consolidation or simplification of compliance and reporting requirements under the rule

for small entities; (c) the use of performance rather than design standards; and (d) an exemption from the coverage of the rule, or any part thereof, for small entities.

The proposed rules are intended to remove regulatory requirements for all companies, including those that are small entities. The costs of the proposed notice and undertaking requirements are not expected to be significant and should be more than offset by the cost savings realized as a result of householding proxy and information statements. The Commission considered exempting small entities that are reporting companies from the notice and undertaking requirements, but believes that investors in companies of all sizes should be notified that a company intends to household the proxy and information statement and have the opportunity to object. Since the proposed rules would be optional and should benefit small entities, it was unnecessary to consider exempting them from coverage of the proposed rules.

H. Solicitation of Comments

The Commission encourages the submission of comments with respect to any aspect of this Initial Regulatory Flexibility Analysis. Comment specifically is requested on the number of small entities that would be affected by the proposed rules. Comment also is requested on the impact of the proposed rules on broker and banks that are small entities. Commenters are asked to describe the nature of any impact and provide empirical data supporting the extent of their impact. These comments will be considered in preparation of the Final Regulatory Flexibility Analysis, if the rules are adopted, and will be placed in the same public comment file as comments on the proposed rules themselves.

VIII. Statutory Authority

The Commission is proposing to amend Rule 154 pursuant to the authority set forth in Section 19(a) of the Securities Act. The Commission is proposing to amend Rules 14a-3, 14c-3, 14b-1 and 14b-2 under the authority set forth in sections 12, 14 and 23(a) of the Exchange Act.

List of Subjects

17 CFR Part 230

Investment companies, Reporting and recordkeeping requirements, Securities.

17 CFR Part 240

Reporting and recordkeeping requirements, Securities.

Text of Proposed Rules

For the reasons set out in the preamble, Title 17, Chapter II of the Code of Federal Regulations is proposed to be 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, 78l, 78m, 78n, 78o, 78w, 78ll(d), 79t, 80a-8, 80a-24, 80a-28, 80a-29, 80a-30, and 80a-37, unless otherwise noted.

* * * * *

§ 230.154 [Amended]

2. Section 230.154 is amended by removing paragraph (e).

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, 78l, 78m, 78n, 78o, 78p, 78q, 78s, 78u-5, 78w, 78x, 78ll(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-2 is amended by revising paragraph (a)(1)(ii) to read as follows:

§ 240.14a-2 Solicitations to which § 240.14a-3 to § (240.14a-15 apply.

* * * * *

(a) * * *

(1) * * *

(ii) Furnishes promptly to the person solicited (or person's household in accordance with § 240.14a-3(e)(1)) a copy of all soliciting material with respect to the same subject matter or meeting received from all persons who shall furnish such copies thereof for such purpose and who shall, if requested, defray the reasonable expenses to be incurred in forwarding such material, and

* * * * *

5. Section 240.14a-3 is amended by revising paragraph (e)(1) 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 and/or proxy statement, as applicable, to all security holders of record who share an address if:

⁷⁵ 17 CFR 240.0-10.

(A) The registrant delivers one annual report and/or proxy statement to the shared address;

(B) The registrant addresses the annual report and/or proxy statement to the security holders as 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");

(C) The security holders consent in writing to delivery of one annual report and/or proxy statement;

(D) With respect to delivery of the proxy statement, the registrant includes a separate proxy card for each security holder residing at the shared address; and

(E) The registrant includes an undertaking in the proxy statement to deliver promptly upon written or oral request a separate copy of the annual report and/or proxy statement to a security holder residing at a shared address to which a single copy of the documents was delivered.

(ii) *Implied consent.* The registrant need not obtain written consent from a security holder 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 90 days before the registrant begins to rely on this section concerning delivery of annual reports and/or proxy statements to that security holder. The notice must:

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

(2) State that only one annual report and/or proxy statement 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 the security holder wishes to receive a separate annual report and/or proxy statement;

(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 the security holder revokes 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 and/or proxy statement, within 90 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 that 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 annual report and/or proxy statement, to a shared address, the registrant must begin sending individual copies to that security holder within 30 days after the registrant receives revocation of the security holder's consent.

(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.

Note to paragraph (e)(1). A person other than the registrant making a proxy solicitation may deliver a single proxy statement to security holders of record who have separate accounts and share an address if: (a) The registrant has followed the procedures in this section; and (b) the registrant makes available the shared address information to the person in accordance with § 240.14a-7(a)(2)(i) and (ii).

* * * * *

6. Section 240.14a-7 is amended by revising paragraphs (a)(2)(i) and (ii) and designating the existing note to § 240.14a-7 as Note 1, revising the heading to the notes, and adding Note 2 to read as follows:

§ 240.14a-7 Obligations of registrants to provide a list of, or mail soliciting materials to, security holders.

