

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 200, 228, 229, 230, 232, 239, 240 and 249

[Release Nos. 33-7369; 34-38023; 39-2344; IC-22374; File No. S7-28-96]

RIN 3235-AG96

Rulemaking for the EDGAR System

AGENCY: Securities and Exchange Commission.

ACTION: Proposed rules.

SUMMARY: The Securities and Exchange Commission ("Commission") today is proposing minor and technical amendments to its rules governing the submission of filings and other documents through the Electronic Data Gathering, Analysis, and Retrieval ("EDGAR") system. These rule proposals follow, and in some cases reflect, the recent completion of the process whereby domestic issuers and third parties filing with respect to those issuers have become subject to mandated electronic filing.

DATES: Comments should be received on or before January 13, 1997.

ADDRESSES: Comments should be submitted in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Comments also may be submitted electronically at the following E-mail address: rule-comments@sec.gov. All comment letters should refer to File No. S7-28-96; this file number should be included in the subject line if E-mail is used. Comment letters will be available for inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, DC 20549. Electronically submitted comment letters will be posted on the Commission's Internet Web Site (<http://www.sec.gov>).

FOR FURTHER INFORMATION CONTACT: James R. Budge, Division of Corporation Finance at (202) 942-2950, or Ruth Armfield Sanders, Division of Investment Management at (202) 942-0633, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549.

SUPPLEMENTARY INFORMATION: The Commission today is proposing for public comment amendments to the following rules relating to electronic filing on the EDGAR system: Rule 200.30-1,¹ Rule 200.30-5,² Item 601(c) of Regulation S-B and Regulation S-K,³

Rule 405 of Regulation C,⁴ Rules 10,⁵ 11,⁶ 13,⁷ 101,⁸ 102,⁹ 201,¹⁰ 202,¹¹ 303,¹² 304,¹³ 307¹⁴ and 311¹⁵ of Regulation S-T,¹⁶ Forms S-2,¹⁷ S-3,¹⁸ S-8,¹⁹ F-2²⁰ and F-3²¹ under the Securities Act of 1933 ("Securities Act"),²² Rule 0-1,²³ Rule 12b-25,²⁴ Rule 13d-2,²⁵ Rule 13e-4,²⁶ Schedule 14A,²⁷ Rule 14e-1,²⁸ and Form 12b-25²⁹ under the Securities Exchange Act of 1934 ("Exchange Act"),³⁰ and Rule 0-2³¹ under the Trust Indenture Act of 1939.³² The proposals also would add new Rules 14, 100 and 601 to Regulation S-T, create a new Form DF, and eliminate the EDGAR transition rules found in Rules 901, 902 and 903 of Regulation S-T.³³

I. Background

Beginning April 26, 1993, the Commission has required many of the documents filed with it pursuant to the federal securities laws to be submitted electronically via the EDGAR system.³⁴ Domestic registrants were scheduled to become subject to mandated electronic filing in a series of discrete phase-in groups. Following the completion of a congressionally-mandated test period,

⁴ 17 CFR 230.405.

⁵ 17 CFR 232.10.

⁶ 17 CFR 232.11.

⁷ 17 CFR 232.13.

⁸ 17 CFR 232.101.

⁹ 17 CFR 232.102.

¹⁰ 17 CFR 232.201.

¹¹ 17 CFR 232.202.

¹² 17 CFR 232.303.

¹³ 17 CFR 232.304.

¹⁴ 17 CFR 232.307.

¹⁵ 17 CFR 232.311.

¹⁶ 17 CFR Part 232.

¹⁷ 17 CFR 239.12.

¹⁸ 17 CFR 239.13.

¹⁹ 17 CFR 239.16b.

²⁰ 17 CFR 239.32.

²¹ 17 CFR 239.33.

²² 15 U.S.C. 77a *et seq.*

²³ 17 CFR 240.0-1.

²⁴ 17 CFR 240.12b-25.

²⁵ 17 CFR 240.13d-2.

²⁶ 17 CFR 240.13e-4.

²⁷ 17 CFR 240.14a-101.

²⁸ 17 CFR 240.14e-1.

²⁹ 17 CFR 249.322.

³⁰ 15 U.S.C. 78a *et seq.*

³¹ 17 CFR 260.0-2.

³² 15 U.S.C. 77aaa, *et seq.*

³³ 17 CFR 232.901, 232.902 and 232.903, respectively.

³⁴ The rules initiating mandated electronic filing were adopted as interim rules in: Release No. 33-6977 (February 23, 1993) (58 FR 14628) (containing a general description of the EDGAR system, Regulation S-T (the electronic filing regulation), and the rules applicable to filings processed by the Division of Corporation Finance); Release No. IC-19284 (February 23, 1993) (58 FR 14848) (relating to rules specific to investment companies and institutional investment managers); and Release No. 35-25746 (February 23, 1993) (58 FR 14999) (relating to rules specific to public utility holding companies).

which included electronic filing by several phase-in groups, the Commission certified that the system satisfied all statutory requirements and announced a schedule for the completion of the transition to mandated electronic filing for all domestic registrants and persons filing with respect to those registrants.³⁵ On May 6, 1996, the last group of domestic registrants became subject to mandated electronic filing requirements. The Commission has determined to review its rules governing electronic filing and update them, as needed, both to recognize the completion of the transition from a paper to an electronic filing system, and to reflect the experience gained with electronic filing over the last several years.

II. Proposed Rule Changes

The Commission is proposing for public comment a number of minor and technical changes to its rules governing electronic filing on the EDGAR system. These proposals are explained in detail below. Comment is solicited with respect to each proposal. Commenters should address whether the proposed changes are necessary and whether there are any alternatives to the proposed approaches that would better address the issues raised.

A. Elimination of EDGAR Transition Rules

Rules 901, 902 and 903 of Regulation S-T were adopted primarily to govern the phase-in of registrants and provide guidance in situations where one party to a transaction was a phased-in electronic filer and another party was a paper filer. With the end of the phase-in period, however, these transition rules are no longer needed, since all domestic registrants and persons filing with respect to them are now required to file electronically.³⁶ The Commission therefore proposes to eliminate these rules, retaining in other rules in Regulation S-T the provisions outlining who is subject to mandated electronic filing, as well as the paper copy submission requirements.³⁷

³⁵ Release No. 33-7122 (December 19, 1994) (59 FR 67752).

³⁶ For transactions involving a foreign private issuer and a domestic registrant, see the discussion below relating to foreign private issuers.

³⁷ See proposed Rule 100 of Regulation S-T and the proposed changes to Rule 101 of Regulation S-T. The definition of "electronic filer" in Rule 11 of Regulation S-T, Rule 405 of Regulation C, Exchange Act Rule 0-1, and Trust Indenture Act Rule 0-1 would be updated to reflect these changes.

The note currently found in Rule 901 of Regulation S-T that explains that domestic electronic filers cannot electronically file beneficial

¹ 17 CFR 200.30-1.

² 17 CFR 200.30-5.

³ 17 CFR 228.601(c) and 229.601(c), respectively.

B. New Rule 601 of Regulation S-T Governing Foreign Private Issuers

Foreign private issuers and foreign governments are not subject to mandated electronic filing requirements, unless they are acting in concert with, or as a third party filer with respect to, a domestic registrant. Foreign private issuers' electronic filing responsibilities currently are outlined in Rule 901, which, as stated above, has been proposed to be eliminated. Thus, a new rule is being proposed that will outline the electronic filing obligations of foreign private issuers and foreign governments.³⁸ The rule would indicate that these entities generally are not required to file electronically, unless they are filing jointly with a domestic registrant or acting as a third party filer with respect to such a registrant.

The new rule also would provide that these entities may choose to file electronically in most situations where electronic filing is not required. Some types of documents filed by foreign private issuers currently are not supported by the EDGAR system, including filings made in connection with the multi-jurisdictional disclosure system. The staff has undertaken a review of documents not yet available for electronic filing with the intention of recommending enhancement of form processing capabilities where appropriate. Should EDGAR be programmed to accept all types of filings made by foreign private issuers? Are some more important than others for inclusion in the database?

Notwithstanding the requirement to file electronically when filing in connection with a domestic registrant, the proposed rule would codify a staff interpretation that where a foreign private issuer engages in an exchange offer, merger or other business combination transaction with a domestic registrant and the foreign private issuer files a registration statement under the Securities Act with respect to the transaction, the registration statement and other documents relating to the transaction may be filed in paper, provided that the domestic registrant will not be a reporting entity at the conclusion of the transaction. Comment is solicited specifically with respect to this codification. Should these types of transactions be required to be filed in

electronic format? Are there other transactions involving foreign private issuers that should qualify for this treatment, such as tender offers made by such issuers with respect to a domestic electronic registrant?

C. Rule 10 of Regulation S-T

Current Rule 10(b) of Regulation S-T³⁹ includes a note that strongly urges persons about to become subject to mandated electronic filing to submit a Form ID to obtain EDGAR access and security codes between three and six months prior to their first required electronic filing. This instruction is proposed to be amended to emphasize that issuers making initial public offerings, as well as third parties with newly-arising filing obligations, should submit a Form ID early to be ready to make their initial filing in electronic format.

D. Rule 11 of Regulation S-T

Rule 11(m) of Regulation S-T⁴⁰ provides a definition of "official filing" for purposes of the electronic filing regulation. That definition states that an "official filing" is the microfiche copy, prepared in compliance with the Commission's administrative regulations and other requirements, of filings made with the Commission, regardless of filing medium. The Commission recently has changed its practice of making microfiche copies of electronic filings, and therefore it is desirable to change the definition to reflect current practices. For purposes of Regulation S-T, it is proposed that the term "official filing" mean any filing that has been received and accepted by the Commission, regardless of filing medium.

