

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 230, 232, 239, 240, 249, and 269

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RIN 3235-A108

Mandated EDGAR Filing for Foreign Issuers

AGENCY: Securities and Exchange Commission.

ACTION: Proposed rule.

SUMMARY: We are publishing for comment proposed amendments to Regulation S-T, the rules that govern our Electronic Data Gathering, Analysis, and Retrieval (EDGAR) system. These amendments would require foreign private issuers and foreign governments to file electronically through the EDGAR system their securities documents, including registration statements under the Securities Act of 1933 and registration statements, reports and other documents under the Securities Exchange Act of 1934. Currently our rules only permit, but do not require, foreign issuers to file their securities documents on EDGAR. By mandating the electronic filing of foreign issuers' securities documents on EDGAR, we hope to realize the same investor benefits and the same efficiencies in information transmission, dissemination, retrieval and analysis achieved since we mandated EDGAR filing for domestic issuers in 1993.

DATES: Please submit your comments on or before December 3, 2001.

ADDRESSES: Please submit three copies of your comments to Jonathan G. Katz, Secretary, U.S. Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549-0609. You also may submit your comments electronically at the following e-mail address: rule-comments@sec.gov. Your comment letter should refer to File No. S7-18-01; include this file number in the subject line if you use electronic mail. We will make comment letters available for public inspection and copying in our Public Reference Room, 450 Fifth Street, NW, Washington, DC 20549. We will post electronically submitted comment letters on our Internet web site (<http://www.sec.gov>).¹

¹ We do not edit personal, identifying information, such as names or electronic mail addresses, from electronic submissions. Submit only information that you wish to make publicly available.

FOR FURTHER INFORMATION CONTACT: Elliot B. Staffin, Special Counsel, Office of International Corporate Finance, Division of Corporation Finance, at (202) 942-2990.

SUPPLEMENTARY INFORMATION: We propose to rescind Rule 601² under Regulation S-T³ and to amend the following rules and forms: Rules 403 and 493⁴ under the Securities Act of 1933 ("Securities Act");⁵ Rules 100, 101, 303, 306, and 311⁶ under Regulation S-T; Rule 12b-12⁷ under the Securities Exchange Act of 1934 ("Exchange Act");⁸ and Forms F-7, F-8, F-9, F-10, F-80, F-X, and CB under the Securities Act;⁹ and Forms 20-F and 6-K under the Exchange Act.¹⁰

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² 17 CFR 232.601.

³ 17 CFR 232.10 *et seq.*

⁴ 17 CFR 230.403 and 230.493.

⁵ 15 U.S.C. 77a *et seq.*

⁶ 17 CFR 232.100, 232.101, 232.303, 232.306 and 232.311.

⁷ 17 CFR 240.12b-12.

⁸ 15 U.S.C. 78a *et seq.*

⁹ 17 CFR 239.37, 239.38, 239.39, 239.40, 239.41, 239.42, and 239.800. Forms F-X and CB are also authorized as Exchange Act forms under 17 CFR 249.250 and 249.480. Form F-X is further authorized under the Trust Indenture Act of 1939 ("Trust Indenture Act") [15 U.S.C. 77aaa *et seq.*] under Trust Indenture Act Rule 269.5 [17 CFR 269.5].

¹⁰ 17 CFR 249.220f and 249.306.

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I. Background

EDGAR is the Securities and Exchange Commission's electronic data gathering, analysis and retrieval system¹¹ that enables registered companies and other persons to file their securities documents with the Commission in electronic format.¹² Filings submitted on EDGAR are available to the public on our web site as well as through many other information providers. In the Commission's fiscal year 2000 alone, registrants and other persons submitted over 305,000 filings on EDGAR.

We initially launched EDGAR as a pilot program in 1984, which enabled companies to participate voluntarily in the EDGAR system until 1993.¹³ At that time, the Commission adopted rules to implement the operational phase of EDGAR, which imposed electronic filing requirements only on domestic issuers.¹⁴ While we encouraged foreign issuers to file their securities documents on EDGAR "so as to encourage transnational capital formation in increasingly global markets,"¹⁵ these

¹¹ We encourage foreign issuers and others who are unfamiliar with our EDGAR system to review the document entitled *Electronic Filing and the EDGAR System: A Regulatory Overview* ("EDGAR Overview"), dated November 14, 2000, which is available on our website located at www.sec.gov/info/edgar/overview1100.htm.

¹² Filers can currently submit documents in electronic format by direct transmission, either by using a dial-up modem or Internet service provider, or on magnetic cartridge. EDGAR filers may submit documents formatted either in American Standard Code for Information Interchange ("ASCII") or a version of HyperText Markup Language ("HTML"). Filers also may choose to provide an unofficial copy of a filing in Portable Document Format ("PDF"). EDGAR Overview at Section C.1.

¹³ Release No. 33-6977 (February 23, 1993) [58 FR 14628].

¹⁴ Following adoption of the operational EDGAR rules in 1993, we phased in the electronic filing requirements for domestic issuers in discrete groups. The last group of domestic issuers became mandated EDGAR filers in May 1996. Release No. 33-7369 (December 6, 1996) [61 FR 65440].

¹⁵ Release No. 33-6977, text at n. 72.

issuers are not generally required to file electronically.¹⁶ Nevertheless, because of EDGAR's advantages over paper filing, many foreign issuers have chosen to file their securities documents on EDGAR on a voluntary basis.¹⁷

A. Mandated EDGAR Rules for Foreign Filers Should Result in the Same Benefits Achieved by Our Adoption of Mandated EDGAR Rules for Domestic Filers

Since its inception, the primary goals of our EDGAR system have been to facilitate the rapid dissemination of financial and business information about companies and other parties participating in U.S. capital markets while making the delivery and the Commission's processing of filings more efficient. Mandated electronic filing benefits members of the investing public and the financial community by making available to them information contained in Commission filings minutes after the Commission has received them.¹⁸ In addition, the electronic format of the information facilitates research and data analysis. Filers also benefit from electronic dissemination of information since it fosters increased market exposure for their securities. At the same time, filers benefit from the speedy and secure delivery afforded by electronic filing as well as from the efficiencies achieved in the Commission's review and processing of their filings.

By requiring foreign entities to file their Securities Act and Exchange Act documents on EDGAR, we seek to achieve the same benefits sought when we first adopted mandated EDGAR rules for domestic filers. These requirements will facilitate more rapid dissemination of financial and other material information about foreign issuers than under our current paper filing system. Because investors, analysts and others

will have quicker access to this information, electronic dissemination should foster enhanced market exposure for a foreign filer's securities.

Foreign issuers should also realize increased efficiencies in the filing process. The direct electronic transmission of securities documents will take significantly less time than traditional methods of paper delivery while offering a secure and reliable method of delivery. The use of EDGAR also will facilitate more efficient storage, retrieval, and analysis of financial and other material information about foreign filers than under the current paper and microfiche regime.¹⁹ Quicker access to a foreign issuer's financial and other material information should not only facilitate staff review of a particular foreign issuer's registration statement or report but should also enhance the Commission's ability to study and address issues that confront foreign issuers.

B. Technological Advances Support Extending Mandated EDGAR Filing to Foreign Issuers

We based the initial exclusion of foreign issuers from the mandated EDGAR regime in part on our belief that foreign issuers would incur higher costs from the implementation of EDGAR than those faced by domestic filers.²⁰ In the initial operational phase of EDGAR, with the Internet relatively undeveloped compared to today, electronic filers could only transmit their documents directly to the Commission over long distance telephone lines and not over the Internet.²¹ As a result, foreign filers

that attempted to transmit directly their electronic documents to the Commission faced higher long distance transmission costs than those borne by domestic companies. Depending on their location, foreign filers also faced potential shortages of long distance lines and proper telecommunications equipment, such as compatible modems. Foreign filers also faced the widespread local unavailability of necessary computer hardware and software and trained personnel capable of transforming their documents into EDGAR compatible files.

While we recognized the potential for increased burdens and higher costs for foreign filers that could have resulted from mandated electronic filing in the early stages of EDGAR, we also stated then that we might require foreign issuers to file their securities documents electronically at some future date.²² Since that time, numerous, significant advances in information and telecommunications technology have occurred that have dramatically increased Internet use by businesses, consumers, investors, and government agencies. These advances have transformed the Internet into a primary means for the rapid dissemination and retrieval of information. As a result, the investing public currently expects information about both foreign and domestic companies to be available electronically.²³

Today many companies maintain websites on which they post their annual and periodic reports, press releases and other information of interest to investors, customers and other persons. Many of these companies are foreign private issuers that are Exchange Act reporting companies. By accessing these websites, individuals can obtain vast amounts of financial and other information in a matter of seconds.

The Commission, and a growing number of foreign securities commissions, have harnessed the

¹⁶ Currently, we require a foreign issuer or person to file a document on EDGAR only if it jointly files a registration statement or some other document with a domestic issuer or if it files a document, such as a Schedule 13D or tender offer schedule, that pertains to a registered domestic issuer. See Rules 101(c) [17 CFR 232.101(c)] and 601(a) of Regulation S-T [17 CFR 232.601(a)].

¹⁷ Regulation S-T currently provides for the voluntary participation of foreign issuers in the EDGAR system under Rules 100(a) [17 CFR 232.100(a)] and 601(a) and (b) [17 CFR 232.601(a) and (b)]. However, some foreign private issuers, such as Canadian registrants that use the multijurisdictional disclosure system ("MJDS") and foreign governments, have not been able to file voluntarily on EDGAR due to the lack of electronic form types for some filings.

¹⁸ While EDGAR filings are available on our website approximately 24 hours after we have received them, many third-party service providers make EDGAR filings available to their subscribers within minutes of our receipt of these filings.

¹⁹ On an ongoing basis, foreign companies are required to submit to the SEC press releases, shareholder reports and other materials that contain information that is material to an investment decision. See Form 6-K, General Instruction B. Foreign companies publish these materials in their home countries in accordance with home market law or custom. By requiring foreign companies to file on EDGAR, we would improve public access to these home market materials as well as all SEC-mandated reports, prospectuses and other documents.

²⁰ See, for example, Release No. 33-6651 (June 26, 1986) [51 FR 24155] in which we sought public comment on our preliminary ideas for rules governing the operational phase of EDGAR. In that release, we justified the voluntary participation of foreign filers in the initial EDGAR operational phase on the grounds that it would give foreign filers "more time to test for compatible equipment and transmission modes." Release No. 33-6651, text following n.23.

²¹ During most of the operational phase of EDGAR, filers have been able to submit electronically formatted documents on EDGAR via direct transmission by dial-up modem, diskette, or magnetic tape. In 2000, we amended the EDGAR rules, among other things, to eliminate diskettes and magnetic tape and to add magnetic cartridges and the Internet as means of transmitting filings electronically to the Commission. Release No. 33-7855 (April 24, 2000) [65 FR 24788].

²² Release No. 33-6977, n. 60. In a more recent release, we noted and solicited comment on our intention to propose at some future date mandated EDGAR filing for foreign issuers. Release No. 33-7803 (February 25, 2000) [65 FR 11507]. We received a few letters that commented specifically on our anticipated EDGAR rulemaking for foreign issuers. These commenters favored electronic filing requirements for foreign issuers. We will consider these comments along with any new comments received as part of this current rulemaking.

²³ While we expected investors and others to benefit from the electronic dissemination of information at the outset of EDGAR, the technological advances that have occurred since then, and particularly the use of the Internet, have dramatically increased these benefits. Investors frequently call Commission staff seeking electronic access to foreign issuers' filings.

advances in information technology to develop electronic filing systems that are linked to their respective websites. By visiting these websites, individuals can gain access to a reporting company's securities documents. For example, the securities commissions of Canada,²⁴ Brazil²⁵ and Argentina²⁶ require their domestic registered companies to file their securities documents electronically. The securities commissions of France,²⁷ Spain²⁸ and Korea²⁹ permit their domestic registered companies to file their securities documents electronically.³⁰ Each of these commissions maintains a website that is linked to the websites of major stock exchanges and other securities regulatory bodies.³¹ Consequently, an investor that visits these commissions' websites can find financial, business and market

²⁴ The Canadian Securities Administrators require all Canadian public companies to file their securities documents electronically in PDF format on the System for Electronic Document Analysis and Retrieval ("SEDAR"). See the SEDAR National Instrument 13-101, Section 2.1, as amended September 7, 1999, of the Canadian Securities Administrators. The Internet address for SEDAR is www.sedar.com.

²⁵ See Instruction 202, dated December 6, 1993, of the Comissão de Valores Mobiliários ("CVM"), Brazil's securities commission. The Internet address for Brazil's CVM is www.cvm.gov.br.

²⁶ See General Resolution No. 368, effective July 2, 2001, of the National Securities Commission of Argentina ("Comision Nacional de Valores" or "CNV"). The Internet address for Argentina's CNV is www.cnv.gov.ar.

²⁷ See Recommendation No. 98-05, dated March 15, 1999, of the Commission des Opérations de Bourse ("COB"), the French securities commission. The Internet address of the COB is www.cob.fr.

²⁸ See the Ley 30/1992, which authorized the Comision Nacional del Mercado de Valores ("CNMV") to develop an electronic filing system for securities documents. The CNMV adopted the electronic system known as CIFRADO/CNMV in 1998. Currently, Spanish companies can only electronically submit quarterly and semi-annual reports on CIFRADO. The Internet address of the CNMV is www.cnmv.es.

²⁹ See Article 194, Section 2 of the Korean Securities Exchange Act ("KSA"), and Rule 84, subsection 28 under the KSA, which authorized the electronic filing system known as "DART." The Internet address of DART is <http://dart.fss.or.kr>. DART's website is also linked to the website of Korea's Financial Supervisory Service ("KSS"). The Internet address of the KSS is www.fss.or.kr.

³⁰ The electronic securities filings of public companies from Brazil, Argentina, France, Spain, and Korea are currently available through the websites of their respective securities commissions only in the home country language. In Canada, prospectuses and other documents filed on SEDAR are available generally in both French and English. The above list of foreign securities commissions that either require or permit their domestic companies to file their securities documents electronically is not exclusive.

³¹ For example, the SEDAR website has links to the websites of Canada's major stock exchanges as well as to the websites of the Commission, the EDGAR system, and several non-Canadian stock exchanges.

information about many public companies.

Because of recent advances in information technology, over 80% of foreign private issuers that were Exchange Act reporting companies as of December 31, 2000 already have electronically formatted their financial statements and other material information either for presentation on their websites or to comply with the requirements of their home country securities commissions.³² These advances in information technology also have increased the number of foreign private issuers that have chosen to file voluntarily their securities documents with the Commission on EDGAR. Of the 1,310 foreign private issuers that were Exchange Act reporting companies as of December 31, 2000,³³ 232 (approximately 18%) chose to file their securities documents on EDGAR during the year 2000.

Foreign governments also use the Internet to disseminate a wide range of financial, economic and other information. Financial information for foreign governments is available electronically through the International Monetary Fund ("IMF") website.³⁴ The IMF website provides a list of foreign countries and redisseminates in a common template and in U.S. dollars financial data on international reserves and foreign currency liquidity reported by foreign governments. For some foreign countries, the IMF website also provides access to the websites of government departments that provide financial information electronically. For example, the IMF website provides links to the finance ministries or central banks of Australia, Brazil, Canada, Germany, Hong Kong Special Administrative Region of the People's Republic of China, Israel, Japan, Mexico, the Netherlands, and the United Kingdom.

These technological advances regarding the Internet and modernization of the EDGAR system should serve to mitigate the costs resulting from mandated EDGAR filing for foreign issuers. For example, today a foreign issuer that seeks to file electronically with the Commission is likely to be able to transmit its electronically formatted documents to

us over the Internet through the use of an Internet service provider, thereby saving long distance telecommunications transmission costs.³⁵ In addition, a foreign issuer wanting filing assistance is now more likely to be able to use a local filing agent, thanks to the global expansion of financial printers and consulting firms that are knowledgeable about the Commission's EDGAR requirements.

