

Proposed Rules

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This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 230, 232, 239, 240, 270, and 274

[Release Nos. 33-7653; 34-41150; IC-23735
File No. S7-9-99]

RIN 3235-AH70

Rulemaking for EDGAR System

AGENCY: Securities and Exchange Commission.

ACTION: Proposed rule.

SUMMARY: The Securities and Exchange Commission is modernizing the Electronic Data Gathering, Analysis, and Retrieval ("EDGAR") system. When the programming for the new system is accomplished, we will be able to accept filings submitted to EDGAR in HyperText Markup Language as well as documents submitted in the American Standard Code for Information Interchange format. Filers will have the option of accompanying their required filings with unofficial copies in Portable Document Format. In this release, we are proposing amendments to our rules to reflect initial changes to filing requirements resulting from EDGAR modernization, as well as certain other changes to clarify or update the rules. We also request comment on the impact that the new approach to EDGAR may have upon filers, investors, and the public, as well as on certain matters that will be the subject of later rulemaking in connection with the completion of EDGAR modernization.

DATES: We must receive your comments on or before April 15, 1999.

ADDRESSES: Please submit three copies of your comments to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549-0609. You also may submit your comments electronically at the following e-mail address: rule-comments@sec.gov. Your comment letter should refer to File No. S7-9-99; include this file number in the subject line if you use e-mail. We will

make comment letters available for your inspection and copying in our Public Reference Room, 450 Fifth Street, N.W., Washington, D.C. 20549. We also will post any electronically submitted comment letters on our Internet Web Site (<http://www.sec.gov>).

FOR FURTHER INFORMATION CONTACT: If you have questions about the proposed rules, please contact one of the following members of our staff: in the Division of Investment Management, Ruth Armfield Sanders, Senior Counsel, (202) 942-0633; and in the Division of Corporation Finance, Margaret R. Black, (202) 942-2940. If you have questions about the development of the modernized EDGAR system, please contact Richard D. Heroux, (202) 942-8885, in the Office of Information Technology.

SUPPLEMENTARY INFORMATION: Today we propose amendments to the following rules relating to electronic filing on the EDGAR system: Rules 485, 486, 487, 495, and 497,¹ and Form S-6,² under the Securities Act of 1933 ("Securities Act");³ Rules 10, 11, 101, 102, 302, 303, 304, 305, 306, 307, and 310 of Regulation S-T;⁴ Schedule 14A⁵ under the Securities Exchange Act of 1934 ("Exchange Act");⁶ Rules 8b-23 and 8b-32,⁷ and Form N-SAR,⁸ under the Investment Company Act of 1940 ("Investment Company Act");⁹ and Forms N-1, N-1A, N-2, N-3, N-4, and N-5¹⁰ under the Securities Act and the Investment Company Act. Today we also propose to add the following to Regulation S-T: Rules 104, 105, and 106.

I. Modernization of EDGAR

A. Background

In 1984, we initiated the EDGAR system to automate the receipt, processing, and dissemination of documents required to be filed with us

under the Securities Act, the Exchange Act, the Public Utility Holding Company Act of 1935 ("Public Utility Act"),¹¹ the Trust Indenture Act of 1939,¹² and the Investment Company Act. Since 1996, we have required all domestic public companies to file with us electronically through the EDGAR system, absent an exemption. EDGAR filings are disseminated electronically and displayed on our web site at <http://www.sec.gov>, in the form in which we receive them. The EDGAR system's broad and rapid dissemination benefits the public by allowing investors and others to obtain information rapidly in electronic format, a form easily searchable and lending itself to ready financial analysis by using spreadsheets and other methods.

Recent technological advances, most notably the rapidly expanding use of the Internet, have led to unprecedented changes in the means available to corporations, government agencies, and the investing public to obtain and disseminate information. Today, many companies, regardless of size, maintain web sites via the World Wide Web through which companies can make information available to the public. Through links from one web site to others, individuals may obtain a vast amount of information in a matter of seconds. Advanced data presentation methods using audio, video, and graphic and image material are now available through even the most inexpensive personal computers or laptops.

We have recognized the profound impact that these technological advances have on the dissemination and collection of information governed by the securities laws.

- In October 1995, we issued an interpretive release on the electronic delivery of information, providing guidance to market participants on using electronic media to satisfy delivery obligations of disclosure documents.¹³

- In May 1996, we issued an interpretive release providing similar guidance concerning use of electronic

¹ 17 CFR 230.485, 486, 487, 495, and 497.

² 17 CFR 239.16.

³ 15 U.S.C. 77a *et seq.*

⁴ 17 CFR 232.10, 11, 101, 102, 302, 303, 304, 305, 306, 307, and 310.

⁵ 17 CFR 240.101.

⁶ 15 U.S.C. 78a *et seq.*

⁷ 17 CFR 270.8b-23 and 8b-32.

⁸ 17 CFR 274.101.

⁹ 15 U.S.C. 80a-1 *et seq.*

¹⁰ 17 CFR 239.15 and 274.11, 17 CFR 15A and 274.11A, 17 CFR 239.14 and 274.11a-1, 17 CFR 239.17a and 274.11b, 17 CFR 239.17b and 274.11c, 17 CFR 239.24 and 274.5.

¹¹ 15 U.S.C. 79a *et seq.*

¹² 15 U.S.C. 77sss *et seq.*

¹³ Use of Electronic Media for Delivery Purposes, Securities Act Release No. 7233, Exchange Act Release No. 36345 (Oct. 6, 1995) [60 FR 53458].

media by broker-dealers and investment advisers.¹⁴

- In October 1997, we issued a report to Congress, under Section 510(a) of the National Securities Markets Improvement Act of 1996, on the impact of recent technological advances on the securities markets.

- In March 1998, we issued another interpretive release providing guidance on when we would consider offers of securities or investment services made on Internet web sites by foreign entities not to be offerings in the United States.¹⁵

These releases and reports discuss the increasing use of such technologies as Internet web sites, CD-ROMs, and e-mail for delivery to investors of documents such as prospectuses, tender offer materials, and proxy statements. The releases and reports also discuss the impact of such technologies on the reporting and disclosure requirements of the securities laws. Also, we adopted technical amendments to our filing and reporting rules that were premised on the filing and distribution of paper documents to take into account these technological changes.¹⁶ Our staff also has provided interpretive guidance regarding the application of technology to market practices and has addressed electronic issues on a case-by-case basis as questions have been raised by market participants.

B. Implementation of HTML/PDF Environment

The purpose of our new EDGAR contract is to modernize EDGAR completely, making the system easier for filers to use, and the documents more attractive and readable for the users of public information. Currently, filers must submit electronic filings to the EDGAR system in a text-based American Standard Code for Information Interchange ("ASCII") format. With EDGAR modernization, filers will be able to submit most filings to us in HyperText Markup Language ("HTML"), as well as in ASCII. We expect that HTML will eventually replace ASCII for most filings. Filers also may submit unofficial copies of filings in Portable Document Format ("PDF"). Unlike ASCII documents,

HTML and PDF documents can include graphics, varied fonts, and other visual displays that filers use when they create Internet presentations or material for distribution to shareholders. In this release, we refer to the required filings that filers must submit only in either ASCII or HTML formats as "official filings." We refer to the PDF documents as "unofficial PDF copies" because filers may *not* use them instead of HTML or ASCII documents to meet filing requirements.

Our plan for the evolution of the EDGAR system is to include an HTML/PDF environment. In May of 1999, we will provide limited support for HTML by allowing only certain tags (commands and identifying information) to be accepted by the EDGAR system. Later, we plan to modernize the EDGAR system so that it will be able to accept and display filings that use graphic and other visual presentations. Filers will be able to submit documents to the EDGAR system that can appear in substantially the same graphic format as those prepared by the filer for delivery to investors and the marketplace. Although initially graphics and hypertext links will be very limited, we anticipate expanding both of these elements, as we discuss below.

These advances will greatly expand the amount and kinds of information that we can make available to investors and other members of the public through the EDGAR system. These advances also will ease the burden upon filers, by enabling the submission of documents to the EDGAR system in a format similar to that in which documents are presented to the public and to investors. However, as discussed below, these advances also pose significant issues concerning the rules governing documents filed with us under the EDGAR system, which we must address before these advances are implemented.

The modernization schedule provides that the EDGAR system will accept HTML/PDF documents beginning on May 24, 1999. However, we envision an initial implementation period for HTML filings, extending until early 2000, during which we will impose certain limitations on HTML filings (the "HTML implementation period"). This period is necessary due to technical issues that we must resolve before full implementation of the new HTML component of the EDGAR system.

The modernized EDGAR system is designed to be Year 2000 compliant. During the summer of 1999, we plan to turn the dates forward on the EDGAR system at specified times to give filers

an opportunity to submit test filings so they can assure themselves that the Commission-owned and operated EDGAR components will operate after January 1, 2000. We advise filers to have their own operating environments certified to be Year 2000 compliant. Other than testing to assure that documents are received and disseminated by us, is there any other testing that filers may want to see performed for Year 2000 compliance?