E. Rule 13 of Regulation S-T

In 1994, the Commission adopted an amendment to Rule 13⁴¹ to address concerns raised about the ability of paper filers to comply with filing requirements by mailing for filing on a Saturday, Sunday or holiday, while electronic filers were constrained to file on days when the Commission was open for business.⁴² The rule states that "[w]here the Commission's rules, schedules and forms provide that a document may be 'mailed for filing with the Commission' at the same time it is published, furnished, sent or given to security holders or others, an electronic

filer may file the document with the Commission electronically before or on the date the document is published, furnished, sent or given, or if such publication or distribution does not occur on a business day of the Commission, as soon as practicable on the next business day."

The staff has interpreted this language to allow issuers and others to electronically file with the Commission proxy materials promptly on the next business day following distribution to security holders where it is impracticable to file electronically such materials on the same business day of the Commission (between the hours of 8 a.m. and 5:30 p.m.) on which the distribution first occurs.⁴³ While this provision would provide relief to filers in all time zones, it is of particular value to proxy contest participants (and/or their counsel) based on the West Coast because it allows them to file proxy materials promptly on the next business day where material is prepared too late in the afternoon to effect an electronic transmission before the 5:30 p.m. Eastern time deadline on the day the materials are first distributed to security holders. The Commission proposes to amend Rule 13 to codify this interpretation. Is there any reason why this interpretation should not be codified? What interests, if any, would be adversely affected by this change?

F. Proposed New Rule 14 of Regulation S-T—Notification of Delayed Filing

While electronic filing has in many ways given filers more control over the timing of their filings, the EDGAR rules recognize that circumstances beyond a filer's control sometimes will prevent the timely electronic filing of a document. The temporary hardship exemption set out in Rule 201 and the filing date adjustment provisions of Rule 13 were designed to aid filers experiencing such electronic filing difficulties. The filing date adjustment mechanism has been more widely used.

In order to reduce the burden on the staff and filers associated with filing date adjustments, the Commission is proposing to add a new provision whereby filers may preserve the timeliness of certain filings without staff intervention.⁴⁴ Proposed new Rule 14 of Regulation S-T would provide that where an electronic filer in good faith attempts to file in a timely manner a report or schedule pursuant to sections 13(a), 13(d), 13(g), 15(d) or 16(a) of the

ownership reports with respect to foreign private issuers would be retained in revised Rule 101 of Regulation S-T. The provisions delegating authority to the Division of Corporation Finance and the Division of Investment Management to change phase-in dates are also being eliminated.

³⁸ Proposed Rule 601 of Regulation S-T.

³⁹ 17 CFR 232.10(b).

⁴⁰ 17 CFR 232.11(m).

⁴¹ The amendment added paragraph (d) to Rule 13. Rule 13 is proposed to be reorganized, with paragraph (d) being redesignated, as revised, as paragraph (a)(4).

⁴² Release No. 33-7122.

⁴³ See Henry Lesser (November 28, 1995).

⁴⁴ This was a recommendation in the report of the Task Force on Disclosure Simplification, issued March 5, 1996.

Exchange Act,⁴⁵ but is unable to do so because of unanticipated technical difficulties beyond the filer's control,⁴⁶ the report or schedule would be deemed timely filed if two conditions were met. First, the report or schedule would be required to be filed electronically no later than two business days following the applicable due date, and second, a new Form DF (for Delayed Filing) would be required to be filed electronically no later than the date the report or schedule is filed.⁴⁷ The new procedure would operate similarly to Rule and Form 12b-25,⁴⁸ which provide for the delayed filing of Exchange Act reports for reasons not related to technical difficulties.⁴⁹ Use of Form DF would not effect a filing date adjustment; rather, as with Form 12b-25, a filing made pursuant to this procedure would be deemed timely even though not filed until after its due date.⁵⁰

Proposed new Form DF would be a one page document that identifies the filer, the filer's Central Index Key ("CIK") number, the document that could not be timely filed, and the Commission file number for the filing, if one is available. It also would include a short statement setting out the nature

of the difficulty⁵¹ and a certification to the effect that notwithstanding good faith efforts, the filer was prevented from making a timely filing because of technical difficulties beyond its control. Form DF would be required to be filed electronically and made public in order to provide information to users as to the nature of the delay.

This procedure could be used only in connection with Exchange Act periodic and annual reports, Schedules 13D⁵² and 13G,⁵³ and Section 16 reports submitted voluntarily on the EDGAR system. While filing date adjustments would continue to be available on a case-by-case basis, they would be much less frequently granted with respect to these documents under the proposed scheme. The procedure would not be available for Securities Act filings and other transactional filings, such as tender offer documents;⁵⁴ the temporary and continuing hardship exemptions would still be available for such filings where the enumerated standards are satisfied.

For the proposals to work as contemplated, filers would need to be vigilant as to the status of their filings. The Commission reiterates that it is the filer's responsibility to determine whether its filings have been appropriately prepared, transmitted and accepted by the Commission.⁵⁵ Under the proposals, a filer would have two business days to act to preserve the timeliness of its filings. If it appears in advance that two business days would be insufficient to complete the electronic filing process, the filer should consider obtaining relief pursuant to a temporary or continuing hardship exemption rather than using the proposed procedure. If a filer began to rely on this procedure but could not meet the two business day deadline because of continuing electronic difficulties, it might wish to consult the staff with regard to the possibility of a continuing hardship exemption to afford it more time, under Rule 202(d) of Regulation S-T.⁵⁶

Comment is specifically solicited as to whether this procedure would be

workable for filers and provide an appropriate measure of relief without impairing the information needs of the investing public. Should the procedure be limited to the types of filings enumerated above, or should it be broadened to cover other types of documents, such as a prospectus filed pursuant to Rule 424⁵⁷ or Form 144⁵⁸ under the Securities Act? Is the two business day time period the one that should be used, or should it be longer (three or four business days) or shorter (one business day or the due date)? Should the time that the Form DF should be filed be fixed as proposed, or should a different timetable be established, such as requiring the form to be filed no later than the business day following the underlying document's due date or requiring it to be filed no earlier than the associated report's due date and no later than the date the report is filed. Does the proposed approach to allow filing of Form DF until, but no later than, the time the related report is filed provide adequate flexibility? Should filers be able to file Form DF after the related filing is made, so long as it is filed no later than one or two business days following the related filing's due date?

G. Rule 101 of Regulation S-T

1. Exemption for Form 10-K as First Electronic Filing

During the phase-in period, issuers were given an automatic exemption from electronic filing for their first required filing after becoming electronic filers if that document was a Form 10-K⁵⁹ or 10-KSB.⁶⁰ Now that all domestic issuers have become subject to the electronic filing requirements, this provision no longer is needed, since reporting entities will already have had the advantage of the one-time exemption and any new issuer's first filing will not be an annual report on either of these forms. Consequently, the Commission proposes to eliminate this provision. Comment is solicited as to whether there is any continued need for this exemption.

2. Proxy Materials and Annual Reports to Security Holders Furnished by Registrants Subject to Reporting Obligations Under Section 15(d) of the Exchange Act

Form 10-K and Form 10-KSB both require issuers reporting under section

⁴⁵ 15 U.S.C. 78m(a), 78m(d), 78m(g), 78o(d) and 78p(a), respectively. This new procedure would be available only to filers whose documents are subject to review by the Division of Corporation Finance.

⁴⁶ In order to qualify for this proposed procedure, the filing difficulties experienced by the filer must be technical in nature, unanticipated and beyond the filer's control. Consequently, this standard would not be satisfied where a document is late because a filing agent made an error as to when a document should be filed or because a filer failed to build into its planning schedule sufficient time to convert a document to an electronic format. If adopted, the staff would monitor the use of this procedure, and if abused, its availability could be restricted or discontinued.

⁴⁷ It is anticipated that most registrants would file the Form DF at the same time they filed the underlying report electronically. However, a filer could file the Form DF earlier to notify the public that its report shortly would be filed in electronic format, serving a function similar to Form 12b-25 (17 CFR 249.322).

⁴⁸ Rule 12b-25 is found at 17 CFR 240.12b-25.

⁴⁹ Form 12b-25 would continue not to be available for use where the reason for the delay related to the preparation and transmission of an electronic filing. Pertinent provisions of Rule 12b-25 (17 CFR 240.12b-25) and Form 12b-25 would be amended to reflect the addition of this new procedure.

The proposal also would include a provision similar to that found in Rule 12b-25 indicating that registrants would not be eligible to use any registration statement form under the Securities Act, the use of which is predicated on timely filed reports, until the report and Form DF were filed electronically in compliance with Rule 14 of Regulation S-T.

⁵⁰ It is anticipated that if this procedure is adopted, filing date adjustments will be granted more sparingly.

⁵¹ This requirement would be similar to those found in Form TH and Form 12b-25 and would provide the staff the means to monitor the use of the proposed procedure.

⁵² 17 CFR 240.13d-101.

⁵³ 17 CFR 240.13d-102.

⁵⁴ It generally is staff policy not to grant filing date adjustments for Securities Act registration statements or other transactional filings because shareholder rights may be affected.

⁵⁵ See Release No. 33-7122, Section III.

⁵⁶ If a filer submitted a report in paper under cover of Form TH later than one business day following its due date, the timeliness of the document would not be preserved.

⁵⁷ 17 CFR 230.424.

⁵⁸ 17 CFR 239.144.

