

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 200 and 202

[Release Nos. 33–8267; 34–48361; 35–27714; 39–2410; IC–26153]

Adoption of Filing Fee Account Rule

AGENCY: Securities and Exchange Commission.

ACTION: Final rule.

SUMMARY: The Securities and Exchange Commission is adopting a new rule that provides for the return of unused filing fees held in filing fee accounts in which there has been no activity for 180 days.

EFFECTIVE DATE: October 21, 2003.

FOR FURTHER INFORMATION CONTACT:

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SUPPLEMENTARY INFORMATION:

Commission rules require fees paid in connection with filings to be submitted to the U.S. Treasury Department depository at Mellon Bank in Pittsburgh, Pennsylvania.¹ The SEC maintains an account for each filer who submits funds to the depository for the purpose of paying required fees. As an accommodation, we have allowed filers to submit funds in advance and to maintain indefinitely running balances in these accounts in anticipation of paying a required fee.

A large number of established fee accounts shows outstanding balances with no activity for an extended period of time. Our Office of Financial Management is modifying its practices for maintaining filing fee accounts. The changes will reduce the administrative burdens associated with these inactive accounts and return control of unused funds to filers for more productive purposes, while retaining flexibility for those who are still periodically paying filing fees. We will soon take the following actions relating to current accounts:

- Account statements will be sent to all account holders at the most current account address they have provided to the Commission. Subsequently, each account with activity within 180 calendar days will receive a monthly account statement.

- If an account has had no activity since January 1, 2003 and the balance exceeds \$5.00, the funds will be returned to the account holders.

- Balances of \$5.00 or less in accounts with no activity since January 1, 2003 will be returned to account holders upon request, if a request is made before January 1, 2004. If no such request is received, the funds will be forwarded to the U.S. Treasury general account, in compliance with applicable regulations.

We also are adopting a new rule to codify our future practices relating to these filing fee accounts. The rule, which will be added as new paragraph (c) to Rule 3a, provides that the SEC will return all funds to account holders if there has been no activity in their accounts for 180 calendar days.² We will include a reminder of this provision on each monthly account statement sent to active account holders.

The rule also indicates that account statements and returned funds will be sent to the account address provided to the SEC by each filer and that filers must keep this address current. Without current account addresses, we may not be able to provide timely account statements, and we may ultimately be unable to return funds to the account holders. To ensure the timely return of funds, all current account holders should confirm as soon as possible that their account addresses on file with the Commission are up to date.

A company may update its account and other addresses using two different methods. The preferred and most efficient method is to change them online using the EDGAR filing website.³ This method ensures data integrity and the most timely update. Alternatively, a company may report a change of addresses on an amended Form ID.⁴ Simply changing an address in the text of the cover page of a filing made on the

² We have chosen 180 calendar days as a reasonable period of time to allow filers flexibility to plan future filings and have money available to pay fees. The administrative and accounting burdens associated with accounts without activity beyond that period begin to outweigh the benefits to filers. The 180-day period begins on the date of the last deposit or withdrawal or other adjustment to an account, regardless of the amount.

Consequently, if a filer has a balance in an account that has been inactive for almost 180 days, the filer can avoid the return of funds simply by adding a nominal amount of money to the account via the depository or by making a filing that will draw down a fee, at which point the 180-day period is re-started.

³ This process is described in the EDGAR Filer Manual (Release 8.5), Vol. 1, Section 6.5.1.

⁴ Form ID is used by filers to obtain access codes to make electronic filings on the EDGAR system and requires filers to provide account address information to the Commission [17 CFR 239.63; 17 CFR 249.446; 17 CFR 274.402].

EDGAR system will not be sufficient to update the Commission's account address records.

We also are adopting an update and revision to Rule 200.30–13, delegating authority to the Office of Financial Management to administer Rule 3a(c).⁵

Since this rule relates solely to agency procedure or practice, publication for notice and comment is not required under the Administrative Procedure Act.⁶ It follows that the requirements of the Regulatory Flexibility Act do not apply.⁷ This rule also imposes no new collection of information under the Paperwork Reduction Act.⁸

Statutory Basis

Rule 3a(c) and revised Rule 200.30–13 are promulgated under Sections 6 and 19(a) of the Securities Act of 1933, Sections 4A, 4B, 13(e), 14(g) and 23(a) of the Securities Exchange Act of 1934, Section 319(a) of the Trust Indenture Act of 1939, Section 20(a) of the Public Utility Holding Company Act of 1935, Section 211 of the Investment Advisers Act of 1940 and Section 38 of the Investment Company Act of 1940.