Furthermore, many foreign filers should today experience reduced EDGAR start-up costs because they have already achieved a level of technological proficiency. These initial costs include the costs associated with hiring an information technology team or training existing employees to be technologically proficient, hiring a filing agent, hiring an Internet service provider, and preparing the documents for electronic formatting. Many foreign companies have already assembled an information technology team to present their financial and business information on their websites. These employees or agents should be familiar with HTML, which is a dominant language of the Internet. Because EDGAR now accepts documents formatted in a version of HTML as well as in ASCII,³⁶ this familiarity with HTML should reduce the time it takes for the information technology teams of many foreign issuers to learn the EDGAR system.

These Internet and information technology developments demonstrate that many foreign issuers already electronically format their financial and other pertinent data in some manner for public use. As a result, investors have come to expect electronic access to financial and business information about public companies, regardless of their country of origin, and to financial information about foreign governments. Because of these developments, we believe that the time is right to require foreign issuers to file their securities documents on EDGAR.

³⁵ Release No. 33-7855, text following n. 61.

³⁶ For the first six years of EDGAR's operation, electronic filers could only submit their securities documents in ASCII. As part of an ongoing modernization of the EDGAR system, since June 28, 1999, electronic filers have been able to submit their securities documents in either HTML or ASCII. See Release No. 33-7684 (May 17, 1999) [64 FR 27888]. As part of the second stage of EDGAR modernization, since May 30, 2000, EDGAR filers have been able to submit HTML documents that include graphic and image files and expanded use of hyperlinks. See Release No. 33-7855 (April 24, 2000) [65 FR 24788].

³² See Part III of this release for further discussion.

³³ See *Foreign Companies Registered and Reporting With the U.S. Securities and Exchange Commission December 31, 2000*, published by the Office of International Corporate Finance, Division of Corporation Finance (available May 2001) ("*Reporting Foreign Issuers List*"), which is available on our website at www.sec.gov/divisions/corpfin/international/companies.shtml.

³⁴ The IMF website is located at www.imf.org.

II. The Proposed Rule Amendments

A. Amendments to Regulation S–T Sections 100 and 601

We propose to amend Regulation S–T³⁷ to require that foreign private issuers³⁸ and foreign governments³⁹ file their Securities Act and Exchange Act documents with us on EDGAR.⁴⁰ Currently, Rules 100 and 601 of Regulation S–T are the provisions that exclude foreign private issuers and foreign governments from the Commission's electronic filing requirements. The proposed amendments would eliminate the foreign issuer exception primarily by revising Rules 100(a) and (c)⁴¹ and removing Rule 601 in its entirety.

The proposed amendments would revise Rule 100(a) by removing the phrase “except for foreign private issuers and foreign governments” to state that Regulation S–T applies to all registrants whose filings are subject to review by the Division of Corporation Finance.⁴² The proposed amendments would eliminate the phrase “foreign private issuers and foreign governments” in Rule 100(c) to clarify that mandated electronic filing applies to any party that files a document jointly with, or as a third party filer with respect to, a registrant that is subject to mandated electronic filing.⁴³ Since, if adopted, the amendments would subject

foreign private issuers and foreign governments to Regulation S–T's electronic filing requirements, without regard to their joint or third party filing status, the reference to these entities in Rule 100(c) would no longer be necessary. As a result, both domestic and foreign entities would have to file on EDGAR any joint or third party filing that relates to a foreign issuer.⁴⁴

We further propose to rescind Rule 601, which also currently codifies the foreign issuer exception from mandated EDGAR filing requirements.⁴⁵ Since the proposed amendments would extend electronic filing requirements to foreign private issuers and foreign governments, regardless of the type of transaction or filing status involved, and since we intend to program the EDGAR system and amend the EDGAR Filer Manual to provide an electronic form type for any foreign form that currently lacks one,⁴⁶ none of the Rule 601 provisions would serve any further purpose. Accordingly, we propose to eliminate this rule in its entirety.

B. Foreign Issuer Forms and Documents Affected by the Amendments

1. Securities Act Registration Statements and Exchange Act Registration Statements and Reports

As proposed, these amendments would require foreign private issuers to file electronically their Securities Act registration statements on Forms F–1, F–2, F–3, F–4,⁴⁷ and any other appropriate form,⁴⁸ absent a hardship

exemption.⁴⁹ They also would mandate the filing on EDGAR of Form F–6,⁵⁰ the registration statement pertaining to depositary shares evidenced by American Depositary Receipts (“ADRs”). The proposed amendments also would require foreign private issuers to file on EDGAR their Exchange Act registration statements and annual reports on Form 20–F.⁵¹ They would further require the electronic submission of reports on Form 6–K, the Exchange Act form used by foreign issuers to submit periodic and current reports with the Commission.

Under the proposed amendments, foreign governments would have to file on EDGAR their Securities Act registration statements on Schedule B.⁵² Foreign governments would further have to file electronically their Exchange Act registration statements on Form 18 and their annual reports on Form 18–K.⁵³

2. Multijurisdictional Disclosure System Forms

Under the proposed amendments, Canadian issuers that choose to use the MJDS would have to file electronically their registration statements on Forms F–7, F–8, F–9, F–10, and F–80.⁵⁴ MJDS filers would also have to file electronically their registration statements and annual reports on Form 40–F.⁵⁵ The proposed amendments would also require the filing on EDGAR of Forms 13E–4F, 14D–1F and 14D–9F,⁵⁶ the tender offer forms under the MJDS.

3. Schedules 13D and 13G and Tender Offer Schedules

The proposed amendments would further mandate the filing on EDGAR of

³⁷ Regulation S–T is the general regulation governing EDGAR filing. In addition to Regulation S–T, filers must submit electronic documents in accordance with the EDGAR Filing Manual.

³⁸ “Foreign private issuer” is defined in Securities Act Rule 405 [17 CFR 230.405] and Exchange Act Rule 3b–4 [17 CFR 240.3b–4].

³⁹ “Foreign government” refers to any issuer that is eligible to register securities under Schedule B of the Securities Act, including political subdivisions and some quasi-governmental entities.

⁴⁰ Regulation S–T also requires the electronic filing of any related correspondence and supplemental information pertaining to a document that is the subject of mandated EDGAR. Regulation S–T Rule 101(a)(1) [17 CFR 232.101(a)(1)]. These materials are not disseminated publicly but are available to the Commission staff. This requirement would apply to foreign issuers upon adoption of the proposed amendments.

⁴¹ 17 CFR 232.100(c).

⁴² Rule 100(a) currently provides that the electronic filing requirements of Regulation S–T apply to “[r]egistrants whose filings are subject to review by the Division of Corporation Finance except for foreign private issuers and foreign governments.”

⁴³ Rule 100(c) currently provides that the electronic filing requirements of Regulation S–T apply to “[a]ny party (including natural persons, foreign private issuers and foreign governments) that files a document jointly with, or as a third party filer with respect to a registrant that is subject to mandated electronic filing requirements.” For example, a foreign issuer named as a guarantor and co-registrant on a registration statement that pertains to a domestic issuer must currently file the registration statement and related documents on EDGAR.

⁴⁴ See Part II.B.3 below.

⁴⁵ Rule 601(a) excepts foreign private issuers and foreign governments from the mandated EDGAR filing rules unless the foreign issuer is filing a document jointly with, or with respect to, a party that is the subject of mandated electronic filing. Rule 601(b) [17 CFR 232.601(b)] provides that a foreign private issuer or foreign government may choose to file electronically any document not required to be filed under Regulation S–T as long as the EDGAR Filer Manual contains an appropriate electronic form type. Rule 601(c) [17 CFR 232.601(c)] provides that if a foreign private issuer engages in an exchange offer, merger or other business combination with a domestic registrant, and the foreign private issuer files a Securities Act registration statement regarding this transaction, the foreign private issuer may file this registration statement in paper as long as the domestic registrant will not be subject to Exchange Act reporting requirements following the transaction.

⁴⁶ We intend to provide electronic form types for the MJDS forms used by qualifying Canadian filers as well as other forms, such as the Schedule B registration statement used by foreign governments, and reports filed by supranational entities under 17 CFR 285 through 290, that currently lack an electronic form type.

⁴⁷ 17 CFR 239.31, 239.32, 239.33 and 239.34.

⁴⁸ Foreign persons may also register securities on Forms S–8 [17 CFR 239.16b] and S–11 [17 CFR 239.18] as well as on other registration statement forms normally used by U.S. issuers.

⁴⁹ See the discussion in Part II.B.8 below on the limited availability of hardship exemptions under Regulation S–T.

⁵⁰ Because Regulation S–T Rule 101(c)(15) [17 CFR 232.101(c)(15)] currently lists Form F–6 as a form to be filed in paper only, the proposed amendments would remove this provision and renumber the remaining provisions in Rule 101(c) accordingly.

⁵¹ We also propose a minor modification to Form 20–F. The second paragraph of General Instruction D of Form 20–F instructs registrants on how to file the Form 20–F on paper. It further states that while we do not require foreign private issuers to file registration statements and reports electronically, we encourage them to do so. We propose to remove this instruction.

⁵² 15 U.S.C. 77a *et seq.*, Schedule B.

⁵³ 17 CFR 249.218 and 249.318.

⁵⁴ We are also proposing some minor modifications to these MJDS forms to clarify that all of a registration statement submitted under cover of one of these forms must be in the English language. See Part II.C.3 below.

⁵⁵ 17 CFR 249.240f.

⁵⁶ 17 CFR 240.13e–102, 240.14d–102, and 240.14d–103.

third party forms, whether filed by a domestic or foreign company, that pertain to a foreign private issuer, since a third party filer would no longer be able to claim an EDGAR exemption based on the underlying EDGAR exemption for foreign private issuers. Thus, a domestic or foreign person would have to file on EDGAR its Schedule 13D⁵⁷ or 13G⁵⁸ that pertains to the securities of a foreign private issuer. Similarly, a domestic as well as a foreign bidder would have to file its Schedule TO⁵⁹ with respect to a tender offer for securities of a foreign private issuer. A foreign private issuer that is subject to a tender offer by a domestic or foreign company would have to file its Schedule 14D-9⁶⁰ on EDGAR.

4. Form CB

The proposed amendments would require under certain circumstances the electronic filing of one exemptive form—Form CB.⁶¹ Both foreign and domestic persons must file Form CB when engaging in specified rights offerings, exchange offers or business combinations with respect to a foreign private issuer.⁶² We propose to require the filing of Form CB on EDGAR in two instances.⁶³ First, if the foreign or domestic company filing the form is an Exchange Act reporting company, and thus already a mandated EDGAR filer, it must file Form CB on EDGAR. In this instance, because the bidder or acquiror is already familiar with EDGAR requirements, requiring it to file its Form CB on EDGAR should not pose an undue burden.

Second, we propose to require the filing of Form CB on EDGAR if the foreign company that is the subject of a transaction covered by a Form CB is an Exchange Act reporting company even if the acquiror is not. In this instance, the subject foreign company will be a mandated EDGAR filer. Investors will therefore expect to have electronic access to all filings about the reporting foreign company, including a Form CB for which it is the subject company.

This public interest warrants requiring the filing of a Form CB on EDGAR. Of course, the proposed amendment would permit the voluntary electronic filing of Form CB even when not required.⁶⁴ A company that electronically files a Form CB would have to file on EDGAR the home jurisdiction documents that are attached to the Form CB as well.⁶⁵

We also propose to amend the cover page of Form CB to require a filer to indicate whether it is filing the Form CB in paper as permitted by the proposed rule. This would facilitate the proper processing of Form CB by Commission staff.

In some instances the company that is the subject of a Form CB transaction undertakes to furnish the Form CB along with all required home country materials instead of the bidder or offeror. In those instances, under our proposed amendment, if the bidder or offeror was an Exchange Act reporting company, the subject company would still have to file the Form CB and all required materials on EDGAR even though it was a non-reporting company. Similarly, if the bidder or offeror was a non-Exchange Act reporting company, and the subject company was an Exchange Act reporting company, the proposed amendment would mandate the filing of the Form CB on EDGAR whether filed by the bidder/offeror or subject company.

There also may occur instances involving competing bidders for the securities of a non-reporting subject company when one bidder is an Exchange Act reporting company and the other is a non-reporting company. Under the proposed amendment, if each bidder files a Form CB, the Exchange Act reporting company would have to file its Form CB on EDGAR while the non-reporting company could file its Form CB on paper.

5. Forms F-X and F-N

We also propose to require that foreign private issuers file electronically two auxiliary forms, Forms F-X and F-N. Form F-X is the form for designating a U.S. agent for service of process that is required for a MJDS filer and specified other foreign filers.⁶⁶ Form F-

N is the form for designating a U.S. agent for service of process by foreign banks and foreign insurance companies when they file registration statements under the Securities Act.⁶⁷

There are two exceptions to the electronic filing requirement proposed for Form F-X.⁶⁸ The first pertains to those foreign issuers that must file Form F-X because they are Form CB filers. Since the proposed amendments only require the filing of Form CBs on EDGAR when the filer or the company that is the subject of a Form CB transaction is an Exchange Act reporting company, we propose the same approach for the Form F-X required to be filed by a foreign company along with a Form CB. The proposed amendments permit, but do not require, the filing of Form F-X on EDGAR if neither the filer nor the Form CB subject company is an Exchange Act reporting company.⁶⁹

The second Form F-X exception pertains to the requirement that a Canadian issuer submit a Form F-X when qualifying an offering statement pursuant to the provisions of Regulation A.⁷⁰ Because Regulation S-T currently requires the submission of Regulation A filings in paper only, the proposed amendments would permit a Canadian Regulation A filer to submit the required Form F-X in paper.⁷¹

As with Form CB, we would amend Form F-X to require the filer to indicate whether it is filing the Form F-X in paper as permitted by the proposed rule. This would facilitate the proper processing of the Form F-X by Commission staff.

6. Exhibits

The proposed amendments would afford to foreign filers the same treatment given to domestic filers regarding exhibits under Rule 102 of

securities registered on a MJDS Securities Act registration statement; a Canadian issuer filing an offering statement under Regulation A [17 CFR 230.251-230.263] or a Form SB-2 registration [17 CFR 239.10]; and a foreign issuer or other non-U.S. person filing Form CB in connection with a tender offer, rights, offering or business combination. See 17 CFR 239.42(d), (e), (f), and (g). In addition, under the Trust Indenture Act, specified Canadian trust companies acting as trustees under an indenture qualified or to be qualified under the Trust Indenture Act must file a Form F-X with the Commission. Trust Indenture Act Rule 260.10A-5(b) [17 CFR 260.10a-5(b)].

⁶⁷ Securities Act Rule 489 [17 CFR 230.489] requires the filing of Form F-N.

⁶⁸ Proposed Rule 101(a)(vii) and 101(b)(8) old Regulation S-T.

⁶⁹ The same reasons that support requiring the filing of Form CB on EDGAR in these instances also support requiring the filing of the accompanying Form F-X in these instances.

⁷⁰ 17 CFR 239.42(f) and 17 CFR 230.263(a).

⁷¹ Proposed Rule 101(a)(viii) of Regulation S-T.

⁵⁷ 17 CFR 240.13d-101.

⁵⁸ 17 CFR 240.13d-102.

⁵⁹ 17 CFR 240.14d-100.

⁶⁰ 17 CFR 240.14d-101.

⁶¹ Similar to our treatment of Form 6-K reports (see Form 6-K General Instruction B), our rules currently treat information and documents furnished under Form CB as not "filed" with the Commission or otherwise subject to the liabilities of Exchange Act Section 18 [15 U.S.C. 78r]. See Form CB General Instructions I(B). The proposed amendments would not alter this treatment.

⁶² See Securities Act Rules 801(a)(4) and 802(a)(3) [17 CFR 230.801(a)(4) and 230.802(a)(3)] and Exchange Act Rules 13e-4(h)(8)(iii), 14d-1(c)(3)(iii), and 14e-2(d) [17 CFR 240.13e-4(h)(8)(iii), 240.14d-1(c)(3)(iii), and 240.14e-2(d)].