⁵⁹ 17 CFR 249.310.

⁶⁰ 17 CFR 249.310b. This exemption is found in Rule 101(a)(1)(iii) of Regulation S-T (17 CFR 232.101(a)(1)(iii)).

15(d) of the Exchange Act to furnish to the Commission for its information any annual report to security holders covering the registrant's last fiscal year and every proxy statement, form of proxy or other proxy soliciting material sent to more than ten of the registrant's security holders with respect to any annual or other meeting of security holders. This information is not deemed filed unless it is being incorporated by reference into the Exchange Act report itself.

These submission requirements were intended to be covered under Rule 101 of Regulation S-T, but they are not specifically addressed in that rule. As is true for proxy materials submitted by companies registered under section 12, the proxy soliciting materials submitted pursuant to these provisions should be submitted electronically. This should be done by submitting them using the same EDGAR form type as used for other definitive proxy statements, DEF 14A, or DEFA14A for definitive additional materials, as outlined in the EDGAR Filer Manual. No fee will be charged for these proxy filings. Consistent with the requirements to furnish annual reports to security holders under the proxy rules, registrants have the option to submit their annual report to security holders pursuant to these provisions either in paper or in electronic format.⁶¹ If electronic submission is chosen, the document should be sent using the ARS form type. The Commission proposes to amend Rule 101(a) and 101(b) to clarify the electronic treatment of these documents. Commenters should address whether this information should be treated in the same manner as comparable materials submitted by section 12 reporting companies, as proposed, or whether they should be treated differently, such as allowing the proxy materials to be furnished in paper? Commenters should provide reasons for any special treatment that might be afforded these documents.

3. Schedules 13D and 13G

Current rules require that the first electronic amendment to a paper-filed Schedule 13D or Schedule 13G restate the entire text of the schedule.⁶² The purpose of this requirement is to ensure that a complete and current copy of these schedules is placed on the

electronic database so that financial observers do not need to refer to paper filings for a complete version of the filings. However, it has been the staff's position that if the first electronic amendment is to report a reduction in beneficial ownership that relieves the filer from further reporting obligations, the amendment needs not include a restatement of the entire text of the schedule, but only the amended portions. The Commission proposes to codify this position. A restatement requirement in connection with this type of amendment is burdensome to filers and provides little benefit to those who follow beneficial ownership transactions because the filer's reporting obligation terminates upon filing the amendment. Comment is sought as to whether restatement in these cases is necessary and whether the requirement to restate should be retained.

4. Certain Material Filed Pursuant to Exchange Act Rule 16b-3(b)(2)(ii)

Rule 16b-3(b)(2)(ii)⁶³ has required an issuer to furnish in writing to the holders of record of the securities entitled to vote for an employee benefit plan, and file with the Commission, substantially the same information concerning the plan that would be required by the rules and regulations in effect under Section 14(a) of the Exchange Act⁶⁴ at the time, where votes or consents were not solicited in a manner substantially in compliance with the Commission's proxy rules. These filings have been required to be made in paper pursuant to Rule 101(c) of Regulation S-T. Since this filing requirement recently has been eliminated by the Commission, effective August 15, 1996,⁶⁵ the corresponding Regulation S-T provision is proposed to be eliminated as well.⁶⁶

5. Filings Made in Connection With Securities Act Exemptions

The Commission recently eliminated Regulations B and F,⁶⁷ which provided for exemptions under the Securities Act. Consequently, references in Rule 101(c) of Regulation S-T to filings made pursuant to those regulations are proposed to be removed.

6. Certain Material Filed Pursuant to Investment Company Act Sections 23(c), 24(e) and 24(f)

The Regulation S-T list of mandated electronic submissions does not expressly include documents filed with the Commission pursuant to sections 23(c), 24(e), and 24(f) of the Investment Company Act, although these submission requirements were intended to be covered under Rule 101 of Regulation S-T. The Commission proposes to clarify that, pursuant to Regulation S-T, submissions under Sections 23(c), 24(e) and 24(f)⁶⁸ of the Act must be made electronically.⁶⁹

H. Hardship Exemptions

1. Confirming Copy Legends

Rule 202 of Regulation S-T provides for exemptions from electronic filing, pursuant to delegated authority, for documents, portions of documents, or groups of documents where the electronic filer would incur undue burden and expense to convert the material to an electronic format. Paragraph (d) of that rule allows the staff to grant such exemptions for a limited period of time premised on an undertaking to submit an electronic version of the material at the end of the stated period. However, unlike Rule 201 (for temporary hardship exemptions), Rule 202(d) does not include a requirement that the electronic version be identified as a confirming electronic copy of what was filed in paper pursuant to the exemption by including a legend to that effect on the first page of the document. The Commission proposes to add such a requirement to be consistent with other similar provisions and to alert users of the information to the fact that the information previously had been filed in paper.

2. Sanctions

The Commission also is proposing to modify the language found in Rule 202(d) of Regulation S-T and in the instructions to Forms S-2, S-3, S-8, F-2 and F-3⁷⁰ to reflect the fact that failure to submit a confirming electronic copy pursuant to a Rule 202(d) hardship exemption renders the registrant ineligible to use the form. Rule 303 of Regulation S-T also would be revised

⁶¹ Investment companies currently are required to file electronically with the Commission copies of their annual, semi-annual and other periodic reports to security holders. See Rule 101(a)(iv) of Regulation S-T (17 CFR 232.101(a)(iv)) and Investment Company Act Rule 30b2-1 (17 CFR 270.30b2-1).

⁶² Rule 101(a)(2)(ii) of Regulation S-T (17 CFR 232.101(a)(2)(ii)) and Rule 13d-2(c) (17 CFR 240.13d-2(c)).

⁶³ 17 CFR 240.16b-3(b)(2)(ii).

⁶⁴ 15 U.S.C. 78n(a).

⁶⁵ See Release No. 34-37260 (May 31, 1996) (61 FR 30376).

⁶⁶ Technical amendments to citations in paragraphs (a)(1)(ii) and (c)(6) of Rule 101 also are being proposed.

⁶⁷ Regulation B and Regulation F were eliminated in Release No. 33-7300 (May 31, 1996).

⁶⁸ While Form 24F-2 (17 CFR 274.24) is among the filings which must be submitted electronically, filers should be aware that there is no need to replicate electronically items such as boxes and vertical lines appearing in the paper version of this form.

⁶⁹ See proposed change to Rule 101(a)(1)(iv) of Regulation S-T (17 CFR 232.101(a)(1)(iv)).

⁷⁰ 17 CFR 239.12, 239.13, 239.16b, 239.32 and 239.33, respectively.

by broadening its language to provide that documents filed in paper under Rule 202(d) could not be incorporated by reference if a required confirming electronic copy is not submitted with respect to that document. Similarly, the tender offer rules would be amended to indicate that tender offer periods would be tolled so long as all required confirming electronic copies have not been submitted to the Commission.⁷¹ These changes are consistent with the treatment associated with temporary hardship exemption requirements and codify current staff interpretation.

3. Exhibits

a. *Exhibit Index.* Rule 102 of Regulation S-T and Item 601 of Regulations S-K and S-B currently require filers to indicate in a filing's exhibit index whether a confirming electronic copy of a paper-filed exhibit has been submitted by placing the letters "CE" next to the item in the index. The language in the rules is limited to confirming electronic copies submitted pursuant to a temporary hardship exemption, but should encompass any document originally filed in paper pursuant to any type of hardship exemption for which a required confirming electronic copy has been submitted. The Commission proposes to amend these rules accordingly.

b. *Technical Procedures.* The electronic filing rules contemplate under certain circumstances paper filing of exhibits in connection with an otherwise electronic filing. Filers may do this pursuant to either a temporary hardship exemption or a continuing hardship exemption, depending on the type of hardship involved. In every case involving a temporary hardship exemption, the filer is required within six business days following the paper filing to submit a confirming electronic copy of the material filed in paper.⁷² Persons making filings in paper pursuant to a continuing hardship exemption may be required to file a confirming electronic copy of the paper-filed material after a designated period of time.⁷³ Confirming electronic copies generally correspond to entire filings that were made in paper pursuant to a hardship exemption and are submitted complete, identified to the electronic system as only a copy of a previously-filed paper document. Where the subject of the hardship exemption is an exhibit

only, the standard protocol cannot be followed because exhibits cannot be filed standing alone—they must be a part of a filing.

Persons who have an obligation to submit electronic confirming copies of an exhibit filed in paper pursuant to a hardship exemption must submit the exhibit electronically by filing an amendment to the document to which the exhibit relates. The CONFIRMING-COPY tag should not be used in the submission header. A statement should be included in the amendment explaining that the amendment is solely to submit an electronic copy of an exhibit previously filed in paper pursuant to a hardship exemption. It is proposed that this be codified in the rules by adding an instruction to Rule 201 and Rule 202 of Regulation S-T.

I. Proxy Statement Performance Graph

Electronic filers subject to the requirement to furnish a stock performance comparison graph in their proxy statements pursuant to Item 402(I) of Regulation S-K⁷⁴ are required to satisfy that obligation in their electronic filings in the same manner as applicable to other types of omitted charts or graphs, that is, by describing the graph in tabular form.⁷⁵ Filers also are required to supplementally furnish a copy of the graph to the staff. In order to reduce the burden on proxy filers, the Commission is proposing to eliminate the requirement that the graph be supplementally sent to the staff. Of course, registrants would continue to be required to produce a copy of the graph, as sent to security holders, upon staff request, pursuant to Rule 304(c).⁷⁶

The staff of the Division of Investment Management has encouraged investment company filers to follow the provisions of Rule 304(d) in their preparation of the line graph required by Item 5A of Form N-1A.⁷⁷ Therefore, the Commission also is proposing to revise Rule 304(d) so that it expressly applies to these investment company registrants.