* * * * *

(a) * * *

(2) * * *

(i) Mail copies of any proxy statement, form of proxy or other soliciting material furnished by the security

holder to the record holders, including banks, brokers, and similar entities, designated by the security holder. A sufficient number of copies must be mailed to the banks, brokers, and similar entities for distribution to all beneficial owners designated by the security holder. If the registrant, banks, brokers or similar entities have received implied or written consent to deliver a single proxy statement to security holders residing at a shared address in accordance with the procedures in § 240.14a-3(e)(1), § 240.14b-1(b)(2), or § 240.14b-2(b)(3), a single copy of the proxy statement furnished by the security holder shall be mailed to that address. The registrant shall mail the security holder material with reasonable promptness after tender of the material to be mailed, envelopes or other containers therefor, postage or payment for postage and other reasonable expenses of effecting such mailing. The registrant shall not be responsible for the content of the material; or

(ii) Deliver the following information to the requesting security holder within five business days of receipt of the request: a reasonably current list of the names, addresses and security positions of the record holders, including banks, brokers and similar entities holding securities in the same class or classes as holders which have been or are to be solicited on management's behalf, or any more limited group of such holders designated by the security holder if available or retrievable under the registrant's or its transfer agent's security holder data systems; the most recent list of names, addresses and security positions of beneficial owners as specified in § 240.14a-13(b), in the possession, or which subsequently comes in the possession, of the registrant; and the names of security holders residing at a shared address that have consented to delivery of a single copy of proxy materials to a shared address, if the registrant has received implied or written consent in accordance with § 240.14a-3(e)(1). All security holder list *information* shall be in the form requested by the security holder to the extent that such form is available to the registrant without undue burden or expense. The registrant shall furnish the security holder with updated record holder information on a daily basis or, if not available on a daily basis, at the shortest reasonable intervals, *provided*, however, the registrant need not provide beneficial or record holder information more current than the record date for the meeting or action.

* * * * *

Notes to § 240.14a-7.

1. * * *

2. When providing the information required by § 240.14a-7(a)(1)(ii), if the registrant has received implied or written consent to householding in accordance with § 240.14a-3(e)(1), it shall exclude from the number of record holders those to whom it does not have to deliver a separate proxy statement.

7. Section 240.14a-101 is amended by adding Item 23 to read as follows:

§ 240.14a-101 Schedule 14A Information required in proxy statement.

* * * * *

Item 23. Delivery of documents to security holders residing at a shared address. If one annual report and/or proxy statement is being delivered ("household") to two or more security holders who share an address in accordance with § 240.14a-3(e)(1), furnish the following information:

(a) State that only one annual report and/or proxy statement is being delivered to multiple security holders residing at a shared address unless the registrant has received contrary instructions from one or more of the security holders;

(b) Undertake to deliver promptly upon written or oral request a separate copy of the annual report and/or proxy statement to a security holder residing at a shared address to which a single copy of the documents was delivered;

(c) Provide instructions as to how a security holder can notify the registrant that the security holder wishes to receive a separate annual report and/or proxy statement in the future; and

(d) Provide instructions how security holders sharing an address can request householding if they are receiving multiple copies of the annual report and/or proxy statement.

8. Section 240.14b-1 is amended by adding a note following paragraph (b)(2) and by adding paragraph (c)(3) to read as follows:

§ 240.14b-1 Obligation of registered brokers and dealers in connection with the prompt forwarding of certain communications to beneficial owners.

* * * * *

(b)(2) * * *

Note to paragraph (b)(2): The broker or dealer may, on its own initiative, or at the

request of a registrant, deliver one annual report, proxy statement, or information statement to more than one beneficial owner residing at a shared address if the requirements set forth in § 240.14a-3(e)(1) (with respect to annual reports and proxy statements), and § 240.14c-3(c) (with respect to annual reports and information statements) applicable to registrants are satisfied instead by the broker or dealer.

* * * * *

(c) * * *

(3) In its response pursuant to paragraph (b)(1) of this section, a broker or dealer shall not include information about proxy statements, information statements or annual reports that will not be delivered to security holders residing at a shared address because of the broker or dealer's reliance on the householding procedures referred to in the Note to paragraph (b)(2) of this section.

9. Section 240.14b-2 is amended by adding a note to paragraph (b)(3) and by adding paragraph (c)(4) to read as follows:

§ 240.14b-2 Obligation of banks, associations and other entities that exercise fiduciary powers in connection with the prompt forwarding of certain communications to beneficial owners.

* * * * *

(b)(3) * * *

Note to paragraph (b)(3): The bank may, on its own initiative, or at the request of a registrant, deliver one annual report, proxy statement, or information statement to more than one beneficial owner residing at a shared address if the requirements set forth in § 240.14a-3(e)(1) (with respect to annual reports and proxy statements), and § 240.14c-3(c) (with respect to annual reports and information statements) applicable to registrants are satisfied instead by the bank.

* * * * *

(c) * * *

(4) A bank shall not include information in its response pursuant to paragraphs (b)(1)(ii)(A) of this section proxy statements, information statements or annual reports that will not be delivered to security holders residing at a shared address because of

the bank's reliance on the householding procedures referred to in the Note to paragraph (b)(3) of this section.

10. Section 240.14c-3 is amended by adding paragraph (c) 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 or information statement to security holders of record who share an address if the requirements set forth in § 240.14a-3(e)(1) are satisfied.

11. Section 240.14c-101 is amended by adding Item 5 to read as follows:

§ 240.14c-101 Schedule 14C Information required in information statement

Item 5. Delivery of documents to security holders residing at a shared address. If one annual report and/or information statement is being delivered ("household") to two or more security holders who share an address in accordance with § 240.14a-3(e)(1), furnish the following information:

(a) State that only one annual report and/or proxy statement is being delivered to multiple security holders residing at a shared address unless the registrant has received contrary instructions from one or more of the security holders;

(b) Undertake to deliver promptly upon written or oral request a separate copy of the annual report and/or information statement to a security holder residing at a shared address to which a single copy of the documents was delivered;

(c) Provide instructions as to how a security holder can notify the registrant that the security holder wishes to receive a separate annual report and/or information statement in the future; and

(d) Provide instructions how security holders sharing an address can request householding if they are receiving multiple copies of the annual report and/or information statement.

Dated: November 4, 1999.

By the Commission.

Margaret H. McFarland,

Deputy Secretary.

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