⁶³ Proposed Rule 101(a)(vi).

⁶⁴ Proposed Rule 101(b)(7). A non-reporting company could continue to file a Form CB in paper when the subject company to which the Form CB relates is not a reporting company.

⁶⁵ An electronic filer would have to comply with Regulation S-T Rule 306, which governs the treatment of foreign language documents in the EDGAR system. See Part II.C below for a discussion of proposed amendments to Rule 306.

⁶⁶ In addition to a MJDS filer, the following persons must file a Form F-X: a non-U.S. person filing tender offer documents on Schedule 13E-4F, 14D-1F, or 14D-9F; a foreign trustee regarding

Regulation S-T.⁷² We currently do not require a domestic filer to file electronically an exhibit previously filed in paper that is being incorporated by reference into the electronically filed document. As under the current rules, a foreign filer could voluntarily refile the exhibit on EDGAR.⁷³ Upon amending its articles of incorporation or bylaws, a foreign filer would have to restate these documents in electronic format.⁷⁴

The proposed amendments would permit, but not require, a foreign issuer to submit electronically its annual report to security holders on a Form 6-K.⁷⁵ This comports with our current treatment of “glossy” annual reports furnished by domestic companies for the information of the Commission pursuant to Exchange Act Rule 14a-3(c)⁷⁶ or 14c-3(b)⁷⁷ or the requirements of Form 10-K or 10-KSB⁷⁸ under Exchange Act Section 15(d).⁷⁹ A foreign issuer would be able to submit in paper both its Form 6-K and its annual report to security holders attached as an exhibit as long as the sole purpose of the Form 6-K was to provide a copy of this report. If the Form 6-K reported other information in addition to attaching the annual report to security holders, the foreign issuer would have to submit the Form 6-K on EDGAR together with all exhibits, including the annual report to security holders exhibit.

We would amend the cover page of Form 6-K to require the foreign issuer to indicate that it is submitting the Form 6-K in paper solely to provide an attached copy of its annual report to security holders as permitted by proposed Regulation S-T Rule 101(b)(1). This proposed amendment would facilitate the proper processing of the form by Commission staff. We would also add an instruction to Form 6-K regarding the limited circumstances that would permit the filing of the Form 6-K in paper.⁸⁰

Finally, we propose to amend Rule 303(b)⁸¹ of Regulation S-T to provide that if a foreign issuer incorporates by

reference into any electronic filing any portion of an annual or other report to security holders, it must file the portion of the annual or other report to security holders in electronic format as an exhibit to the filing. Again, this comports with the treatment afforded to domestic companies.⁸²

7. Trust Indenture Act Forms

Regulation S-T currently requires the filing on EDGAR of statements and applications regarding trustee eligibility and indenture qualification⁸³ under the Trust Indenture Act.⁸⁴ The proposed amendments would require the filing on EDGAR of

- Forms T-1 and T-2⁸⁵ statements of trustee eligibility if submitted in connection with an indenture for which a foreign issuer is the obligor;
- Form T-3⁸⁶ to qualify an indenture covering a foreign issuer's securities sold in offerings that are exempt from registration under the Securities Act;⁸⁷ and
- Form T-6⁸⁸ used by foreign corporations and other foreign business entities to obtain authorization to act as a sole trustee under an indenture qualified or to be qualified under the Trust Indenture Act.

8. Hardship Exemptions

The proposed amendments do not alter the provisions governing the availability of hardship exemptions under Regulation S-T. A foreign issuer that meets the requirements of Section 201 or 202 of Regulation S-T⁸⁹ may obtain a temporary or continuing hardship exemption from the EDGAR filing requirements.⁹⁰ As is the case

with domestic filers, we expect to grant hardship exemptions for foreign issuers infrequently.⁹¹ Moreover, as is the case with domestic filers, our filing desk will not accept in paper format any filing submitted by a foreign issuer that must be filed electronically pursuant to Regulation S-T Items 100 and 101 unless the filing satisfies the requirements for a temporary or continuing hardship exemption under Regulation S-T.⁹²

9. Comment Solicited

We solicit comment on the scope of the proposed amendments. Here and throughout the release, when we solicit comment, we are interested in hearing from all interested parties, including members of the investing public, filers and members of the financial community. We are further interested in learning from all parties what aspects of the rule proposals they deem essential, what aspects they believe are preferred but not essential, and what aspects they believe should be modified.

Should we include both foreign private issuers and foreign governments in the mandated EDGAR regime, as proposed? Or should we continue to allow foreign governments to file their Schedule B registration statements and Exchange Act documents in paper? If we extend the electronic filing requirements to both foreign private issuers and foreign governments, are there some foreign issuer forms or documents that in whole or in part should be exempt from these requirements?⁹³

Should we require, rather than permit as proposed, the submission on EDGAR of a Form 6-K used solely to provide a foreign issuer's annual report to security holders? When a foreign issuer uses a Form 6-K to provide its annual report to security holders as well as to disclose additional information, should we permit the foreign issuer to submit its annual report exhibit in paper rather than require it to submit this exhibit

⁸² See the current version of Regulation S-T Rule 303(b) and Note 2 of General Instruction G to the Form 10-K annual report.

⁸³ Regulation S-T Rule 101(a)(1)(ii) [17 CFR 232.101(a)(1)(ii)].

⁸⁴ 15 U.S.C. 77aaa *et seq.* In contrast, Regulation S-T Rule 101(c)(5) [17 CFR 232.101(c)(5)] currently requires the filing on paper of applications for exemptive relief pursuant to section 304 and 310 of the Trust Indenture Act [15 U.S.C. 77ddd abd 77jjj, respectively]. This provision applies to both domestic and foreign filers and would remain the same under our proposed amendments.

⁸⁵ 17 CFR 269.1 and 269.2.

⁸⁶ 17 CFR 269.3.

⁸⁷ Rule a-1 [17 CFR 260.7a-1] under Trust Indenture Act Section 307(a) [15 U.S.C. 77ggg] authorizes the use of Form T-3.

⁸⁸ 17 CFR 269.9.

⁸⁹ 17 CFR 232.201 or 232.202. An EDGAR filer may obtain a temporary hardship exemption if it experience unanticipated technical difficulties that prevent the timely preparation and submission of an electronic filing. See 17 CFR 232.201(a). An EDGAR filer may apply for a continuing hardship exemption if it cannot file all of part of filing without undue or expense. See 17 CFR 232.202(a).

⁹⁰ A filer obtains a temporary hardship exemption by filing a properly legended paper copy of the filing under cover of Form TH pursuant to

Regulation S-T Rule 201. In contrast to this self-executing process, a filer can only obtain exemption by submitting a written application pursuant to Regulation S-T Rule 202, upon which the Commission staff must then act pursuant to delegated authority.

⁹¹ In addition to pursuing a hardship exemption, a filer that has in good faith attempted to submit a filing in a timely manner but has experienced a delay due to technical conditions beyond its control request a filing date adjustment pursuant to Regulation S-T Rule 13(b) [17 CFR 232.13(b)].

⁹² Rule 14 of Regulation S-T [17 CFR 232.14].

⁹³ See, for example, Part C below for a discussion of and comment solicited about our current and proposed treatment of a foreign government's annual budget exhibit to Forms 18 and 18-K.

⁷² 17 CFR 232.102.

⁷³ Rule 102(a) of the Regulations S-T [17 CFR 232.102(a)].

⁷⁴ This is consistent with the treatment of domestic issuers. Regulation S-T Rule 102(c) [17 CFR 232.102(c)].

⁷⁵ Proposed amendment to Regulations S-T Rule 101(b)(1) [17 CFR 232.101(b)(1)]. The proposed amendment also applies to MJDS filers.

⁷⁶ 17 CFR 240.14a-3(c).

⁷⁷ 17 CFR 240.14c-3(b).

⁷⁸ 17 CFR 249.310 and 310.b.

⁷⁹ 15 U.S.C. 78o. See, example, Form 10-K, the section following “Signatures” entitled “Supplemental Information to be Furnished with Reports Pursuant to Section 15(d) of the Act * * *

⁸⁰ See proposed General Instruction D to the Form 6-K.

⁸¹ 17 CFR 232.303(b).

electronically, as proposed?⁹⁴ Are there other exhibits to or parts of a Form 6-K or other document filed by a foreign issuer that we should permit, but not require, to be submitted electronically? For example, many foreign companies submit under cover of Form 6-K heavily formatted, statutory reports to their home country securities regulators. The proposed amendments would require the submission of these statutory reports in electronic format. We understand that many foreign companies are already preparing these statutory reports electronically. How widespread is this practice? Should we permit, but not require, the electronic submission of these statutory reports? Are investors interested in gaining electronic access to exhibits attached to a Form 6-K?

Should we include all Form F-6s in the mandated EDGAR system, as proposed? For example, should we require the electronic filing of a Form F-6 even when the foreign private issuer whose securities underlie the ADRs that are the subject of the Form F-6 is not an Exchange Act reporting company and has only filed paper documents with the Commission pursuant to the Exchange Act Rule 12g3-2(b) exemption?⁹⁵

Should we require the electronic filing of all of the MJDS forms, as proposed? Are there parts of or exhibits to any of the MJDS forms that we should treat as permitted but not required items to be filed on EDGAR? If the applicable Canadian securities administrator has permitted the filing in paper of an exhibit in Canada, should we also permit the filing of this exhibit in paper if submitted as part of a MJDS filing?

Instead of permitting some Form CBs to be filed in paper, as proposed, are there compelling reasons to require the electronic filing of all Form CBs, even those that are filed by non-Exchange Act reporting companies regarding transactions with other non-Exchange Act reporting companies? What are the costs and burdens that a non-Exchange Act reporting company would incur if we required it to file a Form CB on EDGAR? Are there any Form CB transactions where the costs of filing electronically would not be justified?

Should we require, as proposed, the filing on EDGAR of a Form CB that pertains to a transaction with a foreign

private issuer that is an Exchange Act reporting company even when the filer is a non-Exchange Act reporting company? In a competitive bidding situation for the securities of a non-Exchange Act reporting company, should we require a bidder that is an Exchange Act reporting company to file the Form CB on EDGAR, as proposed, even though a non-reporting bidder could file its Form CB on paper? Would any of the above proposed requirements discourage the use of the Form CB and the extension of offers to U.S. persons pursuant to the exemptive Securities Act and tender offer rules?

Should we require the filing on EDGAR of all Trust Indenture Act forms submitted in connection with an indenture under which a foreign private issuer is an obligor? For example, should we make an exception for filers of Form T-3 that pertain to debt securities not required to be registered under the Securities Act if the foreign issuer is not an Exchange Act reporting company?⁹⁶

C. Electronic Filing Hours

EDGAR filers that submit their documents to the Commission by direct transmission, either through the Internet or by dial-up modem, can take advantage of longer filing hours than those provided for paper filers or issuers filing by magnetic cartridge. The Commission accepts EDGAR filings by direct transmission from 8 a.m. until 10 p.m. Eastern Standard Time or Eastern Daylight Saving Time, whichever is in effect, every day except for Saturdays, Sundays and federal holidays.⁹⁷ In contrast, paper and magnetic cartridge filings must be submitted by 5:30 p.m.⁹⁸ Most EDGAR filings submitted by direct transmission after 5:30 p.m. receive the next day's date as the official date of filing.⁹⁹

We are not currently proposing to change the Commission's filing hours for electronic filings made by direct transmission. Foreign issuers currently filing electronically generally do not appear to have difficulty making filings in a timely fashion. In many cases, they use filing agents based in the United States to submit their filings.

Nevertheless, we request comment on whether the current EDGAR filing hours could prove to be an undue burden on foreign companies, some of whose business hours overlap minimally, or do not overlap at all, with the EDGAR filing hours. We invite comment on the extent to which extending the EDGAR filing hours, if it proved feasible, would assist foreign or domestic filers in different time zones in complying with their electronic filing obligations. We also request data to quantify both the burden imposed by the current EDGAR filing hours and the value of extending these hours for foreign and domestic issuers operating in different time zones.

D. Treatment of Foreign Language Documents

Under our current rules, with one significant difference, both EDGAR and paper filers must file their Securities Act and Exchange Act registration statements and Exchange Act reports in the English language.¹⁰⁰ This substantially similar treatment ensures that investors in the United States, as well as Commission staff and members of the U.S. financial community, will be able to understand the securities documents of any issuer that offers to sell registered securities in or otherwise seeks to avail itself of the U.S. capital markets.

The one significant difference between the EDGAR and paper filing rules regarding the use of foreign language documents is that Regulation S-T Rule 306 forbids the filing on EDGAR of any foreign language document without exception. In contrast, the corresponding paper filing rules permit the filing of a foreign language document as an exhibit to or other part of a registration statement or report as long as the foreign language document is accompanied by a "summary, version or translation in the English language." For the reasons discussed below, we propose to amend the paper filing rules to conform to Regulation S-T Rule 306. We also propose minor modifications to Rule 306.

1. Treatment Under Rule 306, the Electronic Filing Rule

Regulation S-T Rule 306 broadly prohibits the filing of foreign language documents in electronic format. Thus, under Rule 306, the body of a registration statement, prospectus, schedule or report as well as exhibits or other documents filed with the

⁹⁴ If so, we would have to amend Form SE (17 CFR 239.64, 249.444, 259.603, 269.8 and 274.403), the form used by electronic filers to submit in paper documents specified in Rule 311 of Regulation S-T, to provide for its use specifically for this purpose.

⁹⁵ 17 CFR 240.12g3-2(b). As explained below, both currently and under the proposed rule amendments, a foreign private issuer may submit only on paper an application and supporting materials pursuant to Exchange Act Rule 12g3-2(b).

⁹⁶ See Trust Indenture Act Section 307(a) and Trust Indenture Act Rule 7a-1.

⁹⁷ Regulation S-T Rule 12(c) [17 CFR 232.12(c)].

⁹⁸ Regulation S-T Rule 12(b) [17 CFR 232.12(b)].

⁹⁹ Regulation S-T Rule 13(a)(2) [17 CFR 232.13(a)(2)]. The one exception pertains to filings made pursuant to Securities Act Rule 462(b) [17 CFR 230.462(b)], which automatically become effective upon filing. If made between 5:30 p.m. and 10 p.m., these Rule 462(b) filings are deemed filed on the same business day. See Regulation S-T Rule 13(a)(3) [17 CFR 232.13(a)(3)].

¹⁰⁰ See Regulation S-T Rule 306, Securities Act Rule 403(c) [17 CFR 230.403(c)] and Exchange Act Rule 12b-12(d) [17 CFR 240.12b-12(d)].

registration statement, prospectus, schedule or report must all be in the English language. If a required document is in a foreign language, a company or other party must file instead on EDGAR a fair and accurate English translation of the foreign language document.¹⁰¹ Filers must also include in each English language translation a written representation signed by a designated officer that the English version document is a fair and accurate representation of the foreign language document.

The proposed amendments would not substantively alter our current treatment of foreign language documents under Rule 306. Its English translation requirement ensures that most investors and other interested parties in the U.S. market will be able to read all material information about a filing foreign issuer. Since investor understanding is a prerequisite to the development of a market for a foreign issuer's securities in the United States, a foreign issuer benefits by translating into English all of its securities documents, including exhibits, filed with the Commission. Our treatment of foreign language documents also reflects the practical limitations of the EDGAR software, which currently only recognizes a limited number of foreign language symbols and characters.¹⁰²

We propose, however, to make minor revisions to Rule 306, for example, to clarify that all electronic submissions¹⁰³ as well as filings must be in the English language. This proposed language reflects the fact that, under our current rules, some forms, such as Form 6-K and Form CB, are not deemed filed with the Commission for the purpose of Exchange Act Section 18. A party must nevertheless electronically submit these forms and accompanying documents in the English language.