J. Annual Report Provisions Inapplicable to Investment Companies

Currently, Rule 303(b) of Regulation S-T⁷⁸ does not expressly state whether its requirements concerning incorporation by reference to reports to

security holders apply to investment companies. The Commission proposes to revise the rule to make it clear that the rule does not apply to investment company filers, codifying staff interpretation.

Also, the Commission is proposing a clarifying amendment to Schedule 14A. The Schedule would be revised to make it clear that investment companies need not submit electronically annual or quarterly reports to security holders, or any portion thereof, incorporated by reference into a proxy statement, if the report was filed electronically.⁷⁹ This revision also would codify staff interpretation.

K. Computational Materials To Be Filed Under Cover of Form SE

Certain issuers of asset-backed securities file large amounts of computational materials with a Form 8-K, pursuant to two no-action letters.⁸⁰ These materials often are voluminous and difficult to convert to an acceptable electronic format. Typically, filers of such materials have been granted hardship exemptions from filing them electronically. In order to reduce compliance costs both to the issuers and the staff, the Commission proposes to amend Rule 311 of Regulation S-T to add this type of supporting documentation to the list of items that may be filed in paper under cover of Form SE without the need for staff action. The Form 8-K itself, as well as any required term sheets, should be filed electronically. The Commission solicits comment as to whether it would be useful to the public to have computational materials on the EDGAR database and whether there is any feasible method available or under development for converting this information into an acceptable EDGAR format.

L. Financial Data Schedules

The Commission is proposing to codify the principles outlined in two staff interpretive positions relating to Financial Data Schedules. First, a note would be added stating that issuers of asset-backed securities (as defined in Form S-3, except that the securities need not be investment grade) that are not required to file financial statements with the Commission in their Securities Act registration statements or their reports filed pursuant to sections 13(a)

⁷¹ See proposed changes to Rule 13e-4 and Rule 14e-1.

⁷² Rule 201(b) of Regulation S-T [17 CFR 232.201(b)].

⁷³ Rule 202(d) of Regulation S-T.

⁷⁴ 17 CFR 229.402(I).

⁷⁵ Rule 304(d) of Regulation S-T [17 CFR 232.304(d)].

⁷⁶ 17 CFR 232.304(c). Paragraph (b)(2) also is proposed to be amended to conform its language with the changes made to Rule 304 in Release 33-7289 (May 9, 1996) [61 FR 24652], relating to use of electronic media for delivery purposes.

⁷⁷ 17 CFR 274.11A.

⁷⁸ 17 CFR 232.303(b).

⁷⁹ See proposed amendment to Note D.4 to Schedule 14A.

⁸⁰ Distribution of Certain Written Materials Relating to Asset-Backed Securities, (February 17, 1995) and Mortgage and Asset-Back Securities—Furnishing Information to Customers, (May 20, 1994).

or 15(d) of the Exchange Act are not required to submit a Financial Data Schedule in connection with those filings.⁸¹ This is consistent with the existing requirement that Financial Data Schedules be submitted only when updated financial statements are filed. Comment is solicited as to whether this note should be expanded to cover issuers of asset-backed securities that do not satisfy the definition of asset-backed securities for technical reasons. A second note would be added to the effect that a registrant is not required to restate prior Financial Data Schedules for a recapitalization that is in the form of a stock split or reverse stock split, provided that the <EPS> tag in the Financial Data Schedule for the period in which the stock split occurs includes a footnote that indicates that a stock split has occurred and its effective date, and that prior Financial Data Schedules have not been restated for the recapitalization.⁸²

In addition, the rules governing the submission of Financial Data Schedules provide that where a filer submits a document in paper pursuant to a temporary hardship exemption, and the document would have been accompanied by a Financial Data Schedule if filed in electronic format, the filer must submit the Financial Data Schedule with the confirming electronic copy of the filing. Since documents may be filed in paper pursuant to a continuing hardship exemption on the condition that the issuer file an electronic version within a stated time period,⁸³ the Commission is proposing to amend its rules to reflect its position that registrants must submit a Financial Data Schedule with the required confirming electronic copy of a document filed in paper pursuant to any hardship exemption where the underlying document would have included the schedule had it been filed originally in electronic format.

M. Red Ink Requirements

The Commission recently eliminated its requirements to print designated information in red ink.⁸⁴ Consequently, it is proposed that Rule 307 of Regulation S-T be revised to reflect this change.

III. Other Electronic Submission, Processing and Retrieval Issues

A. Expansion of Current System

While most documents required to be submitted to the Commission now must be sent electronically, certain filings and other types of communications still are required to be provided in paper format. Now that the EDGAR system has been fully implemented, as initially conceived, the Commission also seeks comment as to whether it may be appropriate to expand the system to require, or permit, electronic filing of any of the other documents currently excluded from the system pursuant to Rule 101(c) of Regulation S-T. Three examples of such submissions are requests for confidential treatment, no-action and interpretive requests, and filings made in connection with exempt offerings.

1. Confidential Treatment Requests

Requests for confidential treatment were not initially considered for electronic submission because of their special processing requirements, as well as a desire to minimize the risk that confidential information might be inadvertently disseminated publicly as a result of filer error. A specially secured internal database would be required to ensure that the submissions were not made available to the public. Comment is solicited as to whether filers would find it advantageous to be able to submit confidential treatment material in electronic format.

2. Internet Access to No-Action and Interpretive Letters

Questions have been raised about whether there are better ways to afford the public electronic access to no-action and interpretive letters. Correspondence with the staff relating to no-action and interpretive requests generally is not made public until final disposition. Upon disposition, however, these documents are made public and can be found electronically through commercial services, but they are not available on EDGAR or the Commission's Internet Web Site. Comment is requested about whether it would be useful to filers and to the public to make no-action and interpretive letters available on EDGAR or the Commission's Internet Web Site. This, of course, would require the submission of correspondence to the staff in some electronic format, either through the EDGAR system or in a word processing or ASCII format on diskette, depending on the medium chosen. Confidentiality concerns similar to those discussed in connection with

confidential treatment requests would need to be addressed for correspondence received by the Commission prior to final disposition. What benefits would accrue to persons submitting no-action and interpretive requests if an electronic medium for submission were developed? If an electronic method for processing no-action and interpretive requests were created, should it be voluntary or mandatory?

3. Exempt offerings

Filings made pursuant to exempt offerings, such as offering statements⁸⁵ filed under Regulation A,⁸⁶ have not been required to be filed electronically, in part because many of the filings were sent to the Commission's regional offices, which do not receive filings via the EDGAR system, and in part to relieve small issuers of the compliance costs associated with electronic filings. Comment is sought, from the perspective of filers and users of the information, about whether Regulation A documents should be required, or permitted, to be filed electronically.

Comment is solicited as to whether other documents currently excluded from electronic filing, such as shareholder proposal correspondence, applications for relief from periodic reporting requirements under Exchange Act section 12(h) or promotional and sales material, should be permitted or mandated to be submitted electronically. In addition, are there any documents currently allowed to be filed electronically on a voluntary basis that should be made mandated electronic filings, such as the annual report to security holders or Forms 3, 4 and 5? While no action mandating electronic filing of the documents outlined in Rule 101(c) is being proposed at this time, the Commission will take any comments into consideration as it plans future enhancements to the EDGAR system. Systems allowing voluntary submission of certain documents may be developed if supported by commenters. Of course, the Commission will not mandate electronic filing of any these documents without first issuing specific proposals to that effect.

B. Identification of Information in Submission Headers

The Commission recently has issued a release proposing amendments to its rules and Form S-3⁸⁷ and F-3⁸⁸ that would include non-voting as well as

⁸¹ See Ford Motor Credit Company (April 14, 1995).

⁸² See AFLAC/AFLAC Incorporated (April 10, 1996).

⁸³ Rule 202(d) of Regulation S-T.

⁸⁴ Release No. 33-7300.

⁸⁵ Form 1-A [17 CFR 239.90].

⁸⁶ 17 CFR 230.251-230.263.

⁸⁷ 17 CFR 239.13.

⁸⁸ 17 CFR 239.33.

voting common equity in the computation of the required \$75 million aggregate market value of common equity held by non-affiliates of the registrant.⁸⁹ During the course of that rulemaking process, it became apparent that it would be desirable to identify the "public float" of Exchange Act reporting companies electronically so that the staff and the public could readily search such companies by that criterion. The Commission solicits comment on whether the EDGAR system should be modified to include a <FLOAT> tag in the submission header used in connection with Exchange Act annual reports filed by domestic issuers.⁹⁰ Are there any other items of information whose identification in submission headers would benefit the public? This change would be effected in connection with a future upgrade of the EDGAR system and the adoption of a revised EDGAR Filer Manual.

IV. General Request for Comment

Comment is solicited with respect to each of the foregoing proposals from the perspective both of filers and of public users of information filed with the Commission. Interested persons should submit comment letters in triplicate to Jonathan G. Katz, Secretary, U.S. Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC., 20549. Comments also may be submitted electronically at the following E-mail address: rule-comments@sec.gov. All comment letters should refer to File Number S7-28-96. This file number should be included on the subject line if E-mail is used. Comment is requested with respect to any competitive burdens that might result from the adoption of any of the rule proposals. All comments will be considered by the Commission in complying with its responsibility under section 23(a) of the Exchange Act.⁹¹ Comments received will be available for inspection and copying in the Commission's public reference room, 450 Fifth Street, NW., Washington, DC. 20549. Electronically submitted comment letters will be posted on the Commission's Internet web site (<http://www.sec.gov>).