In this release, we describe how the EDGAR system will change at the beginning of the initial HTML implementation period, and we propose rule changes to govern EDGAR filing during this period.¹⁷ We also describe further changes to the system that we plan to make after the HTML implementation period. We will propose corresponding rule changes closer to that time.

Currently, some filers use multi-media prospectuses, including videos, CD-ROMs, and streamed video or audio files that can be played over the Internet. The current EDGAR modernization contract will not accommodate these media, but we are considering whether we should include some of these media in the future. As noted in our release proposing rules on the regulation of securities offerings, we must consider factors such as security; development and maintenance costs; costs of database storage; how these materials should be disseminated to the public; whether investors would have as ready access to these materials as to the current electronic filings; how to meet the archival requirements for storage of these materials; wide divergence in industry standards for most multi-media formats; and how to assure that filed documents continue to be readable in the future, since applications that present these media may change or even disappear over time.¹⁸

C. Use of HTML

Although the EDGAR system will be able to accept HTML documents beginning May 24, 1999, we are not now proposing to require the use of HTML. However, we expect to require HTML for most filings as soon as practicable, so we encourage filers to use it and gain

¹⁴ Use of Electronic Media by Broker-Dealers, Transfer Agents, and Investment Advisers for Delivery of Information, Securities Act Release No. 7288, Exchange Act Release No. 37182 (May 9, 1996) [61 FR 24644].

¹⁵ Statement of the Commission Regarding the Use of Internet Web Sites to Offer Securities, Solicit Securities Transactions or Advertise Investment Services Offshore, Securities Act Release No. 7516 (Mar. 23, 1998) [63 FR 14806].

¹⁶ Securities Act Release No. 7289 (May 9, 1996) [61 FR 24652].

¹⁷ We will revise the EDGAR Filer Manual at a later date. The EDGAR Filer Manual sets forth the technical formatting requirements governing the preparation and submission of electronic filings through the EDGAR system. Filers must comply with the provisions of the Filer Manual to assure timely acceptance and processing of electronic filings. See Rule 301 of Regulation S-T [17 CFR 232.301].

¹⁸ See Section VII.B of "The Regulation of Securities Offerings," Securities Act Release No. 7606A (Nov. 13, 1998) [63 FR 67174].

experience with this format if they do not have it already.¹⁹ We intend to provide technical support for filers to assist them in submitting and correcting HTML documents through our filer technical support function.

During the HTML implementation period, if HTML is used, each EDGAR document may consist of no more than one HTML file. Filers may not submit EDGAR documents composed of multiple linked HTML files, although we may permit this after the conclusion of the HTML implementation period.

We request comment on whether we should continue to accept all EDGAR submissions in ASCII, or whether, in the future, we should require submission of all or some documents in HTML. If you think we should require some or all submissions in HTML, please state when HTML should become mandatory and specify the submissions we should require in HTML format. How soon will individuals, companies, filing agents and training agents begin using HTML? We request comments and data on the impact of converting to HTML from ASCII. Are there one-time or ongoing extra costs? Will the conversion affect all filers equally, e.g., small business issuers or frequent issuers of securities? We request comment on the use of eXtensible Markup Language ("XML"), particularly for EDGAR submission header tags.

D. Use of PDF

In addition to permitting the use of HTML for filings, we intend to permit filers to submit a single unofficial PDF copy of each document.²⁰ These copies will be disseminated publicly. Filers may wish to submit these copies, since PDF documents retain all the fonts, formatting, colors, images, and graphics contained in an original document. The unofficial PDF copy will be optional, but if an unofficial PDF copy of a document is submitted, it must be substantively equivalent²¹ to the document contained in the official filing

of which it is a copy. Further, filers may not make a submission consisting solely of PDF documents; filers must include unofficial PDF copies only in submissions that contain official filings in HTML or ASCII format.

We request comment on our proposal to allow unofficial PDF copies of official filings. Should the unofficial PDF copy contain a legend or disclaimer that it is not the official filing? How else could we alert viewers to the unofficial status of the PDF copy? We also request comment on whether we should require the exhibit index to a filing to note which exhibits, if any, are accompanied by an unofficial PDF copy. Further, should we initially impose a size limitation for unofficial PDF documents? How quickly will individuals, companies, filing agents, and training agents start using PDF? Because PDF documents will be delivered to dissemination subscribers, we also request comment on how our dissemination subscribers and providers of information services will use the PDF documents.

E. Graphic and Image Material

During the HTML implementation period, we will not accept graphic or image material in HTML documents.²² The EDGAR system will suspend submissions made during the HTML implementation period if they contain tags for graphic or image files. However, the optional, unofficial PDF copy of an EDGAR document may contain graphic and/or image material.

We also propose to prohibit, during the HTML implementation period, any EDGAR submission containing animated graphics (e.g., files with moving corporate logos or other animation), either in any official submission or any unofficial PDF copy. We are proposing this requirement during HTML implementation due to the issues concerning how to capture and represent the animated graphics, which we cannot print or search, in identifying the official filing. We request comment concerning what would constitute the official filing in the event that we later propose to allow animated graphics.

We intend to propose permitting graphic and image material in HTML documents after the HTML implementation period. However, due to concerns about data storage limitations and ease of viewing, we may propose restrictions on the type and size

of graphic and image material included. Also, we may propose that information presented as tables, charts, text, or otherwise in a graphic or image file be presented as text in an ASCII file or as an HTML table in an HTML file.

We have some concerns about the potential size of data files that filers may submit in connection with graphic and image material if we allow it following the implementation period, not only because of our own database storage needs, but also because some Internet users may encounter difficulties in downloading or viewing documents that are very large. We request comment on the circumstances and manner in which we might limit file size and the type of graphic and image materials. For example, should we propose a limitation on the allowed size of each file or group of files, including graphic and image files, and provide EDGAR Filer Manual instructions on ways to minimize file size? Should we limit the total number of files that include graphic and/or image material?

We are considering whether, once the HTML implementation period is over, if we permit graphic and image material in HTML documents, we should require graphic and image material to be included in HTML documents under some circumstances. Should we propose that, when our rules require information to be in graphic form, filers using HTML be required to present the graphic, rather than merely giving the data, in the HTML document?²³ Or, should the presentation of graphic and image material continue to be optional to alleviate the burden on filers who do not currently have the resources to prepare graphic and image material?

F. Limitation on Hypertext Links

During the HTML implementation period, we propose to prohibit hypertext links from HTML documents to external web sites. Similarly, we propose to prohibit hypertext links from HTML documents to external documents (including exhibits), regardless of whether the document is part of the same filing. Electronic filers may include hypertext links to different sections within a single HTML document.²⁴ A document may include an inactive textual reference to external sites or documents for informational

¹⁹ See footnote 39 and accompanying text for submissions that we will keep in ASCII format.

²⁰ For example, if a filing consists of a registration statement plus five exhibits, there are six documents for EDGAR purposes. Generally, the filer could submit all of these as HTML documents, all as ASCII documents, or some as HTML and some as ASCII documents. The filer also would have the option to accompany any or all of the six documents with an unofficial PDF copy. But the rules would not permit a filer to submit a single unofficial PDF copy including the registration statement and exhibits; each PDF document should reflect only one ASCII or HTML document.

²¹ "Substantively equivalent" documents are the same in all respects except for the formatting and inclusion of graphics (instead of the narrative and/or tabular description of the graphics). For documents to be substantively equivalent, the text of the two documents must be identical.

²² Filers should continue to provide a fair and accurate description of the differences between a version including graphic or image material and the filed version, as required by Rule 304 of Regulations S-T [17 CFR 232.304].

²³ See, e.g., the performance line graph required by Item 402(l) of Regulation S-K [17 CFR 229.402(l)] and the bar chart and performance graph required for investment companies by Items 2 and 5 of Form N-1A [17 CFR 239.15A and 274.11A].

²⁴ For example, companies might wish to include a prospectus table of contents containing links to the various sections of the prospectus.

purposes,²⁵ but it may not include a link to such an external site or document.

We expect to propose allowing hypertext links to exhibits within the same filing after the HTML implementation period. We also will consider whether to propose permitting external hypertext links to documents contained in other filings or to web sites. However, as discussed below, we recognize that use of such external links poses significant issues concerning the content of an "official filing," which we must resolve before we would permit such links.²⁶ We request comment on whether, following the HTML implementation period, we should allow external hypertext links. For example, should we allow links from within a filing to previously filed documents that are incorporated by reference?