The proposed amendments would also correct a discrepancy between current Rule 306 and Form 18-K's annual budget exhibit requirement imposed on foreign governments. Form 18-K instructs a foreign government to provide a copy of its latest annual

budget while explicitly informing the filer that it need not provide a corresponding English translation.¹⁰⁴ Thus, when filing Form 18-K in paper, a foreign government may satisfy this instruction by providing a copy of the foreign language version of its latest annual budget. In contrast, if filing Form 18-K electronically, under the current version of Rule 306, a foreign government cannot file in electronic format the foreign language version of its latest annual budget. Yet, as an electronic filer, it also cannot submit a copy of the foreign language version in paper because Form SE, which is the form used by electronic filers to submit a document in paper, does not currently allow for this use.¹⁰⁵ Rule 306 provides instead that if no English translation of the budget is available, it need not be filed at all.¹⁰⁶

Consequently, under the current rules, a foreign government that has not prepared an English translation of its latest annual budget need not submit its annual budget as an exhibit on EDGAR, and cannot submit it in paper, despite the requirements of Form 18-K. In order to correct this anomaly, we propose to amend Rule 306 to require a foreign government or political subdivision to file its latest annual budget in a foreign language in paper under cover of Form SE if no English translation is available.¹⁰⁷ We further propose to amend Rule 311 to allow the use of Form SE specifically for this purpose.¹⁰⁸

2. Elimination of the Summary Option Under Rules 403(c) and 12b-12(d), the Rules for Paper Filings Submitted Under a Hardship Exemption or Rule 101 of Regulation S-T

After adoption of our proposed mandated EDGAR regime for foreign issuers, a filer could only submit documents in paper to the Commission pursuant to a hardship exemption under Regulation S-T Rules 201 or 202 or in the limited circumstances recognized by Rule 101(b) or (c).¹⁰⁹ In these few instances a filer would have to abide by Securities Act Rule 403(c) or Exchange

Act Rule 12b-12(d), the rules governing the treatment of foreign language documents for paper filings. Unlike Regulation S-T Rule 306, these rules permit a filer to submit a foreign language document as an exhibit or other part of the filing, but not in the body of the filing, as long as it is accompanied by a "summary, version or translation in the English language." We propose to amend Securities Act Rule 403(c) and Exchange Act Rule 12b-12(d) to eliminate the reference to an English language summary or version for the following reasons.¹¹⁰

First, the primary reason for mandating the English language translation of foreign language documents that must be filed electronically—ensuring investor understanding of the foreign issuer in the United States—also compels requiring the translation in English of exhibits and other documents filed with the Commission in paper.¹¹¹ Elimination of the "English summary" option would also reflect the staff's experience that many of the summaries submitted have been too brief and too general. Adoption of the same "English translation" standard for all filed documents also would ensure that electronic filers, which will constitute the vast majority of filers, will not be treated more stringently than paper filers. Moreover, elimination of the reference to "version" would remove a term that is vague and confusing.

Further supporting the elimination of the "English summary or version" option for paper filers is the fact that the option has limited practical utility. In practice, the Commission staff has interpreted the paper filing rules restrictively to permit English summaries or versions only in some circumstances. For example, the staff has typically not permitted summaries or versions of exhibits that, in the staff's view, are too important to present in an abridged fashion. These exhibits include articles of incorporation, whether original or restated, memoranda of association, bylaws, instruments defining the rights of security holders, voting agreements, and exhibits

¹⁰¹ Rule 306(a) [17 CFR 232.306(a)].

¹⁰² For this reason, Rule 306(b) [17 CFR 232.306(b)] requires an electronic filer to express foreign currency denominations in words or letters rather than representative symbols unless the electronic filing is in HTML. In that case, the EDGAR filing may include any representative foreign currency symbol specified in the EDGAR Filer Manual. The proposed amendments would leave this provision intact.

¹⁰³ Regulation S-T Rule 11 (17 CFR 232.11) defines "electronic submission" as any document, such as a filing or correspondence, or series of documents transmitted or delivered to the Commission in electronic format.

¹⁰⁴ Form 18-K, Exhibit Instructions, paragraph (c). This reflects concerns that the typically lengthy annual budget could be costly to translate.

¹⁰⁵ See Regulation S-T Rule 311.

¹⁰⁶ See the Note to Regulation S-T Rule 306(a). As provided in this Note, the Commission staff currently reserves the right to review a copy of the annual budget upon request.

¹⁰⁷ Proposed Rule 306(b).

¹⁰⁸ Proposed Rule 311(f).

¹⁰⁹ For example, under the proposed amendment to Rule 101(b), a foreign issuer could submit in paper its annual report to security holders attached to a Form 6-K. A filer could also submit a Form CB in paper if neither company involved was an Exchange Act reporting company.

¹¹⁰ Foreign issuers that currently file in paper will not be able to submit a summary of a foreign language document following adoption of our proposed amendments since, as mandated EDGAR filers, they will be subject to Regulation S-T Rule 306, which requires an English translation of an entire foreign language document.

¹¹¹ For this reason, we currently require Form CB filers to submit English translations of all attached home country documents required to be sent to U.S. security holders or published in the United States. The proposed amendments would continue this requirement whether the Form CB is filed electronically or in paper.

containing financial statements. This list comprises most of the exhibits required for a Form 20-F registration statement or annual report.

Current Commission staff practice also precludes the summarizing of a material contract exhibit or other document for which a filer is seeking confidential treatment in whole or part pursuant to Rule 83 of the Commission's rules concerning information and requests,¹¹² Securities Act Rule 406¹¹³ or Exchange Act Rule 24b-2.¹¹⁴ Regulation S-T requires the submission of all confidential treatment requests and supporting documents to be in paper only.¹¹⁵ The staff does not permit a confidential treatment applicant to submit in paper an English summary or version of a foreign language exhibit that is the subject of the confidential treatment request. A line by line translation of the entire document is necessary to enable the Commission's staff to determine whether to grant the filer's confidential treatment request. A filer cannot submit a summary or abridged version of a foreign language document that is the subject of a confidential treatment request either as a substitute for the publicly filed, redacted version or the confidentially submitted, unredacted version.¹¹⁶

In addition to eliminating the reference to an English "summary" or "version," the proposed amendments would adopt the written representation requirement of Regulation S-T Rule 306 for paper filings. Both amended Securities Act Rule 403(c) and Exchange Act Rule 12b-12(d) would require a paper filer to include in any submitted English translation of a foreign language document a written representation, signed by the paper filer's designated officer or official, that the submission was a fair and accurate translation of the foreign language document. This written representation requirement should help to ensure the accuracy of any translated document filed in paper.

The proposed amendment of Exchange Act Rule 12b-12(d) also would adopt the "annual budget" exception of Regulation S-T Rule 306 for paper filings. A foreign government filing a Form 18 or 18-K would have to submit an English translation of its latest annual budget only if one were available. If a foreign government lacked an available English translation, it

would have to file a paper copy of the foreign language version of its latest annual budget.¹¹⁷

3. Foreign Language Instructions on Form 6-K and MJDS Forms

We also propose a conforming amendment to Form 6-K's General Instruction D, which pertains to English translation requirements for documents submitted under cover of Form 6-K. The first paragraph currently provides that, pursuant to Exchange Act Rule 12b-12(d), a filer must provide an English translation, version or summary of press releases, communications or other materials distributed to holders of securities for which a filer has reporting obligations under the Exchange Act and which it must furnish under cover of Form 6-K. The second paragraph then provides that a filer need not furnish any other documents, including offering circulars relating solely to foreign offerings, unless it has prepared an English translation, version or summary. This paragraph further instructs that if the filer has not prepared an English translation, version or summary, it can submit a brief description of the document although there is no requirement to submit a copy of the original language document.

In light of the proposed amendments to Rule 306, and in an attempt to achieve uniformity in the treatment of foreign language documents, we propose to remove most of General Instruction D. We would replace it with the instruction that, under Regulation S-T Rule 306, an electronic filer must provide an English translation of any foreign language document that is the subject of the Form 6-K report. The instruction would then refer filers that are filing on paper under a hardship exemption to the similar requirements of Exchange Act Rule 12b-12(d).

We further propose to amend an instruction regarding foreign language documents that currently appears on all of the Securities Act registration statements under the MJDS. This instruction currently states that if any part of the MJDS prospectus is in a language other than English, the MJDS filer must submit an English translation along with the prospectus. The instruction also requires a MJDS filer to submit an English translation or summary of any foreign language exhibit, paper or other document filed

as part of a MJDS registration statement or amendment.¹¹⁸

We initially adopted this instruction to accommodate Canadian filers such as Quebec companies that wished to publish parts of their Canadian prospectuses or exhibits in French. However, this instruction has rarely been used if at all. Moreover, in light of our proposed inclusion of MJDS forms in mandated EDGAR, and our proposed amendment of Rule 306, we propose to amend this MJDS instruction as follows.

First, the proposed revised instruction would state that an electronic filer may only submit the registration statement in the English language pursuant to Regulation S-T Rule 306. If any part of the body of the Canadian registration statement is in a language other than English, the filer must provide an English translation instead of the foreign language version when filing the MJDS document with the Commission in electronic format. The proposed amended instruction would further provide that

- If an electronic filer wishes to submit a foreign language exhibit or other supplementary document with the registration statement, it must instead provide an English translation of the exhibit or other document as required by Regulation S-T Rule 306; and
- if filing the registration statement in paper under a hardship exemption under Regulation S-T Rules 201 or 202 or as otherwise permitted by the Commission, a filer must file a registration statement that complies with Securities Act Rule 403(c).

4. Comment Solicited

We solicit comment on our proposed amendments to Regulation S-T Rules 306 and 311 and Securities Act Rule 403(c) and Exchange Act Rule 12b-12(d) as well as to the foreign language instruction to the MJDS forms and to Form 6-K. Should we preclude filers from providing English summaries or versions of foreign language exhibits, as proposed? What are the costs expected to affect a foreign issuer as a result of our elimination of the summary option? Because of these expected costs, should we continue to permit paper filers to provide English summaries of specified exhibits? If so, what exhibits are appropriate subjects to be summarized and why? Are there some exhibits that are too important to be summarized? If so, what are they?

Are there conditions that would render a summary a suitable substitute

¹¹² 17 CFR 200.83.

¹¹³ 17 CFR 230.406.

¹¹⁴ 17 CFR 240.24b-2.

¹¹⁵ Rule 101(c)(1)(i) [17 CFR 232.101(c)(1)(i)].

¹¹⁶ See revised Staff Legal Bulletin No. 1, dated July 11, 2001, published by the Division of Corporation Finance, at Section II(D)(3), which is available at www.sec.gov/interp/legalslbf1r.htm.

¹¹⁷ This provision is consistent with proposed Rule 306(b). The proposed amendment of Exchange Act Rule 12b-12(d) would also refer both to filings and submissions, similar to proposed Rule 306(a).

¹¹⁸ See Form F-7, General Instruction, II.G; Form F-8, General Instruction IV.I; Form F-9 General Instruction II.I; Form F-10, General Instruction II.J; and Form F-80, General Instruction IV. I.

for an unabridged version? For example, should we permit a filer to provide a summary if it could not obtain a fair and accurate English translation without undue effort and expense? Do foreign filers have difficulty finding competent translation services? Are there other conditions that would render the filing of a summary proper? Should we amend Regulation S-T Rule 306 to allow electronic filers to submit English summaries of specified exhibits? If so, should we also amend Form SE to enable filers to submit a paper copy of a foreign language document when electronically filing an English summary of that document? Or is the summary of a foreign language document of limited practical utility for most U.S. investors? Should any rule permitting the use of a summary provide specific guidance as to when a summary is or is not acceptable? What guidance would be useful?

Should we require a foreign government filing electronically to submit the foreign language version of its latest annual budget in paper under cover of Form SE if no English translation is available, as proposed? Or should we continue to permit a foreign government filing electronically to omit its latest annual budget exhibit to its Form 18 or 18-K if no English translation is available? Conversely, should we require an English translation of the budget or of its material features?

Should we adopt the same requirements governing the treatment of foreign language documents for filers filing electronically and those filing in paper as proposed? In particular, should we adopt for paper filers Rule 306's requirement that a designated official of the filer attest in writing to the accuracy of an English translation of an exhibit? Should we eliminate the written representation requirement for both electronic and paper filers? Do the antifraud provisions of the federal securities laws afford investors sufficient protection from and deter the making of material misrepresentations or omissions concerning English translations of foreign language documents?

Regarding our proposed revisions to the MJDS "foreign language" instruction, should we require that MJDS electronic filers abide by amended Rule 306, as proposed? Or are there any circumstances that would justify exempting a MJDS filer from the English translation requirement and allowing the submission of an English summary instead? Similarly, are there circumstances that we should specify on Form 6-K that would permit the use of

an English summary instead of a translation?

E. Amendment To Require Electronic Filing Instruction for Schedule B Registrants That Are Incorporating by Reference

Forms F-2, F-3 and F-4¹¹⁹ and their domestic counterparts, Forms S-2, S-3 and S-4¹²⁰ enable qualified registrants to incorporate by reference Exchange Act reports as well as exhibits and amendments to these reports into their registration statements. Each of these forms requires a registrant to identify the report being incorporated by reference and to state that, upon the request of any person that has received a prospectus, the registrant will provide a copy of any information incorporated by reference that has not been delivered with the prospectus. In conjunction with these requirements, each of these forms bears an "electronic filing" instruction that requires a registrant to disclose in a prospectus information concerning the electronic availability of a registrant's reports and other information on the Commission's website. A registrant is further encouraged to give its own Internet address, if available.¹²¹

A foreign government or political subdivision may also incorporate by reference its Form 18-K annual report and any exhibit or subsequent amendment to this report into a Schedule B registration statement if, upon application to the Division of Corporation Finance, the Division does not object to this incorporation by reference. Because there is no form for a Schedule B registration statement, Division staff has outlined procedures for a Schedule B filer that seeks to incorporate by reference.¹²² These procedures are substantially similar to the requirements established for domestic and foreign private issuers that seek to incorporate by reference.¹²³

Currently there is no substantially similar "electronic filing" instruction for a Schedule B registration statement. We propose to amend Securities Act

Rule 493 to require that a foreign government intending to incorporate by reference its Form 18-K annual report provide the following information in its electronically filed Schedule B registration statement:

- The foreign filer must state that the SEC maintains an Internet site that contains reports, statements and other information regarding issuers that file electronically with the SEC; and
- The foreign filer must disclose the address for the SEC Internet site at (<http://www.sec.gov>).

The instruction would also encourage the foreign filer to provide its own Internet address, if available.¹²⁴

The proposed rule would also state that a foreign government must file its Schedule B registration statement on EDGAR unless it has obtained a hardship exemption pursuant to Regulation S-T Rule 201 or 202.¹²⁵ Since foreign governments have thus far only filed their Schedule B registration statements in paper, we believe that this provision is a useful reminder of their new EDGAR filing status.

F. Treatment of Supranational Entities' Reports

Regulation S-T currently permits, but does not require, the International Bank for Reconstruction and Development ("World Bank") to file on EDGAR its annual and periodic reports and its reports concerning proposed distributions of its primary obligations that the World Bank must submit to the Commission.¹²⁶ The proposed amendments do not alter the voluntary electronic filing treatment of this supranational entity. However, we propose to amend Section 101 of Regulation S-T to enable other supranational entities that have Commission reporting obligations to file voluntarily their annual, periodic and transactional reports on EDGAR.¹²⁷ These additional supranational entities consist of the Inter-American Development Bank,¹²⁸ the Asian

¹¹⁹ 17 CFR 239.32, 239.33 and 239.34.

¹²⁰ 17 CFR 239.12, 239.13 and 239.25.

¹²¹ See, for example, Form F-3, Items 6(d) and 6(e).

¹²² A Schedule B filer that seeks to incorporate by reference must follow the staff's procedures outlined in a no-action letter that relates specifically to that filer. See, for example, Province of Nova Scotia no-action letter, dated November 1, 1999; Republic of Turkey no-action letter, dated October 19, 1999; and Republic of South Africa no-action letter, dated October 4, 1999.

¹²³ These requirements include stating that the registrant will furnish upon request a copy of any report, including exhibits and amendments, incorporated by reference. Province of Nova Scotia no-action letter.