V. Cost-Benefit Analysis

Commenters are requested to address the costs and benefits of the rule proposals, and to provide any available

support for such views, in order to aid the Commission in its own evaluation of their costs and benefits. It is anticipated that the proposed rule changes will not impose significant costs on filers, since the proposals generally are codifications and/or clarifications of current filing practices. The benefit of the proposals would be to clarify existing rules and make the filing community at large more aware of current practices and interpretations.

VI. Summary of Regulatory Flexibility Act Certification

Pursuant to section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 605(b), the Chairman of the Commission has certified that the amendments proposed herein would not, if adopted, have a significant economic impact on a substantial number of small entities. This certification, including a statement of the factual basis therefor, is attached to this release as Appendix A.

VII. Paperwork Reduction Act

The staff has consulted with the Office of Management and Budget ("OMB") and has submitted the proposals for review in accordance with the Paperwork Reduction Act of 1995 ("the Act") (44 U.S.C. 3501 et seq.). It is anticipated that the proposals would add 100 burden hours annually, attributable to the information collection requirements of proposed Form DF.⁹² These burden hours would be derived from 500 respondents per year dedicating two-tenths of an hour to prepare each response on the form.

The Commission solicits comment: Concerning whether the proposed information collection on Form DF is necessary; on the accuracy of the Commission's estimates of the burden of proposed Form DF; on the quality, utility and clarity of the information to be collected; on how the burden of collection of information on those who are to respond, including through the use of automated collection techniques or other forms of information technology, may be minimized.

Persons desiring to submit comments on the collection of information requirements should direct them to the Office of Management and Budget, Attention: Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Washington, DC 20503, and should also send a copy of their comments to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W.,

Washington, DC 20549, with reference to File No. S7-6-96. The Office of Management and Budget is required to make a decision concerning the collection of information between 30 and 60 days after publication, so a comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication.

VIII. Statutory Basis

The rule amendments outlined above are proposed pursuant to sections 6, 7, 8, 10 and 19(a) of the Securities Act, Sections 3, 12, 13, 14, 15(d), 23(a) and 35(A) of the Exchange Act, sections 3, 5, 6, 7, 10, 12, 13, 14, 17 and 20 of the Public Utility Holding Company Act of 1935,⁹³ Section 319 of the Trust Indenture Act of 1939,⁹⁴ and Sections 8, 30, 31 and 38 of the Investment Company Act of 1940.⁹⁵

List of Subjects in 17 CFR Parts 200, 228, 229, 230, 232, 239, 240, and 249

Registration requirements, Reporting and recordkeeping requirements, Securities.

Text of the Proposals

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

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

1. The authority citation for Part 200 continues to read as follows:

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

* * * * *

§ 200.30-1 [Amended]

2. By amending § 200.30-1 by removing paragraph (m).

§ 200.30-5 [Amended]

3. By amending § 200.30-5 by removing paragraph (j) and by redesignating paragraphs (k) and (l) as paragraphs (j) and (k).

PART 228—INTEGRATED DISCLOSURE SYSTEM FOR SMALL BUSINESS ISSUERS

4. The authority citation for Part 228 continues to read as follows:

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

⁹³ 15 U.S.C. 79a et seq.

⁹⁴ 15 U.S.C. 77aaa et seq.

⁹⁵ 15 U.S.C. 80a-1 et seq.

⁸⁹ Release No. 33-7326 (August 30, 1996) (61 FR 47706).

⁹⁰ The public float currently is required to be disclosed in the body of the annual report itself. If this programming change were effected, a registrant only would be required to restate that figure in the submission header of the filing.

⁹¹ 15 U.S.C. 78w(a).

⁹² The information collection will be entitled "Form DF."

5. By amending § 228.601 by revising the second sentence of instruction 3 to paragraph (a), by designating the note to paragraph (c)(1)(ii) as "Note 1 to paragraph (c)(1)(ii)", by adding Note 2 to paragraph (c)(1)(ii), by revising paragraph (c)(1)(v), and by adding a note to paragraph (c)(2)(iii) to read as follows:

§ 228.601 (Item 601) Exhibits.

(a) * * *

Instructions to Item 601(a)

* * * * *

(3) * * * Whenever an electronic confirming copy of an exhibit is filed pursuant to a hardship exemption (§ 232.201 or § 232.202(d) of this chapter), the exhibit index should specify where the confirming electronic copy can be located; in addition, the designation "CE" (confirming electronic) should be placed next to the listed exhibit in the exhibit index.

(c) *Financial Data Schedule (1) General.* * * *

(ii) * * *

Note 2 to paragraph (c)(1)(ii): Issuers of asset-backed securities (as that term is defined in the general instructions to Form S-3 (§ 239.13 of this chapter), except that they need not be investment grade) that are not required to file financial statements with the Commission in their Securities Act registration statements or their reports filed pursuant to sections 13(a) or 15(d) of the Exchange Act are not required to submit a Financial Data Schedule in connection with those filings.

* * * * *

(v) A Financial Data Schedule shall be submitted only in electronic format. Where a registrant submits a filing, otherwise required to include a Financial Data Schedule, in paper pursuant to a hardship exemption under Rule 201 or Rule 202(d) of Regulation S-T (§ 232.201 or § 232.202(d) of this chapter, respectively), the Financial Data Schedule shall not be included with the paper filing, but shall be included with the required confirming electronic copy.

* * * * *

(2) *Format and presentation of Financial Data Schedule.* * * *

(iii) * * *

Note to paragraph (c)(2)(iii): A registrant is not required to restate prior Financial Data Schedules for a recapitalization that is in the form of a stock split or reverse stock split, provided that the <EPS> tag for the period in which the stock split occurs includes a footnote indicating that a stock split has occurred and its effective date, and that prior Financial Data Schedules have not been restated for the recapitalization.

* * * * *

PART 229—STANDARD INSTRUCTIONS FOR FILING FORMS UNDER THE SECURITIES ACT OF 1933, SECURITIES EXCHANGE ACT OF 1934 AND ENERGY POLICY AND CONSERVATION ACT OF 1975—REGULATION S-K

6. The authority citation for part 229 continues to read in part as follows:

Authority: 15 U.S.C. 77e, 77f, 77g, 77h, 77j, 77k, 77s, 77aa(25), 77aa(26), 77ddd, 77eee, 77ggg, 77hhh, 77iii, 77jjj, 77nnn, 77sss, 78c, 78i, 78j, 78l, 78m, 78n, 78o, 78w, 78ll(d), 79e, 79n, 79t, 80a-8, 80a-29, 80a-30, 80a-37, 80b-11, unless otherwise noted.

* * * * *

7. By amending § 229.601 by revising the second sentence of instruction 4 of "Instructions to Item 601", by designating the note to paragraph (c)(1)(ii) as "Note 1 to paragraph (c)(1)(ii)", by adding Note 2 to paragraph (c)(1)(ii), by revising paragraph (c)(1)(v), and by adding a note to paragraph (c)(2)(iii) to read as follows:

§ 229.601 (Item 601) Exhibits.

(a) * * *

Instructions to Item 601

* * * * *

(4) * * * Whenever an electronic confirming copy of an exhibit is filed pursuant to a hardship exemption (§ 232.201 or § 232.202(d) of this chapter), the exhibit index should specify where the confirming electronic copy can be located; in addition, the designation "CE" (confirming electronic) should be placed next to the listed exhibit in the exhibit index.

* * * * *

(c) *Financial Data Schedule (1) General.* * * *

(ii) * * *

Note 2 to paragraph (c)(1)(ii): Issuers of asset-backed securities (as that term is defined in the general instructions to Form S-3 (§ 239.13 of this chapter), except that they need not be investment grade) that are not required to file financial statements with the Commission in their Securities Act registration statements or their reports filed pursuant to sections 13(a) or 15(d) of the Exchange Act are not required to submit a Financial Data Schedule in connection with those filings.

* * * * *

(v) A Financial Data Schedule shall be submitted only in electronic format. Where a registrant submits a filing, otherwise required to include a Financial Data Schedule, in paper pursuant to a hardship exemption under Rule 201 or Rule 202(d) of Regulation S-T (§ 232.201 or § 232.202(d) of this chapter, respectively), the Financial Data Schedule shall not be included with the paper filing, but shall be

included with the required confirming electronic copy.

* * * * *

(2) *Format and presentation of financial data schedule.* * * *

(iii) * * *

Note to paragraph (c)(2)(iii): A registrant is not required to restate prior Financial Data Schedules for a recapitalization that is in the form of a stock split or reverse stock split, provided that the <EPS> tag for the period in which the stock split occurs includes a footnote indicating that a stock split has occurred and its effective date, and that prior Financial Data Schedules have not been restated for the recapitalization.

* * * * *

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

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

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

* * * * *

9. By amending § 230.405 by revising the definition of "electronic filer" to read as follows:

§ 230.405 Definitions of terms.

* * * * *

Electronic filer. The term *electronic filer* means a person or an entity that submits filings electronically pursuant to Rules 100 and 101 of Regulation S-T (§§ 232.100 and 232.101 of this chapter, respectively).

* * * * *

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

10. 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.

11. By amending § 232.10 by revising the note following paragraph (b) to read as follows:

§ 232.10 Application of Part 232.

