

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 202, 228, 229, 230, 232, 239, 240, 270, and 274

[Release No. 33-7168; 34-35705; IC-21061; File No. S7-7-95]

RIN 3235-AG40

Prospectus Delivery; Securities Transactions Settlement

AGENCY: Securities and Exchange Commission.

ACTION: Final rules.

SUMMARY: The Commission is adopting revisions to its rules and forms and a new rule in order to implement two solutions to prospectus delivery issues arising in connection with the change to T+3 securities transaction settlement. These revisions, among other things, include changes that highlight the location of the risk factor disclosure within the prospectus. In addition, the Commission is eliminating an exemption from T+3 settlement for purchases and sales of securities pursuant to a firm commitment offering, providing a T+4 time frame to firm commitment offerings under certain conditions, and adopting a modified procedure whereby participants in firm commitment offerings may agree to an extended settlement time frame.

EFFECTIVE DATE: The new rule and the revisions to rules and forms are effective June 7, 1995.

FOR FURTHER INFORMATION CONTACT: Anita Klein, Joseph Babits or Michael Mitchell (202) 942-2900, Division of Corporation Finance; and, with regard to questions concerning revisions to the T+3 settlement rule, Jerry W. Carpenter or Christine Sibille, (202) 942-4187, Division of Market Regulation; and, with regard to questions concerning Rule 15c2-8 revisions, Alexander Dill, (202) 942-4892, Division of Market Regulation; and, with regard to questions concerning the application to investment companies, Kathleen Clarke, (202) 942-0721, Division of Investment Management, U.S. Securities and Exchange Commission, Washington, DC, 20549.

SUPPLEMENTARY INFORMATION:

I. Introduction and Background

On October 6, 1993, the Commission adopted Rule 15c6-1¹ under the Securities Exchange Act of 1934 (the "Exchange Act").² That rule is

¹ 17 CFR 240.15c6-1. See Exchange Act Release No. 33023 (Oct. 6, 1993) (58 FR 52891).

² 15 U.S.C. 78a *et seq.*

scheduled to become effective on June 7, 1995.³ Rule 15c6-1 requires that the standard settlement time frame for most broker-dealer trades be three business days after the trade (hereinafter "T + 3"). Rule 15c6-1 provides a limited exemption from T + 3 for the sale or securities for cash pursuant to a firm commitment offering registered under the Securities Act of 1933 (the "Securities Act").⁴ Resales of such securities, however, remain within T + 3.

Since the adoption of Rule 15c6-1, members of the brokerage community have suggested that the Commission eliminate this exemption because, among other reasons, the bifurcated settlement cycle created for initial sales and resales of new issues⁵ would be disruptive to broker-dealer operations and to the clearance and settlement system.

According to the brokerage community, the primary reason that settlement within T + 3 is not feasible for many new issues is the amount of time it takes to print and deliver prospectuses.⁶

Two proposals to ease prospectus delivery within T + 3 were submitted for Commission consideration. One was submitted by the Securities Industry Association ("SIA") and one was submitted by a group of four investment firms: CS First Boston Corporation, Goldman, Sachs & Co., Lehman Brothers Inc. and Morgan Stanley & Co. Incorporated (the "Four Firms").⁷ These

³ See Exchange Act Release No. 34952 (Nov. 9, 1994) (59 FR 59137).

⁴ 15 U.S.C. 77a *et seq.*

⁵ The term "new issues" as used herein refers to both initial public offerings and offerings of additional securities by companies.

⁶ Some of these timing difficulties can be expected to be alleviated as markets increasingly rely on non-paper delivery media. In recognition of that development, the staff issued an interpretive letter to facilitate the use of electronic transmission to satisfy prospectus delivery requirements. *Brown & Wood* (Feb. 17, 1995). The Division of Corporation Finance staff, in addition to issuing the *Brown & Wood* letter, is considering generally delivery under the Securities Act of prospectuses through other non-paper media (e.g., audiotapes, videotapes, facsimile, directed electronic mail, and CD ROMs). The staff anticipates submitting to the Commission in the near future recommendations intended both to facilitate compliance with the Securities Act's prospectus delivery requirements and to encourage continued technological developments of non-paper delivery media.

⁷ See letter from Robin Shelby, CS First Boston Corporation; Goldman, Sachs & Co.; Steven Barkenfield, Lehman Brothers Inc.; and John Ander, Morgan Stanley & Co. Inc. to Anita Klein, Securities and Exchange Commission, dated Jan. 24, 1995 and letter from Goldman, Sachs to Anita Klein, Securities and Exchange Commission, dated Feb. 3, 1995. See also letter from Joseph McLaughlin, Brown & Wood, on behalf of the Securities Industry Association, to Anita Klein, Securities and Exchange Commission, dated Feb. 1, 1995. Copies

proposals recommended markedly different solutions to accomplishing prospectus delivery within T + 3.