¹²⁴ Proposed Securities Act Rule 493(c). See the Commission's interpretive release entitled "Use of Electronic Media," SEC Release No. 33-7856 (April 28, 2000) [65 FR 25843] for guidance on, among other matters, issues arising from the use of hyperlinks in connection with securities documents posted on a company's website.

¹²⁵ Proposed Securities Act Rule 493(b).

¹²⁶ Regulation S-T Rule 101(b)(6) [17 CFR 232.101(b)(6)]. The World Bank must submit the reports under the Rules and Regulations Pursuant to Section 15(a) of the Bretton Woods Agreements Act [17 CFR 285] and, in particular, 17 CFR 285.2 and 285.3.

¹²⁷ Proposed Rule 101(b)(6)(i) through (vi).

¹²⁸ See General Rules and Regulations Pursuant to Section 11(a) of the Inter-American Development Bank Act [17 CFR 286].

Development Bank,¹²⁹ the African Development Bank,¹³⁰ the International Finance Corporation,¹³¹ and the European Bank for Reconstruction and Development.¹³² We also intend to amend the EDGAR system and the EDGAR Filer Manual to create electronic form types for these reports to the extent that they do not already exist.

We solicit comment regarding our treatment of supranational entities' reports under the proposed amendments. Should we require, rather than permit, the above supranational entities to file their reports on EDGAR?

G. Documents Submitted Pursuant to Exchange Act Rule 12g3-2(b)

The proposed amendments would not alter our current practice of requiring foreign private issuers to submit on paper their applications and supporting documents for the exemption pursuant to Exchange Act Rule 12g3-2(b).¹³³ Because a foreign company that has received a Rule 12g3-2(b) exemption is afforded only limited access to U.S. capital markets and is not an Exchange Act reporting company, there is less public interest in, and less need for electronic access to, the submissions that a Rule 12g3-2(b) company must make to the Commission in order to maintain its exempt reporting status. This treatment is consistent with, and analogous to, our current treatment of applications for an exemption from Exchange Act reporting obligations filed pursuant to Exchange Act Section 12(h).¹³⁴

We solicit comment regarding our treatment of Rule 12g3-2(b) documents.

Should we permit, but not require, foreign private issuers to submit their Rule 12g3-2(b) applications and supporting documents on EDGAR? Should we require the electronic filing of Rule 12g3-2(b) applications and supporting documents?

H. Transition Period

We anticipate that the amendments would become effective for filings made four months from their date of adoption. This four-month transition period would give foreign issuers enough time to learn the Commission's rules and procedures regarding EDGAR and, if they have not already done so, to train their employees or hire a filing agent that is familiar with our EDGAR system. This transition period would be particularly helpful to foreign issuers that are not yet accustomed to filing their securities documents electronically in some format. Foreign issuers could of course voluntarily file their securities documents on EDGAR during this transition period, and test filings would be encouraged.¹³⁵ We solicit comment on whether the proposed four-month period is appropriate. If not, is it too long or too short, and why?

We currently intend to permit registrants that have filed their registration statements in paper before the proposed rules' effective date to continue to file their pre-effective amendments in paper for a limited period of time, for example, one month following the proposed rules' effective date until their registration statements are effective. If the registration statement becomes effective before this limited period has expired, a filer could also file in paper its prospectus submitted pursuant to Securities Act Rule 430A.¹³⁶ However, once the limited period has ended, we anticipate that a filer would have to submit any amendment, whether pre-effective or post-effective, or prospectus supplement in electronic format.

We solicit comment on whether to permit this paper filing of registration statements for a limited time after the effective date of the proposed rules. Should we permit it for a period of one month, two months, or more than two months following the rules' effective date? If you believe that a longer period is necessary, for how long and why? Should we require the electronic filing of the last submitted version of the registration statement before

effectiveness? Should we permit the paper filing of the prospectus filed pursuant to Rule 430A of the Securities Act, as proposed?

III. Cost-Benefit Analysis

We expect that the proposed amendments to Regulation S-T will achieve the same benefits for investors, foreign issuers and others realized when we adopted the mandated EDGAR filing system for domestic filers in 1993. At that time we excluded foreign filers from mandated EDGAR filing because we believed that they would incur higher costs from the implementation of EDGAR than those faced by domestic filers. Since then significant technological advances have occurred that, together with the recent modernization of EDGAR, should reduce EDGAR costs for foreign filers. Because of these developments, we believe that it is now appropriate to include foreign filers in our mandated EDGAR system.

A. Expected Benefits

The proposed amendments should benefit investors, financial analysts and others by increasing the efficiency of retrieving and disseminating information about foreign issuers that file registration statements, periodic reports and other documents with the Commission. The mandated electronic transmission of foreign issuers' securities documents will enable investors to access more quickly registration statements, annual and periodic reports and other filings containing detailed information about foreign issuers. Instead of having to come in person or through an agent to the Commission's public reference room¹³⁷ to conduct a search for a particular foreign issuer filing that is in paper or microfiche, an investor will be able to find and review a foreign issuer filing on any computer with an Internet connection by accessing the EDGAR system through the Commission's website or through a third party website that links to EDGAR. The proposed amendments will also enable financial analysts and others to retrieve, analyze and disseminate more rapidly information about reporting foreign issuers. As a result, not only should an investor be able to form more efficient investment decisions about particular foreign issuers, but foreign issuers should benefit from increased market exposure for their securities in the United States.

¹²⁹ See General Rules and Regulations Pursuant to Section 11(a) of the Asian Development Bank Act [17 CFR 287].

¹³⁰ See General Rules and Regulations Pursuant to Section 9(a) of the African Development Bank Act [17 CFR 288].

¹³¹ See General Rules and Regulations Pursuant to Section 13(a) of the International Finance Corporation Act [17 CFR 289].

¹³² See General Rules and Regulations Pursuant to Section 9(a) of the European Bank for Reconstruction and Development Act [17 CFR 290].

¹³³ 17 CFR 240.12g3-2(b). This rule provides an exemption from Section 12(g) of the Exchange Act [15 U.S.C. 78l(g)] for foreign private issuers that have not chosen to access the U.S. capital markets. After providing the Commission with information about its home country disclosure requirements and U.S. shareholder information, a qualifying applicant receives an exemption from Exchange Act reporting upon the condition that it furnish to the Commission on an ongoing basis its securities documents required to be furnished or that it furnishes voluntarily in its home country.

¹³⁴ 15 U.S.C. 78l(h). We require the filing of Section 12(h) exemptive applications in paper pursuant to Regulation S-T Rule 101(c)(17) [17 CFR 232.101(c)(17)]. Although the basis for Exchange Act Rule 12g3-2(b) is Exchange Act Section 12(g)(3) [15 U.S.C. 78l(g)(3)], this statutory section is analogous to Exchange Act Section 12(h).

¹³⁵ See Section 5.11.4 of the EDGAR Filer Manual (Release 7.5.b), Volume I for further information about test filings on EDGAR.

¹³⁶ 17 CFR 230.430A.

¹³⁷ The Commission's public reference room is located in its Washington, D.C. headquarters.

Foreign issuers should further benefit from the increased efficiencies in the filing process resulting from the proposed amendments. By electronically transmitting their securities documents directly to the Commission, foreign issuers will avoid the uncertainties and delays that can occur with the manual delivery of paper filings. Foreign issuers also will benefit from no longer having to submit multiple copies of paper documents to the Commission. Foreign issuers will further benefit from the Commission's longer filing hours for the direct electronic transmission of documents, which will enable foreign issuers to file their securities documents directly via EDGAR until 10 p.m. Eastern Standard Time or Eastern Daylight Saving Time, whichever is in effect.¹³⁸

Both foreign issuers and investors should benefit from increased efficiencies in the Commission's storage, retrieval, and analysis of foreign issuer filings, which are expected to result from the proposed amendments. Because the Commission's staff will be able to retrieve and analyze information about foreign filers more readily than under our current paper system, mandated electronic filing for foreign issuers should facilitate both the staff's review of a particular foreign issuer's registration statement or report and its study of issues affecting most foreign filers. For example, the proposed amendments should enable Commission staff to access quickly a foreign registrant's Exchange Act reports that have been incorporated by reference into a Securities Act registration statement that is the subject of review. Because Commission staff must review these incorporated reports when conducting a full review of the Securities Act document, electronic access to all relevant reports should facilitate the timely completion of the review process for a foreign registrant.

The proposed amendments would also enable Commission staff to access rapidly registration statements, reports and related correspondence pertaining to other foreign issuers that are in the same geographic region or industry group as a foreign registrant. This electronic access would foster the development of consistent comments on issues that are common to foreign registrants. This should result in better disclosure to the benefit of foreign issuers and the investing public alike.

Investors and members of the financial community should also benefit from the proposed amendments' elimination of the rule permitting a

paper filer to submit an English language summary of a foreign language exhibit. They also will similarly benefit from the application of Rule 306, which also does not permit a summary of a foreign language document, to foreign issuers that were former paper filers but, following adoption of the proposed amendments, have become mandated EDGAR filers. By requiring former and current paper filers to submit an English translation of the entire foreign language document, the proposed amendments would help ensure that all material information about a foreign company is available to investors and others.

We are aware that many foreign issuers already post their financial statements in electronic format on their websites.¹³⁹ Nevertheless, we believe that mandated EDGAR filing for foreign issuers is beneficial to investors for the following reasons.

- Mandated EDGAR filing for foreign issuers would result in the Commission's creation of a central electronic repository for foreign filings that is free to anyone that has access to a computer linked to the Internet.

- Some foreign issuers have only posted on their websites financial statements that meet their home country requirements and not the Commission's requirements.

- Many foreign issuers have electronically formatted their financial statements only in PDF for viewing on their websites. PDF's search capabilities are not as extensive as those provided by the version of HTML that EDGAR filers may use to format electronically their documents.¹⁴⁰ Moreover, since HTML is a dominant language of the Internet, Commission staff will be able to upgrade EDGAR data formatting requirements to keep current with Internet standards and to take advantage of improvements in Internet data formats.

B. Expected Costs

We expect that the proposed amendments will result in some costs to foreign issuers. However, for the following reasons, we also expect that only a minority of foreign issuers should bear the full range of costs resulting from adoption of the proposed amendments.

The expected costs consist of both initial and ongoing costs. Initial costs are those associated with the purchase of compatible computer equipment and

software, including EDGAR software if obtained from a third-party vendor and not from the Commission's website.¹⁴¹ Initial costs also include those resulting from the training of existing employees to be EDGAR proficient or the hiring of additional employees or agents that are already skilled in EDGAR processing. Initial costs further include those associated with the formatting and transmission of a foreign issuer's first document filed on EDGAR. These transmission costs may include those related to subscribing to an Internet service provider.

Ongoing costs are those associated with the electronic formatting and transmission of subsequent EDGAR filings, including amendments to a foreign issuer's initial EDGAR filing. An issuer may also incur future costs resulting from the training or hiring of employees regarding updated EDGAR filing requirements.

The magnitude of these costs for a foreign issuer will depend on its level of technological proficiency and its previous familiarity with EDGAR filing requirements.

For example, of the 1,310 foreign private issuers that were Exchange Act reporting companies as of December 31, 2000,¹⁴² 244 (approximately 19%) not only did not voluntarily file on EDGAR, but also did not electronically present their financial statements on their websites or otherwise for public use. This minority will incur the full range of initial and other costs associated with electronic filing. Some may have to purchase compatible computer equipment. Some may also have to upgrade their operating and word processing software in addition to obtaining the EDGARLink software. They all will have to hire information technology employees or agents that are knowledgeable about the EDGAR process. Then they will incur the costs associated with formatting and transmitting their documents on EDGAR, which may include the cost of subscribing to an Internet service provider.

A much larger segment of Exchange Act reporting foreign private issuers, 1,066 (approximately 81%) already currently electronically format their financial statements in some fashion for

¹⁴¹ Once a first-time EDGAR filer has filed a Form ID to obtain its EDGAR access codes, it can download for free the EDGARLink software and EDGAR filing manual from the Commission's website. Filers may also purchase the EDGARLink software and filer manual through the Commission's Public Reference Room and from certain third party vendors. See the *EDGAR Overview* at Section C(1).

¹⁴² See *Reporting Foreign Issuers List*.

¹³⁸ See Part II.C. above.

¹³⁹ See Part III.B. below.

¹⁴⁰ PDF is based on a proprietary data format for which only a few software programs with search capabilities are commercially available. In contrast, there are a variety of methods, languages and software available for searching a HTML document.

public use.¹⁴³ This amount includes the 481 Canadian public companies (approximately 37% of reporting foreign private issuers) that are required by the Canadian Securities Administrators to file their securities documents electronically on SEDAR. This amount further includes 585 non-Canadian foreign private issuers (approximately 45% of reporting foreign private issuers) that have chosen to post on their websites their most recent and historical financial statements either as part of their annual or periodic reports or standing alone.¹⁴⁴ These foreign issuers have already incurred initial costs associated with the preparation of disclosure materials in an electronic format. They have already trained their employees or hired an in-house information technology team or a third party agent, such as an Internet services company or financial printer, to format electronically their financial statements and other documents of interest to investors. After obtaining the EDGAR software,¹⁴⁵ these persons should be capable of electronically processing reporting foreign issuers' securities documents for the EDGAR system. Consequently, for four-fifths of Exchange Act reporting foreign issuers, the mandated EDGAR requirements should result only in costs related primarily to the electronic formatting of their securities documents in a format compatible with EDGAR, and transmission of the EDGAR formatted documents to the Commission.

Currently EDGAR only accepts documents formatted in HTML 3.2 or in ASCII. Many Exchange Act reporting foreign issuers have formatted their financial statements only in PDF for presentation on their websites or for submission to foreign securities commissions.¹⁴⁶ These foreign issuers may incur both initial and ongoing costs

associated with presenting their financial statements in an EDGAR-compatible format.

However, other reporting foreign issuers have presented their financial statements in some version of HTML on their websites. These foreign issuers have already trained employees or an agent familiar with formatting in HTML. This previous familiarity with HTML should help to reduce the initial EDGAR costs for these reporting foreign private issuers.¹⁴⁷ This previous expertise in HTML may also help to lessen the ongoing costs related to updated EDGAR training that incorporates improvements in HTML.

Moreover, since HTML is a dominant language used to present information on Internet websites, reporting foreign issuers that have formatted their financial statements thus far only in PDF may already have trained employees or an agent familiar with formatting in HTML. If so, these foreign issuers should also face reduced initial and ongoing EDGAR costs.¹⁴⁸

During the calendar year ended December 31, 2000, 232 (approximately 18%) of reporting foreign private issuers voluntarily chose to file their annual reports, registration statements and other securities documents on EDGAR. For this segment of reporting foreign private issuers, the proposed amendments should result in no initial costs and little or no ongoing costs in addition to those that the foreign issuer had already decided to expend.

For the minority of foreign issuers that have not yet electronically presented their financial statements for public use,¹⁴⁹ as well as for other foreign issuers affected by our proposed amendments, we expect that technological advances regarding the Internet and recent modernization of the EDGAR system should help reduce the initial and ongoing costs resulting from mandated EDGAR filing for foreign issuers. For example, today foreign issuers are able to transmit directly their securities documents to the Commission through the Internet with the assistance of an Internet services provider. A foreign issuer should find that this

method is less expensive than using a direct dial modem to connect to the EDGAR system with the resultant long distance charges.

Today there also are numerous financial printers and other information technology specialists that are capable of electronic document processing, including for the EDGAR system, and available on an international basis.¹⁵⁰ No longer must a foreign issuer rely on a filing agent located in a major city in the United States for its EDGAR needs. This closer proximity of EDGAR knowledgeable agents should reduce the travel, long distance and other initial and ongoing costs shouldered by reporting foreign issuers when preparing their documents for the EDGAR system.