G. Method of Electronic Transmission

Most filers currently make EDGAR submissions by using a dial-up modem process, with or without the use of EDGARLink,²⁷ directly to EDGAR or through CompuServe to EDGAR. The EDGAR system requires three codes for a filer to access EDGAR: a Central Index Key ("CIK"), a CIK Confirmation Code ("CCC") for filer authentication, and a Password Modification Authorization Code ("PMAC"). We contemplate that, after the HTML implementation period, filers will be able to make EDGAR filings through Internet-based technology via an Internet Service Provider ("ISP") of their choice. We plan to revise EDGARLink to support Internet-based filing. We envision providing security by Secure Socket Layer ("SSL," *i.e.*, encrypted transmissions) and server side certificates. We request comment on whether we should propose to allow or to require filers to acquire and present client side certificates from one for more vendors that we designate. This would enhance the security of the transaction, provide for non-repudiation, and allow for digital signing of the filings. We request comment on our planned revision to the method of electronic transmission, including our planned security precautions.

²⁵ It is the staff's position that such a reference will not be deemed to incorporate the material by reference into the filing. See *ITT Corp.* (Dec. 6, 1996) and *Baltimore Gas & Electric Co.* (Jan. 6, 1997).

²⁶ See Section II.A of this release and our discussion of proposed new Rule 105 below.

²⁷ EDGARLink is the filer assistance software we provide to filers filing on the EDGAR system.

H. Regulatory Impact of EDGAR Modernization Filing Requirements

Although these technical advances provide the potential for much more effective use of the EDGAR system for compliance with filing requirements and investor access to information, they also raise significant issues concerning our current filing requirements that we must address as these changes are implemented. In addition to the specific rule changes which we discuss in Section II below, we request comment on the following issues.

We recognize that different Internet browsers used by filers or the public may display the information presented in an HTML document in a different fashion. A document viewed through one browser may have a different appearance and layout from the same filing viewed through a different browser. This problem would be especially evident when a filing printed in hard copy from one browser appears significantly different from the same filing printed out from another browser. We initially propose to maximize the likelihood of consistent document appearance across different browsers by specifying HTML 3.2 as the required standard for HTML documents. We request comment on our selection of a standard. We also request comment on whether we should specify a standard screen size (e.g., 800 by 600 pixels) for HTML document preparers to use to assure that documents will fit most viewers' browser screens and will be printable on most printers.

In addition to using HTML 3.2 as the standard, we also propose to adopt a set of permissible HTML 3.2 tags for use in HTML documents during the HTML implementation period. These permissible tags allow for most HTML 3.2 formatting capability while eliminating active content and certain classes of hypertext links.²⁸ The tentative list of these tags, which will be included in the EDGAR Filer Manual and updated from time to time, appears in Appendix A to this release.²⁹ In general, the EDGAR system will suspend filings if they contain tags that are not permitted. We request comment on the proposed tag set, including whether we should permit, require, or prohibit any particular tag. In particular, we call attention to the fact that we do not plan to allow tables within tables ("nested tables"). This is because users of EDGAR information may find it

²⁸ The 3.2 tag set will not include proprietary extensions that are not supported by all browsers.

²⁹ We anticipate that the permitted tag set will evolve over time to accommodate the industry standard and needs of filers.

difficult to locate and use information in documents with nested tables.

We anticipate proposing that, following the HTML implementation period, HTML documents may consist of more than one HTML file. However, we envision proposing certain restrictions on the presentation and grouping of HTML files within a single HTML document to promote complete, readable, and accurate printing by our staff and web users. We request comment on technical approaches to facilitate printing of HTML documents, including file ordering and width restrictions.

We believe that these advances will ease the burden upon filers by enabling them to submit documents to the EDGAR system in a format similar to the documents they present to the public and to investors. In addition, we believe that these advances will maintain the ability for the public to view, process and analyze the content of filings. We request comment on whether the changes we propose will achieve these goals. We also request comment on what other steps we can take to ease filer burden further while maintaining the usability of the filings. We also seek comment on whether filers will handle the shift to HTML/PDF themselves or by hiring outside filing agents, and whether the benefits to electronic filers and the public of HTML will exceed any associated burdens. We are particularly interested in receiving data on whether the use of a limited set of HTML tags presents a burden to filers.

Currently, electronic filers may make electronic submissions either as direct transmissions or on magnetic tape or diskette.³⁰ Diskette filings often present formatting difficulties, and the percentage of filers using diskettes is minimal, well under one percent. As the EDGAR modernization effort continues, we anticipate eventually discontinuing acceptance of electronic submissions on diskettes. We request comment on whether diskettes remain useful for certain types of filings and whether we should continue to permit them.

II. Rule Amendments to Accommodate EDGAR Modernization

We propose to amend certain rules and regulations, which we discuss below, to accommodate the modernization of EDGAR. We request comment on our proposed amendments and on whether we should amend any other rules and regulations under the securities laws in connection with EDGAR modernization.

³⁰ See Rules 12(b) and 12(c) of Regulation S-T [17 CFR 232.12(b) and 12(c)].

A. Amendments to Regulation S-T

We propose to amend certain provisions of Regulation S-T, which governs the preparation and submission of electronic filings to us, as described below in connection with the addition to the EDGAR environment of HTML documents and unofficial PDF copies.

Rule 11—*Definition of Terms used in Part 232*. Rule 11 contains definitions used in Regulation S-T. We propose to add to the definition section of Regulation S-T the following new terms in connection with EDGAR modernization: animated graphics; ASCII document; disruptive code; electronic document; executable code, HTML document; hypertext links or hyperlinks; and unofficial PDF copy. We also propose to revise the current definition of “electronic filing” to make it clear that an electronic filing may include more than one document.

New Rule 104—*Unofficial PDF Copies Included in an Electronic Submission*. Proposed Rule 104 would provide that an electronic submission may include one unofficial PDF copy of each electronic document contained within an electronic submission.³¹ As proposed, each unofficial PDF copy would have to be substantively equivalent to its associated ASCII or HTML document contained in the submission.³² Filers wanting to submit an unofficial PDF copy to replace a flawed one, or to include an omitted one, would have to submit the unofficial PDF copy as part of another electronic submission containing an amendment to the original submission. The amendment would have to include an explanatory note that the purpose of the amendment was to add or replace an unofficial PDF copy.³³ If the amendment was being filed to add or resubmit an unofficial PDF copy of one or more exhibits, the submission would need to include an exhibit document for each exhibit for which an unofficial PDF copy was being submitted.³⁴

³¹ Proposed Rule 104(a). We also would permit the filer to submit an unofficial PDF copy of correspondence or a cover letter document.

³² See note 21 and accompanying text.

³³ The amendment could consist solely of the cover page (or the first page of the document), the explanatory note, and the signature page and exhibit index (where appropriate), and the corresponding unofficial PDF copy would include the complete text of the official filing for which the amendment was being submitted.

³⁴ The amendment could consist of the cover page (or first page of the document), the explanatory note, the signature page (where appropriate), the exhibit index, a separate electronic document for each exhibit for which an unofficial PDF copy was being submitted, and the corresponding unofficial PDF copy of each exhibit document. However, the text of the official exhibit document(s) could contain only the following legend: “RESUBMITTED

Rule 104 would provide that unofficial PDF copies are not official filings.³⁵ The rule would make it clear that unofficial PDF copies that are prospectuses retain prospectus liability under Section 12 of the Securities Act.³⁶ The rule also would make it clear that an unofficial PDF copy could contain graphic and image material even though its ASCII (and, during the implementation period, HTML) counterpart might not contain such material.³⁷

We propose to accept electronic submissions even if an unofficial PDF copy is flawed and not accepted. In such a case, we propose to accept the submission but not the PDF document.³⁸ Otherwise, filers would risk having a time-sensitive filing being made late because of a problem with the unofficial PDF copy.

New Rule 105—*Limitation on Use of HTML Documents and Unofficial PDF Copies; Use of Hypertext Links*. We propose to exclude Form N-SAR, Form 13F, and Financial Data Schedules from being submitted as HTML documents.³⁹ These documents have standard formats and tagging designed for presentation in ASCII, and their current format facilitates their downloading and use in other computer applications. We request comment on whether we should allow unit investment trust and small business investment company filers, who currently submit Forms N-SAR as text rather than in standard format, to submit their Forms N-SAR in HTML.

Rule 105 as proposed would prohibit electronic filers from including in HTML documents hypertext links to sites or documents outside the HTML document.⁴⁰ However, the rule would allow electronic filers to include hypertext links to different sections within a single HTML document.

We recognize that use of hypertext links to external web sites and documents in a filing may enhance filers’ ability to present information as well as the public’s ability to access information. As noted above in Section I.F, initially we will not permit such hypertext links. Links or references in an EDGAR filing to such external sites present significant issues concerning what constitutes an “official filing”

TO ADD/REPLACE UNOFFICIAL PDF COPY OF EXHIBIT.”

³⁵ Proposed Rule 104(d).

³⁶ Proposed Rule 104(e).

³⁷ Proposed Rule 104(b).

³⁸ See the discussion of proposed Rule 106 below.

³⁹ Proposed Rule 105(a). We propose to allow filers the option of submitting all exhibits to Form N-SAR except Financial Data Schedules as HTML documents.