List of Subjects

17 CFR Part 200

Administrative practice and procedure, Authority delegations (Government Agencies).

17 CFR Part 202

Administrative practice and procedure, Securities.

Text of the Amendment

■ In accordance with the foregoing, Title 17, Chapter II of the Code of Federal Regulations is amended as follows:

PART 200—ORGANIZATION; CONDUCT AND ETHICS; AND INFORMATION REQUESTS

■ 1. The authority citation for Part 200, Subpart A—Organization and Program Management, continues to read, in part, as follows:

Authority: 15 U.S.C. 77s, 78d–1, 78d–2, 78w, 78ll(d), 78mm, 79t, 77sss, 80a–37, 80b–11, unless otherwise noted.

* * * * *

■ 2. By revising § 200.30–13 to read as follows:

§ 200.30–13 Delegation of authority to Associate Executive Director of the Office of Financial Management.

Pursuant to the provisions of 15 U.S.C. 78d–1 and 78d–2, the Securities

⁵ 17 CFR 200.30–13.

⁶ 5 U.S.C. 553(b).

⁷ 5 U.S.C. 601–612.

⁸ 44 U.S.C. 3501–3520.

¹ Rule 3a of the Commission's Informal and Other Procedures [17 CFR 202.3a] and Rule 13(c) of Regulation S–T [17 CFR 232.13(c)].

and Exchange Commission hereby delegates, until the Commission orders otherwise, the following functions to the Associate Executive Director of the Office of Financial Management, to be performed by him or her, or under his or her direction by such person or persons as may be designated from time to time by the Chairman of the Commission:

(a) The compromise and collection of federal claims as required by the Federal Claims Collection Act of 1966, as amended and recodified at 31 U.S.C. 3701–3720, in conformance with standards and procedures jointly promulgated by the Secretary of the Treasury and the Attorney General of the United States in 31 CFR Parts 900–904.

(b) The administration of filing fee account procedures and policies established in § 202.3a of this chapter.

PART 202—INFORMAL AND OTHER PROCEDURES

■ 3. The authority citation for Part 202 continues to read, in part, as follows:

Authority: 15 U.S.C. 77s, 77t, 78d–1, 78u, 78w, 78l(d), 79r, 79t, 77sss, 77uuu, 80a–37,

80a–41, 80b–9, and 80b–11, unless otherwise noted.

* * * * *

■ 4. By amending § 202.3a by adding paragraph (c), to read as follows:

§ 202.3a Instructions for filing fees.

* * * * *

(c) *Filing fee accounts.* (1) A filing fee account is maintained for each filer who submits a filing requiring a fee on the Commission's EDGAR system or who submits funds to the U.S. Treasury designated depository in anticipation of paying a filing fee. Account statements are regularly prepared and provided to account holders. Account holders must maintain a current account address with the Commission to ensure timely access to these statements.

(2) Funds held in any filing fee account in which there has not been a deposit, withdrawal or other adjustment for more than 180 calendar days will be returned to the account holder, and account statements will not be sent again until a deposit, withdrawal or other adjustment is made with respect to the account. Filers must maintain a current account address to assure the

timely return of funds. It may not be possible to return funds from inactive accounts if the Commission is unable to identify a current account address of an account holder after making reasonable efforts to do so.

Note to paragraph (c). A company may update its account and other addresses using two different methods. The preferred and most efficient method is to change them online using the EDGAR filing website. This method ensures data integrity and the most timely update. Alternatively, a company may report a change of addresses on an amended Form ID [17 CFR 239.63; 17 CFR 249.446 and 17 CFR 274.402]. Simply changing an address in the text of the cover page of a filing made on the EDGAR system will not be sufficient to update the Commission's account address records.

Dated: August 19, 2003.

By the Commission.

Margaret H. McFarland,

Deputy Secretary.

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