Some foreign issuers may be able to file a document in paper under a hardship exemption or other exemption recognized under the proposed amendments. These paper filers may incur costs related to the elimination of the summary option for foreign language documents. In addition, foreign issuers that become EDGAR filers for the first time as a result of the proposed amendments may incur similar costs since Regulation S-T Rule 306 prohibits the use of a summary for a foreign language document as well. These foreign filers may incur costs associated with having to obtain an English translation, instead of an English summary, of an entire foreign language document. Because there has been only limited use of the summary option, we do not expect its elimination to affect many filers. Moreover, many agents, including some with EDGAR expertise, provide translation services. The globalization of these agents in recent years should serve to lessen the costs of obtaining their translation services.¹⁵¹

The proposed amendments will cause some domestic persons to file on EDGAR their Schedule TOs, Form CBs and Schedule 13D/Gs in connection with tender offers, exchange offers and other transactions involving the securities of foreign private issuers. However, we expect the number of affected domestic persons to be small. During calendar year 2000, out of a total of 245 Schedule TOs filed with the Commission, only 11 (approximately 4%) were filed in paper. Of these 11

¹⁴³ This figure includes the foreign private issuers that were Exchange Act reporting companies as of December 31, 2000 and had filed their securities documents on EDGAR.

¹⁴⁴ While the Exchange Act reporting companies derive from 59 different countries, after Canada the country having the most reporting companies incorporated in its jurisdiction is the United Kingdom. See the table on the first inside cover page of *Reporting Foreign Issuers List*. Of the 143 United Kingdom companies that are Exchange Act reporting companies, 123 or approximately 87% maintain websites upon which they post their financial statements.

¹⁴⁵ As previously mentioned, since the EDGARLink software is now available on the Commission's website, for most new EDGAR filers, the cost of obtaining the EDGAR software should be insignificant.

¹⁴⁶ For example, the Canadian Securities Administrators require that Canadian public companies file their securities documents in PDF on SEDAR. See Canada's National Instrument 13-101 (September 7, 1999).

¹⁴⁷ Even if foreign issuers are unfamiliar with HTML, there are many software packages available that will translate their documents into ASCII or HTML.

¹⁴⁸ Furthermore, since under Regulation S-T Rule 104 [17 CFR 232.104], we allow EDGAR filers to file a PDF version of a document as an unofficial copy, foreign issuers that present their financial statements in PDF for non-EDGAR purposes will not incur additional formatting costs when exercising the option to file an unofficial PDF version on EDGAR.

¹⁴⁹ This minority would include foreign individuals who only file Schedules 13D or 13G.

¹⁵⁰ The websites of each of three large financial printers reveal that, either directly or through affiliates, these financial printers maintain offices in 20-40 different countries.

¹⁵¹ For example, the websites of the three large financial printers referred to in the preceding footnote advertise their translation services as an integral part of their businesses.

paper Schedule TOs, none were filed by domestic persons.

Similarly, out of a total of 13,282 Schedule 13Ds and 13Gs filed during this same period, only 279 (approximately 2%) were filed in paper. Of these Schedule 13D/G paper filers, 175 (approximately 63%) were filed by foreign entities while several more were filed by individuals with foreign residences. Only 7 domestic entities (approximately 3%) filed Schedule 13D/Gs that pertained to the securities of foreign issuers.¹⁵²

Furthermore, during calendar year 2000, of the 95 Form CBs filed with the Commission, only 32 were filed by Exchange Act reporting companies. An additional eight Form CBs were filed by non-Exchange Act reporting companies regarding transactions with foreign private issuers that were Exchange Act reporting companies. Since the proposed amendments would only require the filing of the Form CB on EDGAR when the filer or subject foreign issuer has Exchange Act reporting obligations at the time of filing, the mandated EDGAR rules for foreign issuers should leave the majority of Form CB filers unaffected.¹⁵³ Moreover, of the 40 Form CB filers that would have been affected by the proposed amendments had they been in effect during calendar year 2000, only four (10%) were domestic persons.

Some domestic persons may incur costs resulting from the electronic formatting of their securities documents as a result of the proposed amendments. Since domestic persons are already subject to mandated EDGAR filing, they already have trained employees or agents capable of readily electronically formatting their Form TOs, Form CBs or Schedule 13D/Gs for the EDGAR system. This previous familiarity with EDGAR should reduce the costs incurred by these domestic persons as a result of our proposed amendments.

C. Comment Solicited

We solicit comment on the costs and benefits of the proposed amendments for foreign issuers and affected domestic entities. We request your views on the costs and benefits described above as well as on any other costs and benefits that could result from adoption of

mandated EDGAR filing requirements for foreign issuers. We also request data to quantify the costs and value of the benefits identified.

What are the benefits that investors, financial analysts, other members of the financial community, and foreign issuers should realize from mandated EDGAR filing for foreign issuers? Are they the same benefits achieved from mandated EDGAR filing for domestic issuers? Are there any benefits not discussed above that you believe will result from the proposed amendments? Are there any benefits discussed above that you believe will not result from the proposed amendments?

In particular, will the proposed amendments help an investor to form more efficient investment decisions about foreign issuers? Will the proposed amendments facilitate the market following of a foreign issuer's securities by financial analysts and other members of the financial community?

Will mandated EDGAR filing for foreign issuers benefit investors by resulting in our creation of a central electronic repository for foreign filings that is free to anyone who has access to a computer linked to the Internet? Will the proposed amendments further benefit investors by resulting in a central electronic database of foreign issuer filings that have been prepared in accordance with the Commission's rules and that are readily searchable?

What are the expected initial and ongoing costs of mandated EDGAR filing for foreign issuers? Will the magnitude of these costs for a foreign issuer depend on its level of technological proficiency and its previous familiarity with EDGAR filing requirements? Will the full range of these costs be borne by only a minority of foreign issuers? If so, what does this full range of costs entail? Are there costs in addition to those discussed above for a foreign issuer that, either because of geographic location or its own state of development, lacks the necessary computer equipment and software and technically proficient employees or agents to present its financial statements and other documents in electronic format for public use?

What are the expected costs of the proposed amendments for foreign governments? Do you expect these costs to be higher than the costs incurred by foreign private issuers?

What are the expected costs of the proposed amendments for a foreign issuer that already electronically formats its financial statements for presentation on its website or to meet the requirements of its sovereign securities commission? Are there costs

in addition to those discussed above that you expect would affect this foreign issuer? Will previous familiarity with HTML by this foreign issuer's employees or filing agent reduce the initial and ongoing costs of EDGAR processing for a foreign issuer resulting from the proposed amendments? What additional costs, if any, will this foreign issuer incur if its employees or agent is only familiar with PDF or a version of HTML that is not the version of HTML used for filing documents on EDGAR?

What are the expected costs, if any, of the proposed amendments for a foreign issuer that is already filing its securities documents on EDGAR?

Will the ability of filers to use the Internet reduce the initial and ongoing costs resulting from mandated EDGAR for foreign filers, as expected? Is the availability of compatible computer equipment, telecommunications links to the Internet, and Internet service providers widespread enough so that most foreign issuers that are currently paper filers will be able to use the Internet to transmit their documents on EDGAR?

Similarly, is the availability of filing agents with EDGAR expertise widespread enough so that most foreign issuers affected by the proposed amendments will be able to use an agent in their own or a nearby country to format and transmit their documents on EDGAR? If so, will this widespread availability of EDGAR filing agents help to reduce the initial and ongoing costs resulting from mandated EDGAR filing for foreign issuers? Are there barriers to entry or other anti-competitive factors that could limit the availability of EDGAR proficient filing agents in some countries or global regions?

Is the current paper filer rule permitting the filing of an English summary instead of an English translation of an entire foreign language document useful or of limited use? How widespread are English translation services? Will the availability of agents offering English translation services help to lessen the costs associated with obtaining an English translation of a foreign language document?

Will the proposed amendments affect domestic filers? If so, how? Do affected domestic entities already have EDGAR-trained employees or agents that are capable of formatting and transmitting their Schedule TOs, Form CBs and Schedule 13D/Gs on EDGAR? If so, will this previous EDGAR expertise lessen the costs resulting from the proposed amendments for domestic filers?

¹⁵² We also expect that the proposed amendments will not have a significant impact on affected domestic entities. According to two large financial printers, the average cost of electronically formatting and transmitting a Schedule 13D or 13G on EDGAR is \$250.

¹⁵³ Had the proposed amendments been in effect during the year 2000, they would have required approximately 42% (40 out of 95) Form CBs submitted in paper during that year to be filed on EDGAR.

IV. Promotion of Efficiency, Competition and Capital Formation Analysis

Section 23(a)(2) of the Exchange Act requires the Commission, in adopting rules under the Exchange Act, to consider the anti-competitive effects of any rules it adopts. Furthermore, Section 2(b) of the Securities Act and Section 3(f) of the Exchange Act require the Commission, when engaging in rulemaking that requires it to consider or determine whether an action is necessary or appropriate in the public interest, to consider whether the action will promote efficiency, competition and capital formation.

We believe that the proposed amendments would enable investors and other interested parties to have the same access to financial and other material information about foreign issuers that have registered securities with the Commission as they currently enjoy with domestic reporting companies. By facilitating the more efficient transmission, retrieval, analysis and dissemination of information contained in foreign issuers' and related third party securities filings with the Commission, the proposed amendments should enhance an investor's ability to make an informed investment decision about a foreign issuer's securities. They also should increase the market access of a reporting foreign issuer's securities in the United States.

In addition, the proposed amendments would subject foreign issuers to the same or substantially similar electronic filing costs shouldered by domestic issuers, thereby placing foreign issuers on a more equal footing, and encouraging competition with domestic issuers. Furthermore, the proposed amendments would facilitate the dissemination of information about a foreign issuer, which may be a non-reporting company, engaged in an exempt cross-border tender offer transaction with a domestic or foreign Exchange Act reporting company. We recognize that the proposed amendments may disparately impact some foreign issuers depending on their level of technological proficiency.

We solicit comment on whether, if adopted, the proposed amendments would result in any anti-competitive effects or promote efficiency, competition and capital formation. We encourage commenters to provide empirical data or other facts to support their views on any anti-competitive effects or any burdens on efficiency, competition or capital formation that might result from adoption of the proposed amendments.

For purposes of the Small Business Regulatory Enforcement Fairness Act of 1996, we request information regarding the potential impact of the proposed amendments on the economy on an annual basis. In particular, commenters should address whether the proposed amendments, if adopted, would have a \$100,000,000 annual effect on the economy, cause a major increase in costs or prices, or have a significant adverse effect on competition, investment, or innovation. Commenters should provide empirical data to support their views.

V. Paperwork Reduction Act Analysis

The proposed rule amendments would affect six forms that contain "collection of information" requirements within the meaning of the Paperwork Reduction Act of 1995.¹⁵⁴ The titles of the affected information collections are the EDGAR Forms ID, ET, SE and TH,¹⁵⁵ Securities Act Form F-1,¹⁵⁶ and Exchange Act Form 20-F.¹⁵⁷ We have based our estimates of the effects that the proposed amendments would have on these information collections primarily on our review of the most recently completed Paperwork Reduction Act submissions for these forms, on the forms' requirements, and on actual filings of these forms. Because an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number, we have provided below the corresponding control number for each of the affected forms. We have submitted this rule proposal to the Office of Management and Budget ("OMB") for review pursuant to 44 U.S.C. 3507(d) and 5 CFR 1320.11.

Form ID (OMB Control Number 3235-0328) is used by registrants, third party filers or their agents to request the assignment of access codes that permit the filing of securities documents on EDGAR. This form enables the Commission to assign an identification number ("CIK"), confirmation code ("CCC"), password ("PW") and password modification ("PMAC") to each EDGAR filer, each of which is essential to the security of the EDGAR system.

Form ET (OMB Control Number 3235-0329) is used by an EDGAR filer when submitting filings on magnetic cartridge. The information provided on

Form ET is technical information about the magnetic cartridge contents as well as information that identifies a contact person who can answer questions about the tape cartridge.

Form SE (OMB Control Number 3235-0327) is used by an EDGAR filer when submitting paper format exhibits either pursuant to a hardship exemption under Regulation S-T Rules 201 and 202 or as otherwise allowed by Regulation S-T. The information provided on a Form SE primarily identifies each paper format exhibit submitted. A Form SE filer must also submit the required number of copies of each paper format exhibit.

Form TH (OMB Control Number 3235-0425) is used by an EDGAR filer to request a temporary hardship exemption pursuant to Regulation S-T Rule 201. A filer must submit the Form TH along with the required number of copies of the paper format securities document. The information provided on Form TH enables the Commission to determine whether the filer's circumstances justify the grant of a temporary hardship exemption.

Form F-1 (OMB Control No. 3235-0258) is used by a foreign private issuer to register its initial public offering or a subsequent offering of securities under the Securities Act. In addition to requiring the disclosure of material information about the registrant, Form F-1 also requires the attachment of numerous exhibits, including copies of the registrant's memoranda of association, articles of incorporation, and material contracts.

Form 20-F (OMB Control No. 3235-0288) is used by a foreign private issuer both to register a class of securities under the Exchange Act as well as to provide its annual report required under the Exchange Act. Like the Form F-1, Form 20-F also requires the filing of numerous exhibits.

We estimate that approximately 7,000 registrants file Form ID each year at an estimated .15 hours per response for a total annual burden of 1,050 hours. We expect that, if adopted, the proposed rule amendments would cause an additional 1,078 registrants to file a Form ID. We anticipate that these additional registrants would require 162 hours in the aggregate to complete the Form ID, which would increase the total annual burden to 1,212 hours.

We estimate that 120 registrants file Form ET each year at an estimated .25 hours per response for a total annual burden of 30 hours. We expect that, if adopted, the proposed rule amendments would cause an additional nine registrants to file a Form ET. We anticipate that these additional

¹⁵⁴ 44 U.S.C. 3501 *et seq.*

¹⁵⁵ 17 CFR 239.63, 239.62, 239.64 and 239.65. These forms are also promulgated as Exchange Act forms under 17 CFR 249.446, 249.444, 249.445, and 249.447.

¹⁵⁶ 17 CFR 239.31.

¹⁵⁷ 17 CFR 249.220.f.

registrants would require two hours in the aggregate to complete the Form ET, which would increase the total annual burden to 32 hours.

We estimate that 710 registrants file Form SE each year at an estimated .10 hours per response for a total annual burden of 71 hours. We expect that, if adopted, the proposed rule amendments would cause an additional 53 registrants to file a Form SE. We anticipate that these additional registrants would require approximately 5 hours in the aggregate to complete the Form SE, which would increase the total annual burden to 76 hours.

We estimate that 64 registrants file Form TH each year at an estimated .33 hours per response for a total annual burden of 21 hours. We expect that, if adopted, the proposed rule amendments would cause an additional five registrants to file a Form TH. We anticipate that these additional registrants would require two hours in the aggregate to complete the Form TH, which would increase the total annual burden to 23 hours.

We estimate that 140 registrants file Form F-1 each year at an estimated 1,881 hours per response for a total of 263,340 burden hours. We further estimate that registrants would incur 25% of the total burden hours (65,835 hours) and outside law firms would account for 75% of the total burden hours (197,505 hours) at an average cost of \$175 per hour for a total of \$34,563,375. We expect that, if adopted, the proposed amendments would cause seven registrants to incur additional burden hours and costs for services pertaining to translating into English all of a foreign language exhibit or other document instead of providing an English summary. We estimate that for each of the seven registration statements affected, there would occur 48 additional burden hours pertaining to these translation requirements for a total of 336 additional burden hours. We expect that registrants would incur 25% of these additional burden hours (84 hours). We further expect that the proposed amendments would require the translation of an additional 18 pages per filing at a cost of \$75 per page (\$1013 per filing) for an aggregate increase of \$7,091. Thus, we estimate that the proposed amendments would increase the total annual burden incurred by registrants in the preparation of a Form F-1 to 65,919 hours. We further estimate that the proposed amendments would increase the total annual costs attributed to the preparation of the Form F-1 by outside firms to \$34,570,466.