⁴⁰ Proposed Rule 105(b).

submitted to and accepted by us. With paper filings, or even text-based ASCII filings, an “official filing” is encompassed entirely within the four corners of the text documents submitted to us by the filer, as well as specific documents incorporated by reference, and is thus easily identifiable. A document submitted to us in HTML format, however, could include links to web sites or other documents that reside outside the EDGAR database. The content of these web sites or documents could change on a regular basis, even after the “official filing” was received by us. As a result, someone trying to determine the content of the “official filing” at a later date would not necessarily be able to re-create the document as it was originally filed.

This also raises issues concerning the extent to which filers’ use of such external links could lead to liability under the securities laws. We request comment on whether allowing hypertext links to other documents or web sites in the future is advisable. We request comment on the impact of such links on the definition of an official filing for regulatory and liability purposes, as well as the impact on automated analysis systems used by the processors and disseminators of EDGAR data. We also request comment on what we should accept as an official filing and on possible methods of archiving the official filing.

Proposed Rule 105 provides that, if an accepted filing includes external links in contravention of this rule, we will not consider information contained in the linked material to be part of the official filing for determining compliance with reporting obligations, but such information will be subject to the civil liability and anti-fraud provisions of the federal securities laws.⁴¹ We request comment on the need for this proposed provision, the impact of including hypertext links within an official filing, and the effect of different liability provisions.

New Rule 106—*Prohibition Against Electronic Submissions Containing Executable Code*. Our planning for the modernized EDGAR system is designed to minimize security risks. Accordingly, new Rule 106 would prohibit any EDGAR submission containing

⁴¹ The proposed rule provides that information contained in the linked material is not part of the official filing for reporting purposes in order to prevent a filing from being considered complete when the entire content of the filing is not available without reference to another document. This provision should not, however, be viewed as a statement that linked material is not considered to be part of the filed document for other purposes.

executable code,⁴² either in any official submission or any unofficial PDF copy, at any time, either during the HTML implementation period or subsequently. "Executable code" includes, but is not limited to, disruptive code.⁴³ This requirement is necessary to protect the integrity of the EDGAR system and database, by reducing the possibility of unauthorized access to sensitive information, and to reduce the possibility of introducing viruses or other destructive applications into the EDGAR system (and to any disseminator receiving data from the EDGAR system). We request comment on this proposal and on the sanctions that we should impose if a filer or filing agent submits a document containing executable code. We also request comment on whether, following HTML implementation, we should continue to prohibit the submission of all executable code.

We propose, in general, to suspend any attempted submission that our staff determines contains executable code.⁴⁴ We will program the EDGAR system to detect and prohibit acceptance of such code during acceptance processing. If a submission is accepted, and our staff later determines that the accepted submission contains executable code, our staff may delete any document contained in the electronic submission from the EDGAR system and direct the electronic filer to resubmit electronically replacement documents for all or selected documents deleted from the submission. We request comment on this proposal and on other possible alternative treatment of attempted and accepted submissions containing executable code. We are aware that suspending acceptance of a filing, or deleting it from the EDGAR database, could have significant

consequences to the filer, such as causing a filing to miss its due date or preventing a time-sensitive filing from moving forward. Nevertheless, we need to take whatever steps are necessary to address potential security problems.

Rule 302—Signatures. Rule 302 currently provides that signatures to or within electronic documents must be in typed form. We propose to revise Rule 302 to make it clear that this provision relates only to *required* signatures to or within electronic submissions.⁴⁵ We recognize that signatures that are not required may appear as script in HTML documents once we permit graphic and image material.⁴⁶ We solicit comment, however, on whether we also should accept required signatures as script in HTML documents.

Rule 304—Graphic, Image, Audio and Video Material. Currently, Rule 304 prohibits the inclusion of graphic, image, or audio material in an EDGAR document. We propose to add the word "video" to the rule to clarify that that information also is prohibited. As discussed above in Section I.E, as part of a later rulemaking proposal, we anticipate lifting the prohibition on graphic and image material (but not on audio or video material) after the HTML implementation period. Rule 304 applies only to official filings, not to unofficial PDF copies, which may contain graphic and image material (but not animated graphics, audio or video material).⁴⁷

Rule 305—Number of Characters per Line; Tabular and Columnar Information. Currently, Rule 305 limits the number of characters per line. We propose to add paragraph (b) to Rule 305 to provide that the limitations of paragraph (a)⁴⁸ do not apply to HTML documents.⁴⁹

Rule 306—Foreign Language Documents and Symbols. Rule 306 currently provides that foreign currency denominations be expressed in words or letters in the English language rather than representative symbols. We propose to amend Rule 306 to allow HTML documents to include the representative foreign currency symbols specified in the EDGAR Filer Manual and to provide that the limitations would not apply to documents which are unofficial PDF copies.

⁴⁵ We propose to keep the rule that required signatures be typed to ensure legibility of these signatures.

⁴⁶ Proposed Rule 302. We will not require signatures in unofficial PDF copies.

⁴⁷ See proposed Rule 104.

⁴⁸ I.e., the narrative portion of an electronic document may not exceed certain character limitations per line and other formatting restrictions.

⁴⁹ Proposed Rule 305(b).

Rules 307—Bold-Face Type. Rule 307 currently states that filers should present required bold-face type as capital letters in ASCII documents. We propose to amend this rule to make it clear that the current provision does not apply to HTML documents, since filers are able to include bold-face type in HTML documents.

Rule 310—Marking Changed Material. Currently, Rule 310 provides that the marking of changed materials is satisfied by inserting the tag <R> before and the tag </R> following a paragraph containing changed material. We propose to retain this redlining convention and extend it to HTML documents. Further, we propose to allow filers to mark changed material in HTML documents within paragraphs, as well.⁵⁰

B. Other Rule Amendment in Connection With EDGAR Modernization

Currently, paragraph (k)(2)(ii) of Rule 497⁵¹ requires filers to submit additional copies of certain forms of profiles in the primary form intended for distribution to investors (e.g., paper or electronic media) or, if the profile is distributed primarily on the Internet, to provide the URL of the profile page(s) in an exhibit to the electronic filing. We propose to amend paragraph (k)(2)(ii) of Rule 497 to allow the electronic filer to submit with its electronically filed definitive form of profile an unofficial PDF copy of the profile instead.

C. Miscellaneous Amendments

We also propose several electronic filing rule amendments not directly associated with EDGAR modernization.

1. Amendments to Regulation S-T

Rule 10—Form ID. Rule 10 provides that filers must file Form ID, the uniform application for access codes to file on the EDGAR system, before they begin electronic filing. We propose to amend Rule 10 to make it clear that filers must submit Form ID in paper format. We are investigating other methods of beginning electronic filing, but these would not become available until after the HTML implementation period. We request comment on more convenient methods of submitting Form ID and initiating electronic filing.

⁵⁰ Filers should not redline PDF documents. While the EDGAR system will remove the redlining tags from HTML documents before they are publicly disseminated (just as is currently the case with ASCII documents), the EDGAR system will not remove the redlining tags from PDF documents. Therefore, if a filer includes redlining tags in a PDF document, the disseminated PDF document will contain redlining tags.

⁵¹ 17 CFR 230.497(k)(2)(ii).

⁴² Executable code is defined as instructions to a computer to carry out operations that use features beyond the viewer's, reader's, or Internet browser's native ability to interpret and display HTML, PDF, and static graphic files. Such code may be in binary (machine language) or in script form. See proposed Rule 11(n). Thus, scripting languages, such as JavaScript and similar scripting languages, fall into this class of executable code, as does Java, ActiveX, Postscript, and any other programming language.

⁴³ The term "disruptive code" means any active content or other executable code, or any program or set of electronic computer instructions inserted into a computer, operating system, or program that replicates itself or that actually or potentially modifies or in any way alters, damages, destroys or disrupts the file content or the operation of any computer, computer file, computer database, computer system, computer network or software, or as otherwise set forth in the EDGAR Filer Manual. A violation of this provision or the relevant provision of the EDGAR Filer Manual also may be a violation of the Computer Fraud and Abuse Act of 1986, as amended, and other statutes and laws.

⁴⁴ If the executable code is contained only in one or more PDF documents, we propose to accept the submission but not the PDF document(s).

Rule 101(a)—*Mandated Electronic Submissions and Exceptions*. Currently, the note to paragraph (a)(1)(iii) of Rule 101 instructs filers filing Schedules 13D and 13G with respect to foreign private issuers to file in paper because one of the required data elements—the IRS tax identification number—is not available for foreign issuers. However, a paper filing is no longer necessary. The staff currently advises these filers to include in the EDGAR submission header all zeroes (*i.e.*, 00-0000000) for the IRS tax identification number, so that they may file electronically. We propose to amend the note to this rule to formalize the existing practice and permit electronic filing.