* * * * *

Note: The Commission strongly urges any person or entity about to become subject to the disclosure and filing requirements of the federal securities laws to submit a Form ID well in advance of the first required filing, including a registration statement relating to an initial public offering, in order to facilitate electronic filing on a timely basis.

12. By amending § 232.11 by revising paragraphs (e) and (m) to read as follows:

§ 232.11 Definition of terms used in part 232.

* * * *

(e) *Electronic filer.* The term *electronic filer* means a person or an entity that submits filings electronically pursuant to Rules 100 and 101 of Regulation S-T (§§ 232.100 and 232.101, respectively).

* * * *

(m) *Official filing.* The term *official filing* means any filing that is received and accepted by the Commission, regardless of filing medium.

* * * *

13. By amending § 232.13 by revising the introductory text of paragraph (a)(1), by adding paragraph (a)(4) before the Note, by redesignating correct paragraphs (b) and (c) as paragraphs (c) and (b), and by removing paragraph (d) to read as follows:

§ 232.13 Date of filing; adjustment of filing date.

(a) *General.* (1) Unless otherwise provided in this section or in Rule 14 of Regulation S-T (§ 232.14 of this chapter), the business day on which a filing is received by the Commission shall be the date of filing thereof, if:

* * * *

(4) Where the Commission's rules, schedules and forms provide that a document may be "mailed for filing with the Commission" at the same time it is published, furnished, sent or given to security holders or others, an electronic filer shall file the document with the Commission before or on the date the document is first published, furnished, sent or given to security holders and others; *provided, however*, that if it is impracticable to file such materials electronically between the hours of 8 a.m. and 5:30 p.m. Eastern time on a business day of the Commission, the electronic filer may file as soon as reasonably practicable, but no later than 5:30 p.m. Eastern time, on the next business day. Any associated time periods shall be calculated on the basis of the publication or distribution date (as applicable) and not on the basis of the date of filing.

* * * *

14. By adding § 232.14 to read as follows:

§ 232.14 Notification of delayed filing.

(a) *Notification of delayed filing.* Where an electronic filer in good faith attempts to file in a timely manner a report or schedule pursuant to sections 13(a), 13(d), 13(g), 15(d) or 16(a) of the Exchange Act (15 U.S.C. 78m(a), 78m(d), 78m(g), 78o(d) or 78p(a)), but is

unable to do so because of unanticipated technical difficulties beyond the filer's control, the report or schedule shall be deemed timely filed if:

(1) It is filed electronically no later than two business days following the applicable due date; and

(2) A Form DF (§ 249.448 of this chapter) is filed electronically no later than the date the report or schedule is filed.

(b) Form DF shall be filed only in electronic format and may not be filed in paper pursuant to a hardship exemption under § 232.201 or § 232.202.

(c) A registrant will not be eligible to use any registration statement form under the Securities Act the use of which is predicated on timely filed reports until the subject report and Form DF are electronically filed pursuant to paragraph (a) of this section.

15. By adding § 232.100, following the undesignated heading "Electronic Filing Requirements" to read as follows:

§ 232.100 Persons and entities subject to mandated electronic filing.

The following persons or entities shall be subject to the electronic filing requirements of this Part 232:

(a) Registrants whose filings are subject to review by the Division of Corporation Finance, except for foreign private issuers and foreign governments;

(b) Registrants whose filings are subject to review by the Division of Investment Management; and

(c) Any 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.

16. By amending § 232.101 by revising paragraphs (a)(1)(ii), (a)(1)(iii), (a)(1)(iv), (a)(2)(ii), (b)(1), (c)(6) and (c)(8), by removing paragraph (c)(20), and by adding paragraph (d) to read as follows:

§ 232.101 Mandated electronic submissions and exceptions.

(a) *Mandated electronic submissions.*

(1) * * *

(ii) Statements and applications filed with the Commission pursuant to the Trust Indenture Act (15 U.S.C. 77aaa, *et seq.*), other than applications for exemptive relief filed pursuant to section 304 (15 U.S.C. 77ddd) and Section 310 (15 U.S.C. 77jjj) of that Act;

(iii) Statements, reports and schedules filed with the Commission pursuant to Sections 13, 14, or 15(d) of the Exchange Act (15 U.S.C. 78m, 78n and 78o(d)), except Form 13F (§ 249.325 of this chapter), and proxy materials required to be furnished for the information of

the Commission in connection with annual reports on Form 10-K (§ 249.310 of this chapter) or Form 10-KSB (§ 249.310b of this chapter) filed pursuant to section 15(d) of the Exchange Act.

Note to paragraph (a)(1)(iii). Domestic electronic filers are restricted from filing Schedules 13D and 13G with respect to foreign private issuers because EDGAR requires an IRS tax identification number to be inserted for the subject company as a prerequisite to acceptance of the filing. Such filings should be made in paper pending future system enhancements.

(iv) Documents filed with the Commission pursuant to sections 8, 17, 20, 23(c), 24(e), 24(f), and 30 of the Investment Company Act (15 U.S.C. 80a-8, 80a-17, 80a-20, 80a-23(c), 80a-24(e), 80a-24(f) and 80a-29); *provided, however*, that submissions under section 6(c), 8(f) or 17(g) of that Act (15 U.S.C. 80a-6(c), 80a-8(f) or 80a-17(g), or documents related to applications for exemptive relief under any section of that Act, shall not be made in electronic format; and

* * * *

(2) * * *

(ii) The first electronic amendment to a paper format Schedule 13D (§ 240.13d-101 of this chapter) or Schedule 13G (§ 240.13d-102 of this chapter), shall restate the entire text of the Schedule 13D or 13G, but previously filed paper exhibits to such Schedules are not required to be restated electronically. See Rule 102 (§ 232.102) regarding amendments to exhibits previously filed in paper format. Notwithstanding the foregoing, if the sole purpose of filing the first electronic Schedule 13D or 13G amendment is to report a change in beneficial ownership that would terminate the filer's obligation to report, the amendment need not include a restatement of the entire text of the Schedule being amended.

* * * *

(b) * * *

(1) Annual reports to security holders furnished for the information of the Commission pursuant to Rule 14a-3(c) (§ 240.14a-3(c) of this chapter) or Rule 14c-3(b) (§ 240.14c-3(b) of this chapter), or pursuant to the requirements of Form 10-K or Form 10-KSB filed by registrants pursuant to section 15(d) of the Exchange Act.

* * * *

(c) * * *

(6) Applications for exemptive relief filed pursuant to Sections 304 and 310 of the Trust Indenture Act.

* * * *

(8) Filings relating to offerings exempt from registration under the Securities Act, including filings made pursuant to Regulation A (§§ 230.251–230.263 of this chapter), Regulation D (§§ 230.501–230.506 of this chapter) and Regulation E (§§ 230.601–230.610a of this chapter), as well as filings on Form 144 (§ 239.144 of this chapter) where the issuer of the securities is not subject to the reporting requirements of section 13 or 15(d) of the Exchange Act (15 U.S.C. 78m or 78o(d), respectively).

* * * * *

(d) *Paper Copies of Electronic Filings.* Electronic filers, including third party filers, shall submit to the Commission a paper copy of their first electronic filing, as follows:

(1) The paper copy shall be either a document that meets the requirements of the applicable Commission rules and regulations for paper filings or a paper printout of the electronic filing. If the copy being submitted is the paper printout of the electronic filing, the header information specified in the EDGAR Filer Manual shall be omitted or blanked out to ensure that confidential information contained in the header remains non-public.

(2) The paper copy shall be sent to the following address: OFIS Filer Support, SEC Operations Center, 6432 General Green Way, Alexandria, VA 22312–2413. The paper copy shall be received by the Commission no later than six business days after the electronic filing. The following legend shall be typed, printed or stamped in capital letters at the top of the cover page of the paper copy:

THIS PAPER DOCUMENT IS BEING
SUBMITTED PURSUANT TO RULE
101(d) OF REGULATION S–T.

(3) Signatures are not required for paper format documents submitted pursuant to paragraph (d) of this section.

17. By amending § 232.102 by revising the last sentence of paragraph (d) to read as follows:

§ 232.102 Exhibits.

* * * * *

(d) * * * Whenever an electronic confirming copy of an exhibit is filed pursuant to a hardship exemption (§ 232.201 or § 232.202(d)), the exhibit index should specify where the confirming electronic copy can be located; in addition, the designation “CE” (confirming electronic) should be placed next to the listed exhibit in the exhibit index.

* * * * *

18. By amending § 232.201 by designating the note following

paragraph (b) as Note 1 and by adding Note 2 to read as follows:

§ 232.201 Temporary hardship exemption.

* * * * *

(b) * * *

Note 2. If the exemption relates to an exhibit only, the requirement to submit a confirming electronic copy shall be satisfied by refiling the exhibit in electronic format in an amendment to the filing to which it relates. The amendment should note that the purpose of the amendment is to add an electronic copy of an exhibit previously filed in paper pursuant to a temporary hardship exemption.

19. By amending § 232.202 by revising paragraph (d) before the note, designating the note as Note 1 and adding Note 2 and Note 3 to read as follows:

§ 232.202 Continuing hardship exemption.

* * * * *

(d) If a continuing hardship exemption is granted for a limited time period, the grant may be conditioned upon the filing of the document or group of documents that is the subject of the exemption in electronic format upon the expiration of the period for which the exemption is granted. The electronic format version shall contain the following statement in capital letters at the top of the first page of the document:

THIS DOCUMENT IS A COPY OF THE
(SPECIFY DOCUMENT) FILED ON
(DATE) PURSUANT TO A RULE 202(d)
CONTINUING HARDSHIP EXEMPTION

* * * * *

Note 2. If the exemption relates to an exhibit only and a confirming electronic copy of the exhibit is required to be submitted, the exhibit should be refilled in electronic format in an amendment to the filing to which it relates. The amendment should note that the purpose of the amendment is to add an electronic copy of an exhibit previously filed in paper pursuant to a continuing hardship exemption.