We estimate that foreign private issuers file 1165 Form 20-Fs each year at an estimated 1721 hours per response for a total of 2,004,965 annual burden hours. We further estimate that foreign private issuers would incur 25% of the total burden hours (501,241 hours) and outside law firms would account for 75% of the total burden hours (1,503,724 hours) at an average cost of \$175 per hour for a total of \$263,151,700. We expect that, if adopted, the proposed amendments would cause 58 foreign private issuers to incur additional burden hours and costs for English translation services. We estimate that for each of the Form 20-Fs affected, there would occur 48 additional burden hours pertaining to these translation requirements for a total of 2784 additional burden hours. We expect that foreign private issuers would incur 25% of these additional burden hours (696 hours). We further expect that the proposed amendments would require the translation of an additional 18 pages per filing at a cost of \$75 per page (\$1013 per filing) for an aggregate increase of \$58,754. Thus, we estimate that the proposed amendments would increase the total annual burden incurred by foreign private issuers in the preparation of a Form 20-F to 501,937 hours. We further estimate that the proposed amendments would increase the total annual costs attributed to the preparation of the Form 20-F by outside firms to \$263,210,454.

We are soliciting comment on the expected Paperwork Reduction Act effects of the proposed rule amendments. In particular, we solicit comment on the accuracy of our additional burden hour and cost estimates expected to result from the proposed amendments. We further request comment on whether the expected increase in the number of Forms ID, ET, SE and TH filed and the expected increase in the number of exhibit pages translated into English following adoption of the proposed amendments is necessary for the proper performance of the Commission's functions, including whether the additional information garnered will have practical utility. In addition, we solicit comment on whether there are ways to enhance the quality, utility, and clarity of the information to be collected. We further solicit comment on whether there are ways to minimize the burden of information collection on those foreign filers who will file the above forms, including through the use of automated collection techniques or other forms of information technology. Finally, we solicit comment on whether

the proposed amendments will have any effects on any other collection of information not previously identified in this section.

If you would like to submit comments on the collection of information requirements and expected effects, please direct them to the Office of Management and Budget, Attention: Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Washington, DC 20503. You should also send a copy of the comments to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549, with reference to File No. S7-18-01. Requests for materials submitted to OMB by the Commission with regard to these collections of information should be in writing, refer to File No. S7-18-01, and be submitted to the Securities and Exchange Commission, Records Management, Office of Filings and Information Services. OMB must make a decision concerning the affected collections of information between 30 and 60 days after publication of this release. Consequently, in order to ensure that your comments achieve their fullest effect, you should submit comments to OMB within 30 days of this release's publication.

VI. Regulatory Flexibility Act Certification

Under Section 605(b) of the Regulatory Flexibility Act,¹⁵⁸ our Chairman has certified that, if adopted, the proposed amendments would not have a significant economic impact on a substantial number of small entities. We have attached this certification as Appendix A to this release. We encourage written comments regarding this certification. We request in particular that commenters describe the nature of any impact on small entities and provide empirical data to support the extent of the impact.

VII. Statutory Basis and Text of Proposed Rule Amendments

We propose Securities Act Rule 493b and the amendments to Securities Act Rule 403, the rescission of Regulation S-T Rule 601, the amendments to Regulation S-T Rules 100, 101, 303, 306 and 311, the amendments to Exchange Act Rule 12b-12, and the amendments to the Securities Act and Exchange Act forms, under the authority in Sections 6, 7, 10 and 19(a) of the Securities Act,¹⁵⁹ and Sections 3, 12, 13, 14, 15(d), 23(a)

¹⁵⁸ 5 U.S.C. 605(b).

¹⁵⁹ 15 U.S.C. 77f, 77g, 77h, 77j, and 77s(a).

and 35A of the Exchange Act.¹⁶⁰ We further propose the amendment to Form F-X under Sections 304, 305, 307, 310 and 319 of the Trust Indenture Act.¹⁶¹

List of Subjects

17 CFR Parts 230, 232, 239, 240, 249, and 269

Reporting and recordkeeping requirements, Securities.

Text of Proposed Rule Amendments

In accordance with the foregoing, we propose to amend Title 17, Chapter II of the Code of Federal Regulations 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, 77c, 77d, 77f, 77g, 77h, 77j, 77r, 77sss, 77z-3, 78c, 78d, 78l, 78m, 78n, 78o, 78t, 78w, 78ll(d), 78mm, 79t, 80a-8, 80a-24, 80a-28, 80a-29, 80a-30, and 80a-37, unless otherwise noted.

* * * * *

2. The authority citation following § 230.403 is removed.

3. Amend § 230.403 by revising paragraph (c) to read as follows:

§ 230.403 Requirements as to paper, printing, language and pagination.

* * * * *

(c) All Securities Act filings must be in the English language. If a filer seeks to include a foreign language document in a filing, for example, as an exhibit, it must submit instead a fair and accurate English translation of the entire foreign language document. Every English translation document must include a written representation that the document is a fair and accurate English translation of the foreign language document. A designated officer or official of the filer must sign the written representation in accordance with § 230.402(e). A filer must provide a copy of any foreign language document upon the request of Commission staff.

* * * * *

4. Section 230.493 is revised to read as follows:

§ 230.493 Additional Schedule B disclosure and filing requirements.

(a) The copy of the opinion or opinions of counsel required by paragraph (14) of Schedule B shall be filed either as a part of the registration statement as originally filed, or as an

amendment to the registration statement.

(b) A foreign government or political subdivision of a foreign government must file a registration statement submitted under Schedule B of the Act on the Commission's Electronic Data Gathering and Retrieval System (EDGAR) unless it has obtained a hardship exemption under § 232.201 or § 232.202 of this chapter (Regulation S-T).

(c) A foreign government or political subdivision that intends to incorporate by reference into a Schedule B registration statement its annual report on Form 18-K (§ 249.318 of this chapter), and any exhibits or amendments to this report, must disclose in the Schedule B registration statement:

(1) That the Commission maintains an Internet site that contains reports and other information regarding issuers that file electronically with the Commission; and

(2) The address for the Commission Internet site (<http://www.sec.gov>). A foreign government or political subdivision filing on EDGAR is further encouraged to give its Internet address, if available.

PART 232—REGULATION S-T—GENERAL RULES AND REGULATIONS FOR ELECTRONIC FILINGS

5. The authority citation for Part 232 continues to read as follows:

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

6. Amend § 232.100 by revising paragraphs (a) and (c) to read as follows:

§ 232.100 Persons and entities subject to mandated electronic filing.

* * * * *

(a) Registrants whose filings are subject to review by the Division of Corporation Finance;

* * * * *

(c) Any party (including natural persons) that files a document jointly with, or as a third party filer with respect to, a registrant that is subject to mandated electronic filing requirements.

7. Amend § 232.101:

a. By removing the word “and” at the end of paragraph (a)(1)(iv);

b. By removing the period at the end of paragraph (a)(1)(v) and in its place adding a semicolon;

c. By adding paragraphs (a)(1)(vi), (a)(1)(vii) and (a)(1)(viii);

d. By revising paragraphs (b)(1) and (b)(6);

e. By adding paragraphs (b)(7) and (b)(8);

f. By removing the period at the end of each of paragraphs (c)(5), (c)(6), and (c)(14) and in its place adding a semicolon;

g. By adding the word “and” at the end of paragraph (c)(16);

h. By removing paragraph (c)(15); and

i. By redesignating paragraphs (c)(16) and (c)(17) as paragraphs (c)(15) and (c)(16).

The additions and revisions read as follows:

§ 232.101 Mandated electronic submissions and exceptions.

(a) * * *

(1) * * *

(vi) Form CB (§§ 239.800 and 249.480 of this chapter) filed under § 230.801 or 230.802 of this chapter or § 240.13e-4(h)(8), 240.14d-1(c), or 240.14e-2(d) of this chapter if:

(A) The filer of the Form CB is a company that is subject to the reporting requirements of Section 13 or 15(d) of the Exchange Act (15 U.S.C. 78m or 78o(d)); or

(B) The foreign private issuer that is the subject of a transaction covered by a Form CB is subject to the reporting requirements of Section 13 or 15(d) of the Exchange Act;

(vii) Form F-X (§ 239.42 of this chapter) except as otherwise provided by § 232.101(b)(8); and

(viii) Form F-N (§ 239.43 of this chapter) filed by foreign banks and insurance companies and certain of their holding companies and finance subsidiaries under § 230.489 of this chapter.

* * * * *

(b) * * *

(1) Annual reports to security holders furnished for the information of the Commission under § 240.14a-3(c) of this chapter or § 240.14c-3(b) of this chapter, under the requirements of Form 10-K or Form 10-KSB (§§ 249.310 or 249.310b of this chapter) filed by registrants under Exchange Act Section 15(d) (15 U.S.C. 78o(d)), or by foreign issuers filed on Form 6-K (§ 249.306 of this chapter) under § 240.13a-16 of this chapter or § 240.15d-16 of this chapter;

* * * * *

(6) Periodic reports and reports with respect to distributions of primary obligations filed by:

(i) The International Bank for Reconstruction and Development under Section 15(a) of the Bretton Woods Agreements Act (22 U.S.C. 286k-1(a)) and Title 17, Part 285 of the Code of Federal Regulations;

(ii) The Inter-American Development Bank under Section 11(a) of the Inter-

¹⁶⁰ 15 U.S.C. 78c, 78l, 78m, 78n, 78o(d), 78w, and 78ll.

¹⁶¹ 15 U.S.C. 77ddd, 77eee, 77ggg, 77jjj and 77sss.

American Development Bank Act (22 U.S.C. 283h(a)) and Title 17, Part 286 of the Code of Federal Regulations;

(iii) The Asian Development Bank under Section 11(a) of the Asian Development Bank Act (22 U.S.C. 285h(a)) and Title 17, Part 287 of the Code of Federal Regulations;

(iv) The African Development Bank under Section 9(a) of the African Development Bank Act (22 U.S.C. 290i-9(a)) and Title 17, Part 288 of the Code of Federal Regulations;

(v) The International Finance Corporation under Section 13(a) of the International Finance Corporation Act (22 U.S.C. 282k(a)) and Title 17, Part 289 of the Code of Federal Regulations; and

(vi) The European Bank for Reconstruction and Development under Section 9(a) of the European Bank for Reconstruction and Development Act (22 U.S.C. 290l-7(a)) and Title 17, Part 290 of the Code of Federal Regulations;

(7) A Form CB (§§ 239.800 and 249.480 of this chapter) if neither the filer nor the company that is the subject of the Form CB transaction is subject to the reporting requirements of Section 13 or Section 15(d) of the Exchange Act (15 U.S.C. 78m or 15 U.S.C. 78o(d));

(8) A Form F-X (§ 239.42 of this chapter) if:

(i) Neither the filer nor the company that is the subject of the transaction under Form CB (§§ 239.800 and 249.480 of this chapter) is subject to the reporting requirements of Section 13 or Section 15(d) of the Exchange Act (15 U.S.C. 78m or 15 U.S.C. 78o(d)); or

(ii) Filed by a Canadian issuer when qualifying an offering statement pursuant to the provisions of Regulation A (§§ 230.251-230.263 of this chapter).

* * * * *

8. Amend § 232.303 by revising paragraph (b) to read as follows:

§ 232.303 Incorporation by reference.

(a) * * *

(b) If a filer incorporates by reference into an electronic filing any portion of an annual or quarterly report to security holders, it must also file the portion of the annual or quarterly report to security holders in electronic format as an exhibit to the filing, as required by Regulation S-K Item 601(b)(13) (§ 229.601(b)(13) of this chapter) and Regulation S-B Item 601(b)(13) (§ 228.601(b)(13) of this chapter). If a foreign issuer incorporates by reference into any electronic filing any portion of an annual or other report to security holders, it also must file the portion of the annual or other report to security holders in electronic format as an exhibit to the filing. The requirements of

this paragraph do not apply to incorporation by reference by an investment company from an annual or quarterly report to security holders.

9. Amend § 232.306:

a. By revising paragraph (a);

b. By removing the Note following paragraph (a);

c. By redesignating paragraph (b) as paragraph (d); and

d. By adding new paragraph (b) and paragraph (c).

The additions and revisions read as follows:

§ 232.306 Foreign language documents and symbols.

(a) All electronic filings and submissions must be in the English language. If a filer seeks to include a foreign language document in an electronic filing or submission, for example, as an exhibit, it must submit instead a fair and accurate English translation of the entire foreign language document in electronic format, except as otherwise permitted under paragraph (b) of this section.

(b) A foreign government or its political subdivision must electronically file a fair and accurate English translation, if available, of its latest annual budget as presented to its legislative body, as Exhibit B in Form 18 (§ 249.218 of this chapter) or Exhibit (c) in Form 18-K (§ 249.318 of this chapter). If no English translation is available, a foreign government or political subdivision must submit a copy of the foreign language version of its latest annual budget in paper under cover of Form SE (§ 249.444 of this chapter).

(c) Every English translation filed or submitted under paragraph (a) or (b) of this section must include a written representation that the electronic filing or submission is a fair and accurate English translation of the foreign language document. A designated officer or official of the filer must sign the written representation in the manner set forth by § 232.302. A filer must provide the foreign language version of a document upon the request of Commission staff.

* * * * *

10. By amending § 232.311 by redesignating paragraphs (f), (g) and (h) as paragraphs (h), (i) and (f) and by adding a new paragraph (g) to read as follows:

§ 232.311 Documents submitted in paper under cover of Form SE.

* * * * *

(g) A foreign government or political subdivision that is not filing in electronic format an English translation of its latest annual budget submitted as

Exhibit B in Form 18 (§ 249.218 of this chapter) or Exhibit (c) in Form 18-K (§ 249.318 of this chapter) must file a copy of the foreign language version of its latest annual budget in paper under cover of Form SE (§§ 239.64, 249.444, 259.603, 269.8, and 274.403 of this chapter) in accordance with § 232.306(b).

* * * * *

§ 232.601 [Removed and Reserved]

11. § 232.601 is removed and reserved.

PART 239—FORMS PRESCRIBED UNDER THE SECURITIES ACT OF 1933

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

Authority: 15 U.S.C. 77f, 77g, 77h, 77j, 77s, 77z-2, 77sss, 78c, 78l, 78m, 78n, 78o(d), 78u-5, 78w(a), 78ll(d), 79e, 79f, 79g, 79j, 79l, 79m, 79n, 79q, 79t, 80a-8, 80a-24, 80a-29, 80a-30 and 80a-37, unless otherwise noted.

* * * * *

13. Amend Form F-7 (referenced in § 239.37), General Instructions II, by revising paragraph G. to read as follows:

Note: The text of Form F-7 does not and the amendment will not appear in the Code of Federal Regulations.

Form F-7

* * * * *

General Instructions

* * * * *

II. Application of General Rules and Regulations

* * * * *

G. You must file a registration statement in electronic format in the English language as required by Regulation S-T Rule 306 (17 CFR 232.306). If any part of the body of the Canadian registration statement is in a language other than English, you must provide an English translation instead of the foreign language version when filing the registration statement in electronic format with the Commission. If you wish to submit a foreign language exhibit or other supplementary document with the registration statement, you must file instead an English translation of the exhibit or other document as required by Regulation S-T Rule 306. If you are filing the registration statement in paper under a hardship exemption provided by Regulation S-T Rule 201 or 202 (17 CFR 232.201 or 232.202), or as otherwise permitted by the Commission, you must file a registration statement, including exhibits and other supplementary documents, that

complies with Securities Act Rule 403(c) (17 CFR 230.403(c)).

* * * * *

14. Amend Form F-8 (referenced in § 239.38), General Instructions IV, by revising paragraph I. to read as follows:

Note: The text of Form F-8 does not and the amendment will not appear in the Code of Federal Regulations.