Rules 101(b), 102(e), and 303—*Permitted Electronic Submissions; Exhibits; and Incorporation by Reference*. Currently, electronic filers may still submit exhibits to Forms N-SAR, other than the Financial Data Schedule, either electronically or in paper.⁵² We have allowed filers to submit these exhibits in paper because, during phase-in to electronic filing, registrants could file their Forms N-SAR electronically on a voluntary basis in advance of their phase-in date, at a time when they were not able to make any other electronic filings. Since phase-in is complete, we propose to require that filers submit all Form N-SAR exhibits electronically.⁵³

We also propose to remove the references to phase-in for registered investment companies and business development companies, since phase-in has been completed.

2. Other Rule Amendments

Item 22(a)(4) of Schedule 14A and Forms N-1, N-1A, N-2, N-3, N-4, N-5, and S-6—*Financial Data Schedules*. We propose to revise provisions concerning Financial Data Schedules (“Schedules”) submitted by registered investment companies and business development companies. We believe that electronic filers that are registered investment companies will provide us with sufficient financial information in Schedule form by filing their Schedules with their Forms N-SAR.⁵⁴ Therefore, we propose to remove the requirement for registered investment companies to

submit Schedules with other forms and submissions.⁵⁵ Business development companies will continue to submit Schedules with their Form 10-K filings; face amount certificate companies and other investment companies filing on forms not unique to investment companies will continue to submit Schedules with the relevant forms.⁵⁶

Investment Company Act Rules 8b-23 and 8b-32—*Incorporation by Reference; Incorporation of Exhibits by Reference*. We propose to make minor revisions to Rules 8b-23 and 8b-32⁵⁷ to remove the reference to Regulation S-T Rule 102, since this reference is no longer relevant following completion of phase-in by investment company registrants.

III. General Request for Comment

You are invited to submit written comments relating to the rule proposals set forth in this release by submitting three copies to Jonathan G. Katz, Secretary, U.S. Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549-0609. You also may submit your comments electronically at the following e-mail address: rule-comments@sec.gov. Your comment letter should refer to File No. S7-9-99; include this file number in the subject line if you use e-mail. We will make comment letters available for your inspection and copying in our Public Reference Room, 450 Fifth Street, N.W., Washington, D.C. 20549. We also will post any electronically submitted comment letters on our Internet Web Site (<http://www.sec.gov>).

We request comment not only on the specific issues we discuss in this release, but on any other approaches or issues that we should consider in connection with the EDGAR modernization that we envision. We seek comment from the point of view of parties required to file information with us via the EDGAR system, as well as that of investors, disseminators of EDGAR data, and other members of the public who have access to and use information from the EDGAR system.

IV. Cost-Benefit Analysis

We expect that the envisioned EDGAR modernization will eventually result in considerable benefit to the securities

markets, investors, and other members of the public, by expanding the types of information and available media that can be filed and made available for public review through the EDGAR system. We also envision that the changes will eventually result in economic benefits to filers by easing their burden in filing required materials through the EDGAR system. The vastly expanding quantities of information that are made available to the public through the Internet are predominantly presented in HTML format. The EDGAR system's ability to accept filings submitted in this format means that filers will eventually be able to file required documents with us in a format similar to that they already use in making documents available to the public, thus easing the burden that filing requirements place upon filers.

The rule proposals are not intended to substantively change the information and disclosures that are required to be submitted to us under the current filing requirements. Rather, they are intended to modify current rules to reflect the expanded types of media and modes of presentation through which information can be submitted to us electronically once the EDGAR system is modernized.

We encourage commenters to identify any other costs or benefits associated with the rule proposals that have not been addressed. In particular, please identify any costs or benefits associated with the rule proposals relating to the contents of an “official filing,” impermissible types of code and content, hypertext links to external documents or web sites, variations in the appearance of an “official filing” that is accessed through different browsers, and any impact that the rule proposals may have on the ease of locating and using EDGAR data.

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

Section 23(a)(2) of the Exchange Act requires us, in adopting rules under the Exchange Act, to consider the anti-competitive effects of any rules we adopt thereunder. Furthermore, Section 2(b) of the Securities Act, Section 3(f) of the Exchange Act, and Section 2(c) of

⁵² See Rules 101(b)(8), 102(e)(2), and 303(a)(3)(ii) [17 CFR 101(b)(8), 102(e)(2), and 202(a)(3)(ii)].

⁵³ We also propose to remove the last sentence of Instruction F(2) of Form N-SAR [17 CFR 274.101], which currently allows filers to submit exhibits to the form in paper, and to remove the exemption for small business investment companies, which are now phased-in to electronic filing. Finally, we are proposing to revise Instruction F(1) to correctly reference “Sub-Item 77Q1: Exhibits.”

⁵⁴ Unit investment trusts are not required to submit the Schedule with their N-SARs.

⁵⁵ See proposed revisions to Item 22(a)(4) of Schedule 14A [17 CFR 240.101]; and Forms N-1 [§§ 239.15 and 274.11], N-1A [§§ 239.15A and 274.11A], N-2 [§§ 239.14 and 274.11a-1], N-3 [§§ 239.17a and 274.11b], N-4 [§§ 239.17b and 274.11c], N-5 [§§ 239.24 and 274.5], and S-6 [§ 239.16]. We also propose to revise Rules 485, 486, 487, and 495 [17 CFR 230.485, 486, 487, and 495], which refer to Financial Data Schedule requirements within registration statement forms.

⁵⁶ See Rule 483(e)(2)(ii) [17 CFR 483(e)(2)(ii)].

⁵⁷ 17 CFR 270.8b-23 and 8b-32.

the Investment Company Act require us, when engaging in rulemaking, and considering or determining whether an action is necessary or appropriate in the public interest, to consider whether the action will promote efficiency, competition, and capital formation.

We preliminarily believe that the proposed rule and amendments would not have an effect on competition. The proposed rules and amendments apply equally to all entities currently required to file on EDGAR. Moreover, the proposed rules and amendments are designed in part to permit filers to provide information in a format that will be more useful to investors. We request comment on any burden on efficiency, competition, or capital formation that might result from the adoption of these proposals.

V. Summary of Regulatory Flexibility Act Certification

Our Chairman has certified, under Section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 605(b), that the new rules and rule amendments we propose in this release (the "Proposals") would not, if adopted, have a significant economic impact on a substantial number of small entities. The certification, documenting the factual basis therefor, is attached to this Release as Appendix B. We encourage written comments on the Certification. We ask commenters to describe the nature of any impact on small entities and provide empirical data to support the extent of the impact.

VI. Paperwork Reduction Act

The new rules and amendments do not come within the scope of the Paperwork Reduction Act of 1995⁵⁸ because the new rules and amendments do not create a new collection of information.⁵⁹

VII. Statutory Basis

We propose the rule amendments outlined above under Sections 6, 7, 8, 10 and 19(a) of the Securities Act, Sections 3, 12, 13, 14, 15(d), 23(a) and 35A of the Exchange Act, Sections 3, 5, 6, 7, 10, 12, 13, 14, 17 and 20 of the Public Utility Holding Company Act of 1935,⁶⁰ Section 319 of the Trust Indenture Act of 1939,⁶¹ and Sections 8, 30, 31 and 38 of the Investment Company Act of 1940.⁶²

List of Subjects

17 CFR Parts 230 and 270

Confidential business information, Investment companies, Reporting and recordkeeping requirements, Securities.

17 CFR Part 232

Administrative practice and procedure, Confidential business information, Reporting and recordkeeping requirements, Securities.

17 CFR Part 239

Reporting and recordkeeping requirements, Securities.

17 CFR Part 240

Confidential business information, Reporting and recordkeeping requirements, Securities.

17 CFR Part 274

Investment companies, Reporting and recordkeeping requirements, Securities.

Text of the Proposed Amendments

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

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

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

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

§ 230.485 [Amended]

* * * * *

2. By amending § 230.485 by removing paragraph (f)(2) before the Note and redesignating paragraph (f)(1) as paragraph (f).

§ 230.486 [Amended]

3. By amending § 230.486 by removing paragraph (f)(2) before the Note and redesignating paragraph (f)(1) as paragraph (f).

§ 230.487 [Amended]

4. By amending § 230.487 by removing paragraph (d)(2) and redesignating paragraph (d)(1) as paragraph (d).

§ 230.495 [Amended]

5. By amending § 230.495 by removing paragraph (e)(2) and redesignating paragraph (e)(1) as paragraph (e).

6. By amending § 230.497 by adding a sentence before the last sentence in paragraph (k)(2)(ii) to read as follows:

§ 230.497 Filing of investment company prospectuses—number of copies.

* * * * *

(k) * * *

(2) *Filing procedures.* * * *

(ii) * * * Filers may fulfill the requirements of this paragraph by submitting with their definitive form of profile filed electronically under paragraph (k)(1)(ii) of this section an unofficial PDF copy of the profile in accordance with § 232.104 of this chapter. * * *

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

7. 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.

8. By amending § 232.10 by revising paragraph (b) before the Note to read as follows:

§ 232.10 Application of part 232.