Note 3. Failure to submit a required confirming electronic copy of a paper filing made in reliance on a continuing hardship exemption granted pursuant to paragraph (d) of this section will result in ineligibility to use Forms S–2, S–3, S–8, F–2 and F–3 (see, §§ 239.12, 239.13, 239.16b, 239.32 and 239.33, respectively), restrict incorporation by reference of the document submitted in paper (see Rule 303 of Regulation S–T (§ 232.303), and toll certain time periods associated with tender offers (see Rule 13e–4(f)(12) (§ 240.13e–4(f)(12)) and Rule 14e–1(e) (240.14e–1(e))).

20. By amending § 232.303 by revising paragraph (a)(2) and paragraph (b) to read as follows:

§ 232.303 Incorporation by reference.

(a) * * *

(2) Any document filed in paper pursuant to a hardship exemption for which a required confirming electronic copy has not been submitted.

* * * * *

(b) If any portion of the annual or quarterly report to security holders is incorporated by reference into any electronic filing, such portion of the annual or quarterly report to security holders shall be filed in electronic format as an exhibit to the filing, as required by Item 601(b)(13) of Regulation S–K and Item 601(b)(13) of Regulation S–B. This requirement shall not apply to incorporation by reference by an investment company from an annual or quarterly report to security holders.

21. By amending § 232.304 by revising paragraph (b)(2) and paragraph (d), to read as follows:

§ 232.304 Graphic, image and audio information.

* * * * *

(b)(1) * * *

(2) Narrative descriptions, tabular representations or transcripts of graphic, image and audio material included in an electronic filing or appendix thereto also shall be deemed part of the filing. However, to the extent such descriptions, representations or transcripts represent a good faith effort to fairly and accurately describe omitted graphic, image or audio material, they shall not be subject to the liability and anti-fraud provisions of the federal securities laws.

* * * * *

(d) The performance graph that is to appear in registrant proxy and information statements relating to annual meetings of security holders (or special meetings or written consents in lieu of such meetings) at which directors will be elected, as required by Item 402(l) of Regulation S–K (§ 229.402(l) of this chapter), and the line graph that is to appear in registrant annual reports to security holders or prospectuses, as required by paragraph (b) of Item 5A of Form N–1A (§ 274.11A of this chapter), shall be furnished to the Commission in connection with an electronic filing by presenting the data in tabular or chart form within the electronic filing, in compliance with paragraph (a) of this section and the formatting requirements of the EDGAR Filer Manual.

22. By revising § 232.307 and its section heading to read as follows:

§ 232.307 Bold face type.

Provisions requiring presentation of information in bold face type shall be satisfied in an electronic format

document by presenting such information in capital letters.

23. By amending § 232.311 by adding paragraph (i) to read as follows:

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

* * * * *

(i) Computational materials filed as an exhibit to Form 8-K (§ 249.308) by issuers of an "asset-backed security," as that term is defined in General Instruction I.B.5 of Form S-3 (§ 239.13 of this chapter).

24. By adding an undesignated heading and § 232.601, to read as follows:

FOREIGN PRIVATE ISSUERS AND FOREIGN GOVERNMENTS

§ 232.601 Foreign private issuers and foreign governments.

(a) Foreign private issuers and foreign governments shall not be subject to the mandated electronic filing requirements of this part 232, except that a document filed either jointly with, or with respect to, a registrant that is subject to mandated electronic filing shall be filed in electronic format. See Rule 100 of Regulation S-T (§ 232.100).

(b) Foreign private issuers and foreign governments may choose to file electronically any document not required to be so filed to the extent that an appropriate form type is available, as identified by the EDGAR Filer Manual.

(c) Notwithstanding any provision of this part 232, if a foreign private issuer engages in an exchange offer, merger or other business combination transaction with a domestic registrant and the foreign private issuer files a Securities Act registration statement with respect to the transaction, the registration statement and all other documents relating to the transaction may be filed in paper, provided that the domestic registrant will not be subject to the reporting requirements of the Exchange Act at the conclusion of the transaction.

§§ 232.901, 232.902 and 232.903 and Undesignated heading [Removed and renewed]

25. By removing and reserving §§ 232.901, 232.902 and 232.903 and the undesignated heading "Transition to Electronic Filing".

PART 239—FORMS PRESCRIBED UNDER THE SECURITIES ACT OF 1933

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

Authority: 15 U.S.C. 77f, 77g, 77h, 77j, 77s, 77sss, 78c, 78l, 78m, 78n, 78o(d), 78w(a), 78ll(d), 79e, 79f, 79g, 79j, 79l, 79m, 79n, 79q,

79t, 80a-8, 80a-29, 80a-30 and 80a-37, unless otherwise noted.

* * * * *

27. By amending Form S-2 (referenced in § 239.12) by revising general instruction I.H.(1) to read as follows:

Note: The text of Form S-2 does not, and the amendment thereto will not, appear in the Code of Federal Regulations

FORM S-2

REGISTRATION STATEMENT UNDER THE SECURITIES ACT OF 1933

* * * * *

GENERAL INSTRUCTIONS

* * * * *

I. Eligibility Requirements for Use of Form S-2

* * * * *

H. Electronic filings. * * *

(1) all required electronic filings, including confirming electronic copies of documents submitted in paper pursuant to a hardship exemption as provided by Rule 201 or Rule 202(d) of Regulation S-T (§ 232.201 or § 232.202(d) of this chapter); and,

* * * * *

28. By amending Form S-3 (referenced in § 239.13) by revising general instruction I.A.8.(1) to read as follows:

Note: The text of Form S-3 does not, and the amendment thereto will not, appear in the Code of Federal Regulations

FORM S-3

REGISTRATION STATEMENT UNDER THE SECURITIES ACT OF 1933

GENERAL INSTRUCTIONS

* * * * *

I. Eligibility Requirements for Use of Form S-3

* * * * *

A. Registrant Requirements. * * *

8. Electronic filings. * * *

(1) all required electronic filings, including confirming electronic copies of documents submitted in paper pursuant to a hardship exemption as provided by Rule 201 or Rule 202(d) of Regulation S-T (§ 232.201 or § 232.202(d) of this chapter); and,

* * * * *

29. By amending Form S-8 (referenced in § 239.16b) by revising general instruction A.3.(1) to read as follows:

Note: The text of Form S-8 does not, and the amendment thereto will not, appear in the Code of Federal Regulations

FORM S-8

REGISTRATION STATEMENT UNDER THE SECURITIES ACT OF 1933

* * * * *

A. Rule as to Use of Form S-8. * * *

3. Electronic filings. * * *

(1) all required electronic filings, including confirming electronic copies of documents

submitted in paper pursuant to a hardship exemption as provided by Rule 201 or Rule 202(d) of Regulation S-T (§ 232.201 or § 232.202(d) of this chapter); and,

30. By amending Form F-2 (referenced in § 239.32) by revising general instruction I.H to read as follows:

Note: The text of Form F-2 does not, and the amendment thereto will not, appear in the Code of Federal Regulations

FORM F-2

REGISTRATION STATEMENT UNDER THE SECURITIES ACT OF 1933

* * * * *

A. Eligibility Requirements for Use of Form F-2 * * *

H. Electronic filings. In addition to satisfying the foregoing conditions, a registrant subject to the electronic filing requirements of Rule 101 of Regulation S-T (§§ 232.101 of this chapter) shall have filed with the Commission all required electronic filings, including confirming electronic copies of documents submitted in paper pursuant to a hardship exemption as provided by Rule 201 or Rule 202(d) of Regulation S-T (§ 232.201 or § 232.202(d) of this chapter).

* * * * *

31. By amending Form F-3 (referenced in § 239.33) by revising general instruction I.A.6 to read as follows:

Note: The text of Form F-3 does not, and the amendment thereto will not, appear in the Code of Federal Regulations

FORM F-3

REGISTRATION STATEMENT UNDER THE SECURITIES ACT OF 1933

* * * * *

I. Eligibility Requirements for Use of Form F-3 * * *

A. Registrant requirements * * *

6. Electronic filings. In addition to satisfying the foregoing conditions, a registrant subject to the electronic filing requirements of Rule 101 of Regulation S-T (§§ 232.101 of this chapter) shall have filed with the Commission all required electronic filings, including confirming electronic copies of documents submitted in paper pursuant to a hardship exemption as provided by Rule 201 or Rule 202(d) of Regulation S-T (§ 232.201 or § 232.202(d) of this chapter).

* * * * *

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

32. The authority citation for Part 240 continues to read in part as follows:

Authority: 15 U.S.C. 77c, 77d, 77g, 77j, 77s, 77eee, 77ggg, 77nnn, 77sss, 77ttt, 78c, 78d, 78f, 78i, 78j, 78k, 78k-1, 78l, 78m, 78n, 78o, 78p, 78q, 78s, 78w, 78x, 78ll(d), 79q,

79t, 80a-20, 80a-23, 80a-29, 80a-37, 80b-3, 80b-4 and 80b-11, unless otherwise noted.

33. By amending § 240.0-1 by revising paragraph (a)(5) to read as follows:

§ 240.0-1 Definitions.

(a) * * *

(5) The term *electronic filer* means a person or an entity that submits filings electronically pursuant to Rules 100 and 101 of Regulation S-T (§§ 232.100 and 232.101 of this chapter, respectively).