Form F-8

* * * * *

General Instructions

* * * * *

IV. Application of General Rules and Regulations

* * * * *

I. You must file a registration statement in electronic format in the English language as required by Regulation S-T Rule 306 (17 CFR 232.306). If any part of the body of the Canadian registration statement is in a language other than English, you must provide an English translation instead of the foreign language version when filing the registration statement in electronic format with the Commission. If you wish to submit a foreign language exhibit or other supplementary document with the registration statement, you must file instead an English translation of the exhibit or other document as required by Regulation S-T Rule 306. If you are filing the registration statement in paper under a hardship exemption provided by Regulation S-T Rule 201 or 202 (17 CFR 232.201 or 232.202), or as otherwise permitted by the Commission, you must file a registration statement, including exhibits and other supplementary documents, that complies with Securities Act Rule 403(c) (17 CFR 230.403(c)).

* * * * *

15. Amend Form F-9 (referenced in § 239.39), General Instructions II, by revising paragraph I. to read as follows:

Note: The text of Form F-9 does not and the amendment will not appear in the Code of Federal Regulations.

Form F-9

* * * * *

General Instructions

* * * * *

II. Application of General Rules and Regulations

* * * * *

I. You must file a registration statement in electronic format in the English language as required by Regulation S-T Rule 306 (17 CFR

232.306). If any part of the body of the Canadian registration statement is in a language other than English, you must provide an English translation instead of the foreign language version when filing the registration statement in electronic format with the Commission. If you wish to submit a foreign language exhibit or other supplementary document with the registration statement, you must file instead an English translation of the exhibit or other document as required by Regulation S-T Rule 306. If you are filing the registration statement in paper under a hardship exemption provided by Regulation S-T Rule 201 or 202 (17 CFR 232.201 or 232.202), or as otherwise permitted by the Commission, you must file a registration statement, including exhibits and other supplementary documents, that complies with Securities Act Rule 403(c) (17 CFR 230.403(c)).

* * * * *

16. Amend Form F-10 (referenced in § 239.40), General Instructions II, by revising paragraph J. to read as follows:

Note: The text of Form F-10 does not and the amendment will not appear in the Code of Federal Regulations.

Form F-10

* * * * *

General Instructions

* * * * *

II. Application of General Rules and Regulations

* * * * *

J. You must file a registration statement in electronic format in the English language as required by Regulation S-T Rule 306 (17 CFR 232.306). If any part of the body of the Canadian registration statement is in a language other than English, you must provide an English translation instead of the foreign language version when filing the registration statement in electronic format with the Commission. If you wish to submit a foreign language exhibit or other supplementary document with the registration statement, you must file instead an English translation of the exhibit or other document as required by Regulation S-T Rule 306. If you are filing the registration statement in paper under a hardship exemption provided by Regulation S-T Rule 201 or 202 (17 CFR 232.201 or 232.202), or as otherwise permitted by the Commission, you must file a registration statement, including exhibits and other supplementary documents, that

complies with Securities Act Rule 403(c) (17 CFR 230.403(c)).

* * * * *

17. Amend Form F-80 (referenced in § 239.41), General Instructions IV, by revising paragraph I. to read as follows:

Note: The text of Form F-80 does not and the amendments will not appear in the Code of Federal Regulations.)

Form F-80

* * * * *

General Instructions

* * * * *

IV. Application of General Rules and Regulations

* * * * *

I. You must file a registration statement in electronic format in the English language as required by Regulation S-T Rule 306 (17 CFR 232.306). If any part of the body of the Canadian registration statement is in a language other than English, you must provide an English translation instead of the foreign language version when filing the registration statement in electronic format with the Commission. If you wish to submit a foreign language exhibit or other supplementary document with the registration statement, you must file instead an English translation of the exhibit or other document as required by Regulation S-T Rule 306. If you are filing the registration statement in paper under a hardship exemption provided by Regulation S-T Rule 201 or 202 (17 CFR 232.201 or 232.202), or as otherwise permitted by the Commission, you must file a registration statement, including exhibits and other supplementary documents, that complies with Securities Act Rule 403(c) (17 CFR 230.403(c)).

* * * * *

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

18. 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, 77z-3, 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, 78mm, 79q, 79t, 80a-20, 80a-23, 80a-29, 80a-37, 80b-3, 80b-4 and 80b-11, unless otherwise noted.

* * * * *

19. The authority citations following § 240.12b-12 are removed.

20. Amend § 240.12b-12 by revising paragraph (d) to read as follows:

§ 240.12b-12 Requirements as to paper, printing and language.

* * * * *

(d)(1) All Exchange Act filings and submissions must be in the English language. If a filer seeks to include a foreign language document in a filing or submission, for example, as an exhibit, it must submit instead a fair and accurate English translation of the entire foreign language document, except as otherwise permitted under paragraph (d)(2) of this section.

(2) A foreign government or its political subdivision must provide a fair and accurate English translation of its latest annual budget submitted as Exhibit B in Form 18 (§ 249.218 of this chapter) or Exhibit (c) in Form 18-K (§ 249.318 of this chapter) only if one is available. If no English translation is available, a filer must provide a paper copy of the foreign language version of its latest annual budget as an exhibit.

(3) In any English translation document submitted pursuant to paragraphs (d)(1) or (2) of this section, a filer must include a written representation that the document is a fair and accurate English translation of the foreign language document. A designated officer or official of the filer must sign the written representation in accordance with § 240.12b-11(d). A filer must provide a copy of any foreign language document upon the request of Commission staff.

* * * * *

PART 249—FORMS, SECURITIES EXCHANGE ACT OF 1934

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

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

* * * * *

22. Amend Form 20-F (referenced in § 249.220f) by revising General Instruction D. to read as follows:

Note: The text of Form 20-F does not and the amendment will not appear in the Code of Federal Regulations.

Form 20-F

* * * * *

General Instructions

* * * * *

D. How To File Registration Statements and Reports on This Form

(a) If you have technical questions about our Electronic Data Gathering and Retrieval System (EDGAR) or want to request an access code, call the EDGAR Filer Support Office at (202) 942-8900. If you have questions about the EDGAR

rules, call the Office of EDGAR Policy at (202) 942-2940.

(b) If you are filing the Form 20-F registration statement or report in paper under a hardship exemption in Rule 201 or 202 of Regulation S-T (17 CFR 232.201 or 232.202), or as otherwise permitted by the Commission, you must file with the Commission (i) three complete copies of the registration statement or report, including financial statements, exhibits and all other papers and documents filed as part of the registration statement or report, and (ii) five additional copies of the registration statement or report, which need not contain exhibits. File at least one complete copy of the registration statement or report, including financial statements, exhibits and all other papers and documents filed as part of the registration statement or report, with each exchange on which any class of securities is or will be registered. Manually sign at least one complete copy of the registration statement or report filed with the Commission and one copy filed with each exchange. Type or print the signatures on copies that are not manually signed. See Exchange Act Rule 12b-11(d) (17 CFR 240.12b-11(d)) for instructions about manual signatures and the Instructions as to Exhibits of this Form for instructions about signatures through powers of attorney.

(c) When registration statements and reports are permitted to be filed in paper, they are filed with the Commission by sending or delivering them to our File Desk between the hours of 9:00 a.m. and 5:30 p.m., Washington, D.C. time. The File Desk is closed on weekends and federal holidays. If you file a paper registration statement or report by mail or by any means other than hand delivery, the address is U.S. Securities and Exchange Commission, Attention: File Desk, 450 Fifth Street, NW., Washington, DC 20549. We consider documents to be filed on the date our File Desk receives them.

* * * * *

23. Amend Form CB (referenced in § 239.800 and § 249.480) by revising the cover page to read as follows:

Note: The text of Form CB does not and the amendment will not appear in the Code of Federal Regulations.

OMB Approval

OMB Number: 3235-0518

Expires: March 31, 2002

Estimated average burden hours per response: 2.0

United States Securities and Exchange Commission, Washington, D.C. 20549**Form CB****Tender Offer/Rights Offering Notification Form (Amendment No. _____)**

Please place an X in the box(es) to designate the appropriate rule provision(s) relied upon to file this Form:

- ☐ Securities Act Rule 801 (Rights Offering)
- ☐ Securities Act Rule 802 (Exchange Offer)
- ☐ Securities Act Rule 13e-4(h)(8) (Issuer Tender Offer)
- ☐ Exchange Act Rule 14d-1(c) (Third Party Tender Offer)
- ☐ Exchange Act Rule 14e-2(d) (Subject Company Response)
- ☐ Filed in paper if permitted by Regulation S-T Rule 101(b)(7)

Note: Regulation S-T Rule 101(b)(7) only permits the filing of a Form CB in paper if neither the subject company nor the person furnishing the form has reporting obligations under Section 13 or 15(d) of the Exchange Act.

* * * * *

24. Amend Form 6-K (referenced in § 249.306) by revising the cover page and paragraph D. of the General Instructions to read as follows:

Note: The text of Form 6-K does not and the amendments will not appear in the Code of Federal Regulations.

OMB Approval

OMB Number: 3235-0116

Expires: March 31, 2003

Estimated average burden hours per response: 8

Form 6-K**Securities and Exchange Commission, Washington, D.C. 20549****Report of Foreign Private Issuer**

Pursuant to Rule 13a-16 or 15d-16 under the Securities Exchange Act of 1934

For the month of _____, 20
Commission File Number _____

(Translation of registrant's name into English)

(Address of principal executive offices)

Indicate by check mark whether the registrant files or will file annual reports under cover of Form 20-F or Form 40-F:

Form 20-F _____ Form 40-F _____

Indicate by check mark if the registrant is submitting the Form 6-K in paper as permitted by Regulation S-T Rule 101(b)(1): _____

Note: Regulation S-T Rule 101(b)(1) only permits the submission in paper of a Form 6-K if submitted solely to provide an attached annual report to security holders.

Indicate by check mark whether by furnishing the information contained in this Form, the registrant is also thereby furnishing the information to the Commission pursuant to Rule 12g3-2(b) under the Securities Exchange Act of 1934.

Yes _____ No _____

If "Yes" is marked, indicate below the file number assigned to the registrant in connection with Rule 12g3-2(b): 82-____

* * * * *

General Instructions

* * * * *

D. Application of General Rules and Regulations

You must submit a Form 6-K report in electronic format in the English language as required by Regulation S-T Rule 306 (17 CFR 232.306). If you wish to submit a foreign language document as part of the report, you must file instead an English translation of the document as required by Regulation S-T Rule 306.

You may submit a Form 6-K in paper under Regulation S-T Rule 101(b)(1) (17 CFR 232.101(b)(1)) if the sole purpose of the Form 6-K is to furnish an annual report to security holders. If you seek to file a Form 6-K in paper under this rule, you must check the appropriate box on the cover page of the Form 6-K.

You may also submit a Form 6-K in paper under a hardship exemption provided by Regulation S-T Rule 201 or 202 (17 CFR 232.201 or 232.202). If you are submitting a Form 6-K in paper under a hardship exemption, on the cover page of the Form 6-K you must provide the legend required by Regulation S-T Rule 201(a)(2) or 202(c) (17 CFR 232.201(a)(2) or 232.202(c)).

When submitting a Form 6-K in paper in the limited circumstances described above, or as otherwise permitted by the Commission, you must submit the Form 6-K report, including all documents submitted with the report, in compliance with Exchange Act Rule 12b-12(d) (17 CFR 240.12b-12(d)).

PART 269—FORMS PRESCRIBED UNDER THE TRUST INDENTURE ACT OF 1939

25. The authority citation for Part 269 continues to read as follows:

Authority: 15 U.S.C. 77ddd(c), 77eee, 77ggg, 77hhh, 77iii, 77jjj, 77sss, 78ll(d), unless otherwise noted.

26. Amend Form F-X (referenced in §§ 239.42, 249.250 and 269.5), General Instructions II, by revising paragraph B. to read as follows:

Note: The text of Form F-X does not and the amendment will not appear in the Code of Federal Regulations.

FORM F-X

* * * * *

GENERAL INSTRUCTIONS

* * * * *

II.

* * * * *

B. (1) This is [check one]

☐ an original filing for the Filer

☐ an amended filing for the Filer

(2) Check the following box if you are filing the Form F-X in paper in accordance with Regulation S-T Rule 101(b)(8) ☐

Note: Regulation S-T Rule 101(b)(8) only permits the filing of the Form F-X in paper:

(a) If neither the filer nor the company that is the subject of the Form CB transaction is subject to the reporting requirements of Section 13 or Section 15(d) of the Exchange Act; or

(b) If filed by a Canadian issuer when qualifying an offering statement pursuant to the provisions of Regulation A (230.251-230.263 of this chapter).

* * * * *

Dated: September 28, 2001.

By the Commission.

Margaret H. McFarland,

Deputy Secretary.

Note: Appendix A to the Preamble will not appear in the Code of Federal Regulations.

Appendix A

Regulatory Flexibility Act Certification

I, Harvey L. Pitt, Chairman of the Securities and Exchange Commission, hereby certify, pursuant to 5 U.S.C. 605(b), that the proposed rescission of Rule 601 under Regulation S-T, and the proposed amendments of Rules 403 and 493 under the Securities Act of 1933 ("Securities Act"), Rules 100, 101, 303, 306, and 311 under Regulation S-T, Rule 12b-12 under the Securities Exchange Act of 1934 ("Exchange Act"), Forms F-7, F-8, F-9, F-10, and F-80 under the Securities Act, Forms 20-F and 6-K under the Exchange Act, Form CB under the Securities Act and Exchange Act, and Form F-X under the Securities Act, Exchange Act, and Trust Indenture Act of 1939 ("Trust Indenture Act"), if adopted, would not have a significant economic impact on a substantial number of small entities for purposes of the Regulatory Flexibility Act ("Act"). The reasons for this certification are as follows.

The proposed rule amendments would require foreign private issuers and foreign governments to file their securities documents, including Securities Act

registration statements and Exchange Act registration statements, schedules, and reports electronically through the Commission's Electronic Data Gathering, Analysis, and Retrieval ("EDGAR") system. The current rules permit, but do not require, foreign issuers to file their securities documents on EDGAR.

The proposed amendments would primarily affect foreign issuers and not domestic companies since the Commission already requires domestic companies to file their securities documents on EDGAR. While the proposed amendments would affect some domestic entities by requiring them to file on EDGAR their third party forms, such as Schedule 13Ds and 13Gs, Schedule TOs, and Form CBs that pertain to foreign private issuers, we do not expect the proposed amendments to affect a substantial number of small entities.

Based on an analysis of the language and legislative history of the Act, Congress did not intend that the Act apply to foreign issuers or natural persons. Moreover, the Exchange Act and Securities Act rules define a small entity for purposes of the Act as one having assets of \$5 million or less as of the last day of its most recently completed fiscal year. As explained below, most of the above third party forms have been filed by foreign issuers, natural persons or domestic entities that have assets significantly greater than \$5 million, and which are, therefore, beyond the scope of the Act.

For example, of the 279 Schedule 13Ds and 13Gs filed in paper in calendar year 2000, only seven were filed by domestic entities regarding securities of foreign issuers. Of these seven domestic filers, only two had assets of \$5 million or less as of the last day of their most recently completed fiscal year. Similarly, of the 11 Schedule TOs filed during this same period, none was filed by a domestic entity.

The proposed amendments would only require the filing of a Form CB on EDGAR if the filer or the foreign company that is the subject of the Form CB transaction is an Exchange Act reporting company. Of the 95 Form CBs filed with the Commission during calendar year 2000, 32 were filed by Exchange Act reporting companies and an additional eight were filed by non-Exchange Act reporting companies concerning subject companies that were Exchange Act reporting companies. Of these 40 Form CBs that would have been affected by the proposed amendments had they been enacted then, only four were filed by domestic entities. Each of these four domestic entities had assets that were significantly greater than \$5 million as of the last day of its most recently completed fiscal year.

While a few small domestic entities may incur costs resulting from the proposed amendments, these costs should not have a significant economic impact. For example, we understand that the average cost of electronically formatting and transmitting a Schedule 13D or 13G on EDGAR is approximately \$250. In addition, the proposed amendments will not effect any change in the substantive requirements of the federal securities laws.

For all the foregoing reasons, the proposed amendments should not have a significant

economic impact on a substantial number of small entities.

Dated: September 25, 2001.

Harvey L. Pitt,
Chairman.

[FR Doc. 01-24806 Filed 10-3-01; 8:45 am]

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