* * * * *

(b) Each registrant, third party, or agent must file in paper format a Form ID (§§ 239.63, 249.446, 259.602, 269.7 and 274.402 of this chapter), the uniform application for access codes to file on EDGAR, before beginning to file electronically.

* * * * *

9. By amending § 232.11 by redesignating paragraphs (a) as (c), (b) as (d), (c) as (f), (d) as (g), (e) as (i), (f) as (j), (g) as (k), (h) as (l), (i) as (m), (j) as (p), (k) as (r), (l) as (s), (m) as (t), (n) as (u), (o) as (v), (p) as (w), (q) as (x), (r) as (y), (s) as (z), (t) as (aa), (u) as (bb), (v) as (cc) and (w) as (dd); by revising newly redesignated paragraph (j); and by adding paragraphs (a), (b), (e), (h), (n), (o), (q) and (ee) to read as follows:

§ 232.11 Definition of terms used in part 232.

* * * * *

(a) *Animated graphics.* The term *animated graphics* means text or images that do not remain static but that move when viewed in a browser.

(b) *ASCII document.* The term *ASCII document* means an electronic text document with contents limited to American Standard Code for Information Interchange ("ASCII") characters and that is tagged with Standard Generalized Mark Up Language ("SGML") tags in the format required for ASCII/SGML documents by the EDGAR Filer Manual.

* * * * *

⁵⁸ 44 U.S.C. 3501 *et seq.*

⁵⁹ 5 CFR 1320.5(g).

⁶⁰ 15 U.S.C. 79a *et seq.*

⁶¹ 15 U.S.C. 77aaa *et seq.*

⁶² 15 U.S.C. 80a–1 *et seq.*

(e) *Disruptive code*. The term *disruptive code* means any active content or other executable code, or any program or set of electronic computer instructions inserted into a computer, operating system, or program that replicates itself or that actually or potentially modifies or in any way alters, damages, destroys or disrupts the file content or the operation of any computer, computer file, computer database, computer system, computer network or software, and as otherwise set forth in the EDGAR Filer Manual.

* * * * *

(h) *Electronic document*. The term *electronic document* means the portion of an electronic submission separately tagged as an individual document in the format required by the EDGAR Filer Manual.

* * * * *

(j) *Electronic filing*. The term *electronic filing* means one or more electronic documents filed under the federal securities laws that are transmitted or delivered to the Commission in electronic format.

* * * * *

(n) *Executable code*. The term *executable code* means instructions to a computer to carry out operations that use features beyond the viewer's, reader's, or Internet browser's native ability to interpret and display HTML, PDF, and static graphic files. Such code may be in binary (machine language) or in script form. Executable code includes disruptive code.

(o) *HTML document*. The term *HTML document* means an electronic text document tagged with HyperText Markup Language tags in the format required by the EDGAR Filer Manual.

* * * * *

(q) *Hypertext links or hyperlinks*. The term *hypertext links* or *hyperlinks* means the representation of an Internet address in a form that an Internet browser application can recognize as an Internet address.

* * * * *

(ee) *Unofficial PDF copy*. The term *unofficial PDF copy* means an optional copy of an electronic document that may be included in an EDGAR submission tagged as a Portable Document Format document in the format required by the EDGAR Filer Manual and submitted in accordance with Rule 104 of Regulation S-T (§ 232.104).

10. By amending § 232.101 by revising the note to paragraph (a)(1)(iii) and by removing paragraph (b)(7) to read as follows:

§ 232.101 Mandated electronic submissions and exceptions.

(a) *Mandated electronic submissions.*

(1) * * *

(iii) * * *

Note to paragraph (a)(1)(iii). Electronic filers filing Schedules 13D and 13G with respect to foreign private issuers should include in the submission header all zeroes (i.e., 00-0000000) for the IRS tax identification number, since the EDGAR system requires an IRS number to be inserted for the subject company as a prerequisite to acceptance of the filing.

* * * * *

11. By amending § 232.102 by revising paragraph (e) to read as follows:

§ 232.102 Exhibits.

* * * * *

(e) Notwithstanding the provisions of paragraphs (a) through (d) of this section, any incorporation by reference by a registered investment company or a business development company must relate only to documents that have been filed in electronic format, unless the document has been filed in paper under a hardship exemption (§ 232.201 or 232.202) and any required confirming copy has been submitted.

* * * * *

By adding §§ 232.104, 232.105 and 232.106 to read as follows:

§ 232.104 Unofficial PDF copies included in an electronic submission.

(a) An electronic submission may include one unofficial PDF copy of each electronic document contained within that submission, tagged in the format required by the EDGAR Filer Manual.

(b) Except as provided in paragraph (c) of this section, each unofficial PDF copy must be substantively equivalent to its associated electronic document contained in the electronic submission. An unofficial PDF copy may contain graphic and image material (but not animated graphics, or audio or video material), notwithstanding the fact that its HTML or ASCII document counterpart may not contain such material but must contain a fair and accurate narrative description or tabular representation of any omitted graphic or image material.

(c) If a filer omits an unofficial PDF copy from, or submits one or more flawed unofficial PDF copies in, the electronic submission of an official filing, the filer may add or resubmit an unofficial PDF copy by electronically submitting an amendment to the filing to which it relates. The amendment should include an explanatory note that the purpose of the amendment is to add or to correct an unofficial PDF copy.

(1) If such an amendment is filed, the official amendment may consist solely

of the cover page (or first page of the document), the explanatory note, and the signature page and exhibit index (where appropriate). The corresponding unofficial copy must include the complete text of the official filing document for which the amendment is being submitted.

(2) If the amendment is being filed to add or resubmit an unofficial PDF copy of one or more exhibits, the submission may consist of the following: the official filing—consisting of the cover page (or first page of the document), the explanatory note, the signature page (where appropriate), the exhibit index, and a separate electronic exhibit document for each exhibit for which an unofficial PDF copy is being submitted—and the corresponding unofficial PDF copy of each exhibit document. However, the text of the official exhibit document need not repeat the text of the exhibit; that document may contain only the following legend: "RESUBMITTED TO ADD/REPLACE UNOFFICIAL PDF COPY OF EXHIBIT."

(d) An unofficial PDF copy is not filed for purposes of section 11 of the Securities Act (15 U.S.C. 77k), section 18 of the Exchange Act (15 U.S.C. 78r), section 16 of the Public Utility Act (15 U.S.C. 79p), section 323 of the Trust Indenture Act (15 U.S.C. 77www), or section 34(b) of the Investment Company Act (15 U.S.C. 80a-33(b)), or otherwise subject to the liabilities of such sections, and is not part of any registration statement to which it relates. An unofficial PDF copy is, however, subject to all other civil liability and anti-fraud provisions of the above Acts or other laws.

(e) Unofficial PDF copies that are prospectuses are subject to liability under Section 12 of the Securities Act (15 U.S.C. 77j).

§ 232.105 Limitation on use of HTML documents and hypertext links.

(a) Electronic filers must submit the following documents in ASCII: Form N-SAR (§ 274.101 of this chapter), Form 13F (§ 249.325 of this chapter), and Financial Data Schedules submitted in accordance with Item 601(c) of Regulation S-K (§ 229.601(c) of this chapter), Item 601(c) of Regulation S-B (§ 228.601(c) of this chapter), or Rule 483(e) (§ 230.483(e) of this chapter). Notwithstanding the foregoing provision, electronic filers may submit exhibits to Form N-SAR in HTML, except for Financial Data Schedules, which filers must submit in ASCII.

(b) Electronic filers may not include in any HTML document hypertext links to sites, locations, or documents outside

the HTML document, including links to exhibit documents. Electronic filers may include within an HTML document hypertext links to different sections within that single HTML document.

(c) If, notwithstanding paragraph (b) of this section, electronic filers include hypertext links to external sites within a submission, information contained in such links will not be considered part of the official filing for determining compliance with reporting obligations; however, this information is subject to the civil liability and anti-fraud provisions of the federal securities laws.

§ 232.106 Prohibition against electronic submissions containing executable code.

(a) Electronic submissions must not contain executable code. Attempted submissions identified as containing executable code will be suspended, unless the executable code is contained only in one or more PDF documents, in which case the submission will be accepted but the PDF document(s) containing executable code will be deleted and not disseminated.

(b) If an electronic submission has been accepted, and the Commission staff later determines that the accepted submission contains executable code, the staff may delete from the EDGAR system the entire accepted electronic submission or any document contained in the accepted electronic submission. The Commission staff may direct the electronic filer to resubmit electronically replacement document(s) or a replacement submission in its entirety, in compliance with this provision and the EDGAR Filer Manual.

Note to § 232.106: A violation of this section or the relevant EDGAR Filer Manual section also may be a violation of the Computer Fraud and Abuse Act of 1986, as amended, and other statutes and laws.

13. By amending § 232.302 by revising paragraph (a) to read as follows:

§ 232.302 Signatures.