34. By amending § 240.12b-25 by revising the section heading and last sentence of paragraph (g) to read as follows:

§ 240.12b-25 Notification of inability to timely file all or any required portion of a Form 10-K, 10-KSB, 10-Q, 10-QSB, 20-F, 11-K, or N-SAR.

(g) * * * Filers unable to submit a report in electronic format within the time period prescribed solely due to difficulties with electronic filing should comply with Rule 14 (§ 232.14 of this chapter), Rule 201 or Rule 202 of Regulation S-T (§ 232.201 and § 232.202 of this chapter), or apply for an adjustment of filing date pursuant to Rule 13(c) of Regulation S-T (§ 232.13(c) of this chapter).

35. By amending § 240.13d-2 by revising paragraph (c) to read as follows:

§ 240.13d-2 Filing of amendments to Schedules 13D or 13G.

(c) The first electronic amendment to a paper format Schedule 13D (§ 240.13d-101 of this chapter) or Schedule 13G (§ 240.13d-102 of this chapter) shall restate the entire text of the Schedule 13D or 13G, but previously filed paper exhibits to such Schedules are not required to be restated electronically. See Rule 102 of Regulation S-T (§ 232.102 of this chapter) regarding amendments to exhibits previously filed in paper format. Notwithstanding the foregoing, if the sole purpose of filing the first electronic Schedule 13D or 13G amendment is to report a change in beneficial ownership that would terminate the filer's obligation to report, the amendment need not include a restatement of the entire text of the Schedule being amended.

36. By amending § 240.13e-4 by revising the last sentence of paragraph (f)(12) to read as follows:

§ 240.13e-4 Tender offers by issuers.

(f) * * *

(12) * * * If such documents were filed in paper pursuant to a hardship exemption (see § 232.201 and § 232.202 of this chapter), the minimum offering periods shall be tolled for any period during which a required confirming electronic copy of such Schedule and tender offer material is delinquent.

37. By amending § 240.14e-1 by revising the last sentence of paragraph (e) to read as follows:

§ 240.14e-1 Unlawful tender offer practices.

(e) * * * If such documents were filed in paper pursuant to a hardship exemption (see § 232.201 and § 232.202 of this chapter), the minimum offering periods shall be tolled for any period during which a required confirming electronic copy of such Schedule and tender offer material is delinquent.

PART 249—FORMS, SECURITIES EXCHANGE ACT OF 1934

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

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

39. By amending Form 12b-25 (referenced in § 249.322) by revising general instruction 5 to read as follows: Form 12b-25

NOTIFICATION OF LATE FILING

GENERAL INSTRUCTIONS

5. *Electronic Filers.* This form shall not be used by electronic filers unable to timely file a report solely due to electronic difficulties. Filers unable to submit a report in electronic format within the time period prescribed solely due to difficulties with electronic filing should comply with Rule 14 (§ 232.14 of this chapter), Rule 201 or Rule 202 of Regulation S-T (§ 232.201 and § 232.202 of this chapter), or apply for an adjustment of filing date pursuant to Rule 13(c) of Regulation S-T (§ 232.13(c) of this chapter).

40. By adding § 249.448 to Subpart D to read as follows:

§ 249.448 Form DF—Notification of delayed filing pursuant to Rule 13(d) of Regulation S-T

This form shall be filed in connection with a delayed electronic filing, as provided by Rule 13(d) of Regulation S-T (§ 232.13(d) of this chapter), to preserve the timeliness of filing of reports or schedules filed pursuant to sections 13(a), 13(d), 13(g), 15(d) and 16(a) of the Exchange Act (15 U.S.C. 78m(a), 78m(d), 78m(g), 78o(d) or 78p(a)), which, notwithstanding good

faith efforts, are not filed in a timely manner because of technical difficulties beyond the electronic filer's control.

41. By adding Form DF (referenced in § 249.448), to read as follows:

Note: The text of Form DF will not appear in the Code of Federal Regulations

FORM DF

NOTIFICATION OF DELAYED FILING PURSUANT TO RULE 14 OF REGULATION S-T

Exact name of registrant as specified in charter

Registrant CIK Number

Report or schedule with respect to which this form is being filed (include period of report)

SEC File Number, if available

Name of person filing the document (if other than the registrant)

Reasons for the delay:

The registrant (or person filing the report or schedule if other than the registrant) hereby certifies that it made good faith attempts to electronically file the document identified above in a timely manner, but that the filing was delayed due to technical difficulties beyond its control. The registrant undertakes to file the document electronically no later than two business days following the applicable due date.

SIGNATURES

Filings made by the registrant:

The registrant has duly caused this form to be signed on its behalf by the undersigned, thereunto duly authorized, in the city of _____, state of _____, Dated _____, 19____.

(Registrant)

By: _____
(Name and title)

Filings made by person other than the registrant:

After reasonable inquiry and to the best of my knowledge and belief, I certify on _____, 19____, that the information set forth in this statement is true and complete.

By: _____
(Name and title)

GENERAL INSTRUCTIONS TO FORM DF

I. Use of Form DF

This form may be filed in connection with a report or schedule filed pursuant to Section 13(a), 13(d), 13(g), 15(d) or 16(a) of the Securities Exchange Act of 1934 which, despite good faith efforts, could not be submitted electronically in a timely manner because of technical difficulties beyond the control of the filer. Rule 14 of Regulation S-T (17 CFR

232.13(d) of this chapter). Form DF shall be filed only in electronic format. The report or schedule will be deemed timely filed if it is filed electronically no later than two business days following the applicable due date and this Form DF is filed electronically no later than the date the report or schedule is filed. If either of these conditions are not satisfied, the report or schedule will not be deemed timely filed.

II. Preparation and filing of Form DF

Form DF should be submitted electronically as a separate filing, as outlined in the EDGAR Filer Manual, and not as a cover sheet to the report or schedule.

Potential persons who are to respond to the collection of information contained in this form are not required to respond unless the form displays a currently valid OMB control number.

PART 260—GENERAL RULES AND REGULATIONS, TRUST INDENTURE ACT OF 1939

42. The authority citation for Part 260 continues to read as follows:

Authority: 15 U.S.C. 77eee, 77ggg, 77nnn, 77sss, 78ll(d), 80b-3, 80b-4, and 80b-11.

43. By amending § 260.0-2 by revising paragraph (g) to read as follows:

§ 260.0-2 Definitions of terms used in the rules and regulations.

* * * * *

(g) *Electronic filer*. The term *electronic filer* means a person or an entity that submits filings electronically

pursuant to Rules 100 and 101 of Regulation S-T (§§ 232.100 and 232.101 of this chapter, respectively).

* * * * *

Dated: December 6, 1996.

By the Commission.

Margaret H. McFarland,

Deputy Secretary.

Appendix A

[Note: This appendix will not appear in the Code of Federal Regulations

Regulatory Flexibility Act Certification

I, Arthur Levitt, Chairman of the Securities and Exchange Commission, hereby certify, pursuant to 5 U.S.C. 605(b), that the proposed amendments to Rule 200.30-1, Rule 200.30-5, Item 601(c) of Regulation S-B and Regulation S-K, Rule 405 of Regulation C, Rules 10, 11, 13, 101, 102, 201, 202, 303, 304, 307 and 311 of Regulation S-T, Forms S-2, S-3, S-8, F-2 and F-3 under the Securities Act of 1933 ("Securities Act"), Rule 0-1, Rule 12b-25, Rule 13d-2, Rule 13e-4, Schedule 14A, Rule 14e-1, and Form 12b-25 under the Securities Exchange Act of 1934 ("Exchange Act"), and Rule 0-2 under the Trust Indenture Act of 1939, the addition of new Rules 14, 100 and 601 to Regulation S-T, and new Form DF, and the elimination of the electronic filing transition rules found in Rules 901, 902 and 903 of Regulation S-T, as set forth in Securities Act Release Number 7369, if adopted, would not have a significant economic impact on a substantial number of small entities.

The proposed rule amendments generally would have no economic impact on small entities because they would codify existing interpretations and practices relating to the preparation, filing and processing of electronic documents via the Commission's Electronic Data Gathering, Analysis and

Retrieval ("EDGAR") system. Other changes would effect only technical corrections to current rules and similarly would not result in an economic impact on small entities.

One noteworthy proposed change is the addition of Form DF and related rules that would allow electronic filers to act on their own to preserve the timeliness of certain Exchange Act reports that are electronically filed late because of unanticipated technical difficulties beyond their control. Currently, if electronic documents are filed late under such circumstances, filers must petition the staff in writing for a filing date adjustment. This petition generally takes the form of a letter to the staff explaining the factual and legal basis in support of the request. The staff then processes the application and grants or denies the request pursuant to delegated authority. In the first eight months of 1996, approximately 24 Exchange Act reporting companies with assets of \$5 million or less applied for and received a filing date adjustment for a late Exchange Act report. The proposals would eliminate the need for staff intervention in most similar cases in the future, resulting in greater certainty of treatment for filers and time savings for the staff. However, while the burden of consultation with the staff would be eliminated, a one-page document would still need to be prepared and filed with the Commission. The estimated time required to prepare this document is 10 to 15 minutes. In sum, while both filers and the staff would benefit from the adoption of this procedure, the economic impact of the proposed procedure would be roughly equivalent to the current practice.

Dated: December 5, 1996.

Arthur Levitt,

Chairman.

[FR Doc. 96-31499 Filed 12-11-96; 8:45 am]

BILLING CODE 8010-01-P