(a) Required signatures to or within any electronic submission must be in typed form rather than manual format. When used in connection with an electronic filing, the term "signature" means an electronic entry in the form of a magnetic impulse or other form of computer data compilation of any letter or series of letters or characters comprising a name, executed, adopted or authorized as a signature. Signatures are not required in unofficial PDF copies submitted in accordance with Rule 104 of Regulation S-T (§ 232.104).

14. By amending § 232.303 by revising paragraph (a)(3) to read as follows:

§ 232.303 Incorporation by reference.

(a) * * *

(3) For a registered investment company or a business development company, documents that have not been filed in electronic format, unless the document has been filed in paper under a hardship exemption (§ 232.201 or 232.202 of this chapter) and any required confirming copy has been submitted.

* * * * *

15. By amending § 232.304 by revising the section heading, paragraphs (a) and (b) and the first sentence of paragraph (c) to read as follows:

§ 232.304 Graphic, image, audio and video material.

(a) If a filer includes graphic, image, audio or video material in a document delivered to investors and others that may not, in accordance with the requirements of the EDGAR Filer Manual, be reproduced in an electronic filing, the electronically filed version of that document must include a fair and accurate narrative description, tabular representation or transcript of the omitted material. Such descriptions, representations or transcripts may be included in the text of the electronic filing at the point where the graphic, image, audio or video material is presented in the delivered version, or they may be listed in an appendix to the electronic filing. Immaterial differences between the delivered and electronically filed versions, such as pagination, color, type size or style, or corporate logo need not be described.

(b)(1) The graphic, image, audio and video material in the version of a document delivered to investors and others shall be deemed part of the electronic filing and subject to the civil liability and anti-fraud provisions of the federal securities laws.

(2) Narrative descriptions, tabular representations or transcripts of graphic, image, audio and video 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, audio or video material, they shall not be subject to the civil liability and anti-fraud provisions of the federal securities laws.

(c) An electronic filer shall retain for a period of five years a copy of each publicly distributed document, in the format used, that contains graphic, image, audio or video material where such material is not included in the version filed with the Commission.

* * *

* * * * *

16. By amending § 232.305 by designating the existing text as paragraph (a) and adding paragraph (b) to read as follows:

§ 232.305 Number of characters per line; tabular and columnar information.

(a) * * *

(b) Paragraph (a) of this section does not apply to HTML documents.

17. By amending § 232.306 by revising paragraph (b) to read as follows:

§ 232.306 Foreign language documents and symbols.

(a) * * *

(b) Foreign currency denominations must be expressed in words or letters in the English language rather than representative symbols, except that HTML documents may include any representative foreign currency symbols that the EDGAR Filer Manual specifies. The limitations of this paragraph do not apply to unofficial PDF copies submitted in accordance with Rule 104 of Regulation S-T (§ 232.104).

18. By amending § 232.307 by designating the existing language as paragraph (a) and by adding paragraph (b) to read as follows:

§ 232.307 Bold-face type.

(a) * * *

(b) Paragraph (a) of this section does not apply to HTML documents.

19. By revising § 232.310 to read as follows:

§ 232.310 Marking changed material.

Provisions requiring the marking of changed materials are satisfied in ASCII and HTML documents by inserting the tag <R> before and the tag </R> following a paragraph containing changed material. HTML documents may be marked to show changed materials within paragraphs. Financial statements and notes thereto need not be marked for changed material.

PART 239—FORMS PRESCRIBED UNDER THE SECURITIES ACT OF 1933

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

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

* * * * *

21. By amending Form S-6 (referenced in § 239.16) by removing Instruction 5 of Instructions as to Exhibits.

Note—The text of Form S-6 and the amendments will not appear in the Code of Federal Regulations.

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

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

Authority: 15 U.S.C. 77c, 77d, 77g, 77j, 77s, 77z-2, 77eee, 77ggg, 77nnn, 77sss, 77ttt, 78c, 78d, 78f, 78i, 78j, 78j-1, 78k, 78k-1, 78l, 78m, 78n, 78o, 78p, 78q, 78s, 78u-5, 78w, 78x, 78ll(d), 79q, 79t, 80a-20, 80a-23, 80a-29, 80a-37, 80b-3, 80b-4 and 80b-11, unless otherwise noted.

* * * * *

§ 240.14a-101 [Amended]

23. By amending § 240.14a-101 by removing paragraph (a)(4) of Item 22.

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

24. The authority citation for part 270 continues to read in part as follows:

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

* * * * *

25. By amending § 270.8b-23 by revising paragraph (a) to read as follows:

§ 270.8b-23 Incorporation by reference.

(a) Any registrant may incorporate by reference, in answer or partial answer to any item of a registration statement or report, any information contained elsewhere in the statement or report or any information contained in any other statement, report or prospectus filed with the Commission under any Act administered by it, so long as a copy of the other statement, report or prospectus is filed with each copy of the registration statement or report in which it is incorporated by reference. In the case of a registration statement, report, or prospectus filed in electronic format, the registrant need not file a copy of the document incorporated by reference if that document also was filed in electronic format. A registrant may incorporate by reference matter contained in an exhibit, however, only to the extent permitted by §§ 270.8b-24 and 270.8b-32. A registrant may not

incorporate by reference a Financial Data Schedule.

* * * * *

26. By amending § 270.8b-32 by revising paragraph (c) to read as follows:

§ 270.8b-32 Incorporation of exhibits by reference.

* * * * *

(c) *Electronic filings.* (1) A registrant may incorporate by reference into a registration statement or report required to be filed electronically only exhibits that have been filed in electronic format, unless the exhibit has been filed in paper under a hardship exemption (§ 232.201 or 232.202 of this chapter) and any required confirming copy has been submitted.

(2) Notwithstanding paragraph (c)(1) of this section, a registrant may not incorporate by reference a Financial Data Schedule.

PART 274—FORMS PRESCRIBED UNDER THE INVESTMENT COMPANY ACT OF 1940

27. The authority citation for part 274 continues to read as follows:

Authority: 15 U.S.C. 77f, 77g, 77h, 77j, 77s, 78c(b), 78l, 78m, 78n, 78o(d), 80a-8, 80a-24, and 80a-29, unless otherwise noted.

28. By amending Form N-SAR (referenced in § 274.101) by revising General Instruction F to read as follows:

Note—The text of Form N-SAR and the amendments will not appear in the Code of Federal Regulations.

Instructions and Form

Form N-SAR

Semi-Annual Report for Registered Investment Companies

* * * * *

General Instructions

* * * * *

F. Filings on EDGAR.

(1) Attention is directed to Sub-Item 77Q1: Exhibits for certain items of financial information that are required (Financial Data Schedule).

(2) Management investment companies must file Form N-SAR electronically only by direct electronic

submission, and in accordance with the EDGAR Filer Manual. Filing of the form on magnetic tapes or diskettes is not permitted.

* * * * *

PART 239—FORMS PRESCRIBED UNDER THE SECURITIES ACT OF 1933

PART 274—FORMS PRESCRIBED UNDER THE INVESTMENT COMPANY ACT OF 1940

Note—The text of Forms N-2, N-1, N-1A, N-3, N-4 and N-5 and the amendments will not appear in the Code of Federal Regulations.

29. By amending Form N-2 (referenced in §§ 239.14 and 274.11a-1) by removing General Instruction I and redesignating General Instruction J as General Instruction I and removing paragraph 2.r of Item 24 of Part C.

30. By amending Form N-1 (referenced in §§ 239.15 and 274.11) by removing General Instruction H and paragraph (b)(16) to Item 1 of Part II.

31. By amending Form N-1A (referenced in §§ 239.15A and 274.11A) by removing paragraph (n) of Item 23 and by redesignating paragraph (o) of Item 23 as paragraph (n).

32. By amending Form N-3 (referenced in §§ 239.17a and 274.11b) by removing General Instruction J and paragraph (b)(17) to Item 28 of Part C.

33. By amending Form N-4 (referenced in §§ 239.17b and 274.11c) by removing General Instruction J and paragraph (b)(14) to Item 24 of Part C and redesignating paragraphs (b)(15) through (b)(17) as paragraphs (b)(14) through (b)(16).

34. By amending Form N-5 (referenced in §§ 239.24 and 274.5) by removing General Instruction H and Instruction 13 to Instructions as to Exhibits.

Dated: March 10, 1999.

By the Commission.

Margaret H. McFarland,
Deputy Secretary.

Note: Appendix A and Appendix B to the preamble do not appear in the Code of Federal Regulations.

APPENDIX A—ACCEPTABLE TAGS FOR HTML DOCUMENTS

[Acceptable HTML 3.2 Tags—Document Header]

Non-format tags	Definition
<HTML>	Identifies text as HTML document.
<!-->	Comment—does not appear in browser, only in HTML source.
<A>	Anchor/Hyperlink. [Note: For the attribute HREF, external references are not supported; however, Bookmark (internal) references will be supported.]
<BODY>	Signifies the body of the HTML document. [Note: The BACKGROUND attribute is not supported for this tag.]

APPENDIX A—ACCEPTABLE TAGS FOR HTML DOCUMENTS—Continued

[Acceptable HTML 3.2 Tags—Document Header]

Non-format tags	Definition
<HEAD>	Signifies header information for HTML document.
<ISINDEX>	Signifies document is an index for a search engine.
<BASE>	Base URL to be used by all links in the document.
<LINK>	Like a hyperlink, but only contained within header.
<META>	Extended information to be included in document header. [Note: The HTTP-EQUIV attribute is not supported for this tag.]
<TITLE>	Title of document. It is displayed at the top of the browser.

[Acceptable HTML 3.2 Tags—Within Document]

Format-specific tags (change the appearance of the text only)	Definition
<~<>	Escape Sequences—Used to display characters normally reserved (such as "<") as plain text in the HTML document.
<A>	Anchor/Hyperlink. [Note: For the attribute HREF, external references are not supported; however, Bookmark (internal) references will be supported.]
<ADDRESS>	Address—Usually italicized.
	Bold.
<BLOCKQUOTE>	Block Quote—Usually indented.
 	Line Break.
<CITE>	Citation.
<CODE>	Code.
<DIR>	Directory List.
<DL>	Definition List—Used with <DT> and <DD>.
<DT>	Definition Term.
<DD>	Definition.
	Emphasized—Like Bold.
<H1>	Heading 1—Largest.
<H2>	Heading 2.
<H3>	Heading 3.
<H4>	Heading 4.
<H5>	Heading 5.
<H6>	Heading 6—Smallest.
<HR>	Horizontal Rule—Displays a thin line across the page separating text.
<I>	Italic.
<KBD>	Keyboard—Preformatted text.
	List Item—Used by <DIR>, <MENU>, , and .
<LISTING>	Listing—Same as <PRE>.
<MENU>	Menu List.
	Ordered List—Includes numbers.
<P>	Paragraph.
<PLAINTEXT>	Plain Text.
<PRE>	Preformatted Text.
<SAMP>	Sample—Uses fixed width font—Like <PRE>.
<STRIKE>	Strikethrough.
	Strong—Similar to bold.
<TT>	Teletype—Uses fixed width font—Like <PRE>.
<U>	Underlined.
	Unordered List—Bullets only.
<VAR>	Variable—Uses fixed width font—Like <PRE>.
<XMP>	Example—Same as <PRE>.
<BIG>	Big Text—Increases font size.
<CAPTION>	Caption—Can only be used with tables.
<CENTER>	Centers elements between tags.
<DFN>	Definition—Like <I>.
<DIV>	Division—Helps separate a document into parts.
	Allows alteration of font contained within tags.
<SMALL>	Small Text—Decreases font size.
<SUB>	Subscript.
<SUP>	Superscript.
<TABLE>	Table. Note: No HTML documents with nested <TABLE> tags are to be accepted or disseminated by EDGAR.]
<TD>	Table Data or Cell.
<TH>	Table Header—Displayed in bold.
<TR>	Table Row.

[Acceptable Legacy SGML Tags—Within HTML Documents]

Non-standard tags	Definition
<PAGE>	SGML tag for page markers (browsers will ignore this tag if present).
<R>	[Note: The <R> tag can also be represented as <R>.]
</R>	[Second Note: The <R> tag will not be publicly disseminated; it is for SEC use only.]
<SEGMENTS> </SEGMENTS>	
<MODULE> <NAME> <CIK> <CCC> </MODULE>	For incorporation of document text at the Host. [Note: These tags will not be publicly disseminated.]

Appendix B—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 Rules 485, 486, 487, 495, and 497,⁶³ and Form S-6,⁶⁴ under the Securities Act of 1933 ("Securities Act"),⁶⁵ Rules 10, 11, 101, 102, 302, 303, 304, 305, 306, 307, and 310 of Regulation S-T⁶⁶ under the Securities Act, Schedule 14A⁶⁷ under the Securities Exchange Act of 1934 ("Exchange Act"),⁶⁸ Rules 8b-23 and 8b-32,⁶⁹ and Form N-SAR,⁷⁰ under the Investment Company Act of 1940 ("Investment Company Act"),⁷¹ and Forms N-1, N-1A, N-2, N-3, N-4, and N-5⁷² under the Securities Act and the Investment Company Act; and the addition of new Rules 104, 105, 106, and 107 under Regulation S-T, as set forth in Release Number 33-7653 (together, the "Proposals"), if adopted, would not have a significant economic impact on a substantial number of small entities.

The Proposals generally would not have a significant economic impact on a substantial number of small entities because they would only provide filers additional options for making their submissions on the Commission's Electronic Data Gathering, Analysis, and Retrieval ("EDGAR") system, which they may choose to use on a voluntary basis; codify several existing interpretations and practices relating to the preparation, filing, and processing of electronic documents; remove the requirement for submission of a financial data schedule exhibit for certain filings made by investment companies; and make technical corrections to current rules. Therefore, the Proposals would not have a significant economic impact on a substantial number of small entities within the definitions of "small business" and "small organization" (together, "small

entities") set forth in Rule 0-10⁷³ under the Investment Company Act, Rule 0-7⁷⁴ under the Investment Advisers Act of 1940,⁷⁵ Rule 0-10⁷⁶ under the Exchange Act, and Rule 157⁷⁷ under the Securities Act.

Dated: March 10, 1999.

Arthur Levitt

[FR Doc. 99-6277 Filed 3-15-99; 8:45 am]

BILLING CODE 8010-01-P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Part 990

[Docket No. FR-4425-N-02]

Operating Fund Rule; Final Notice of Establishment of Negotiated Rulemaking Committee and Notice of First Meeting

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Establishment of Negotiated Rulemaking Advisory Committee and first meeting.

SUMMARY: HUD announces the establishment of a negotiated rulemaking advisory committee under the Federal Advisory Committee Act. The establishment of the committee is required by the Quality Housing and Work Opportunity Act of 1998, which requires issuance of regulations under the Negotiated Rulemaking Act of 1990. The purpose of the committee is to discuss and negotiate a proposed rule that would change the current method of determining the payment of operating subsidies to public housing agencies (PHAs). The committee consists of representatives with a definable stake in the outcome of the proposed rule. This document announces the committee

members and the dates, location, and agenda for the first committee meeting.

DATES: The first committee meeting will be held on March 23–March 25, 1999. On March 23, 1999, the meeting will start at 10:00 am and run until completion; on March 24, 1999, the meeting will start at 9:00 am and run until completion; and on March 25, 1999, the meeting will start at 9:00 am and run until approximately 3:00 pm.

ADDRESSES: The first committee meeting will take place at the Channel Inn Hotel (Captain's Room), 650 Water Street, SW, Washington, DC 20024.

FOR FURTHER INFORMATION CONTACT: Joan DeWitt, Director, Funding and Financial Management Division, Public and Indian Housing, Room 4216, Department of Housing and Urban Development, 431 Seventh Street, SW, Washington, DC 20410-0500; telephone (202) 708-1872 ext. 4035 (this telephone numbers is not toll-free). Hearing or speech-impaired individuals may access this number via TTY by calling the toll-free federal Information Relay Service at 1-800-877-8339.

SUPPLEMENTARY INFORMATION:

I. Statutory Background

HUD currently uses a formula approach called the Performance Funding System (PFS) to distribute operating subsidies to public housing agencies (PHAs). A regulatory description of the PFS can be found at 24 CFR part 990. Generally, the amount of subsidy received by a PHA is the difference between projected expenses and projected income, with the PFS regulations detailing how these projections will be made. While the amount varies, this subsidy can represent a substantial amount of revenue for a PHA. For example, in 1998, HUD distributed over \$2.9 billion in operating subsidies to PHAs.

On February 3, 1999 (65 FR 5570), HUD published a notice of intent to establish an advisory committee to discuss and negotiate a proposed rule

⁶³ 17 CFR 230.485, 486, 487, 495, and 497.

⁶⁴ 17 CFR 239.16.

⁶⁵ 15 U.S.C. 77a *et seq.*

⁶⁶ 17 CFR 232.10, 11, 101, 102, 302, 303, 304, 305, 306, 307, and 310.

⁶⁷ 17 CFR 240.101.

⁶⁸ 15 U.S.C. 78a *et seq.*

⁶⁹ 17 CFR 270.8b-23 and 8b-32.

⁷⁰ 17 CFR 274.101.

⁷¹ 15 U.S.C. 80a-1 *et seq.*

⁷² 17 CFR 239.15 and 274.11, 17 CFR 15A and 274.11A, 17 CFR 239.14 and 274.11a-1, 17 CFR 239.17a and 274.11b, 17 CFR 239.17b and 274.11c, 17 CFR 239.24 and 274.5.

⁷³ 17 CFR 270.0-10.

⁷⁴ 17 CFR 275.0-7.

⁷⁵ 15 U.S.C. 80b-1 *et seq.*

⁷⁶ 17 CFR 240.0-10.

⁷⁷ 17 CFR 230.157.