On February 21, 1995, the Commission proposed new Rule 434 and amendments to existing rules and forms based upon these two proposals.⁸ The Commission sought comment regarding which approach should be implemented, or whether the Commission should implement both approaches and thereby allow market participants a choice as to which to use in any given offering. Twenty-nine comment letters were received in response to the Proposing Release.⁹ Most commenters addressing the question of whether to adopt one or both of the Commission's approaches.

As described in greater detail below, the Commission is adopting both approaches, largely as proposed, to provide market participants with the flexibility of selecting between alternative methods to expedite prospectus delivery under a T + 3 clearance and settlement system.¹⁰ Because of the concerns expressed by some commenters with respect to the potential for investor confusion, however, the Commission intends to monitor closely disclosure practices that develop under the new rules and will undertake revisions to the rules if necessary to address investor problems.

On February 21, 1995, the Commission also proposed amendments to Rule 15c6-1 to eliminate the current exemption for firm commitment offerings except offerings of asset-backed securities and structured securities, to provide for a T+4 standard settlement period for offerings priced after the close of the markets ("after-market pricings"), and to permit the managing underwriter to establish T+3, T+4, or T+5 as the standard settlement period for an entire offering if certain conditions were met. In general, commenters favored the proposed amendments to Rule 15c6-1. Many

of these proposals are available for inspection and duplication at the Commission's Public Reference Room, 450 Fifth St. NW., Washington, DC 20549, File Number S7-7-95.

⁸ See Securities Act Release No. 7141 (Feb. 21, 1995) (60 FR 10724) (hereinafter, the "Proposing Release").

⁹ These letters of comment and a summary thereof are available for inspection and duplication at the Commission's Public Reference Room, 450 Fifth Street NW., Washington, DC 20549, File No. S7-7-95.

¹⁰ As adopted, the approaches will apply specifically to certain investment companies registered under the Investment Company Act of 1940 (15 U.S.C. 80a-1 *et seq.*) (hereinafter, the "Investment Company Act") (i.e., closed-end investment companies and unit investment trusts ("UITs")). See *infra* Sections II.A.8. and II.B.3.d.

commenters, however, objected to the requirements and limitations contained in the T+3, T+4, or T+5 proposal. As described below, the Commission is eliminating the blanket exemption from Rule 15c6-1 for firm commitment offerings, is adopting the T+4 standard for after-market pricings, and is adopting a revised provision authorizing exceptions from T+3 settlement for certain firm commitment offerings.¹¹

II. Prospectus Delivery Approaches

A. The Four Firms Approach

The Four Firms proposal was premised on the view that the process of preparing and delivering prospectuses in new issues could be accelerated sufficiently to comply with T+3 if six steps were taken by the Commission to facilitate the printing of a significant portion of the final prospectus prior to pricing. Those six steps, noted below, are being adopted substantially as proposed.¹² Except as otherwise noted, these steps are applicable to any offering.

1. Re-ordering of Prospectuses

As was proposed, the Commission is adopting rule revisions enabling the contents of prospectuses to be re-ordered to expedite the printing process.¹³ All portions likely to be subject to change at the time of pricing may be placed together in the beginning of the prospectus after the front cover page in a "pricing-related information"

¹¹ With the help of staff of the Commission's Division of Corporation Finance and Office of General Counsel, the Commission's Advisory Committee on the Capital Formation and Regulatory Processes is examining the relative costs and benefits of the Securities Act's transactional registration scheme, including the prospectus delivery requirements. See Commission File No. 265-20.

¹² For a discussion of the application of the Four Firms approach to investment companies, see *infra* Section II.A.8.

¹³ Certain Commission rules that specify the location of information in the forepart of the prospectus, or in a specified order within the prospectus, are being revised to eliminate certain requirements regarding location. See revisions to Items 503(b) and 503(c) of Regulation S-K, 17 CFR 229.503(b) and 229.503(c); Items 503(b) and 503(c) of Regulation S-B, 17 CFR 228.503(b) and 228.503(c); and Securities Industry Guide 4, 17 CFR 229.801(d). Consistent with the proposal, no revision has been made to order and location rules that relate to specific and limited classes of transactions. See Items 903(a) and 904(a) of Regulation S-K, 17 CFR 229.903(a) and 229.904(a) (summary of a roll-up transaction, reasonably detailed description of each material risk and effect of the roll-up transaction); Securities Act Industry Guide 5, 17 CFR 229.801(e), (real estate limited partnerships suitability standards). In addition, issuers of limited partnership interests and other real estate investment vehicles must continue to comply with the disclosure guidance set forth in Securities Act Release No. 6900 (June 17, 1991) (56 FR 28979).

section, or may be wrapped around the remainder of the prospectus just inside the front and back cover pages.¹⁴ While summary and risk factors sections must remain in the forepart of the prospectus, those sections may immediately follow the "pricing-related information" section rather than preceding it. To ensure that investors continue to be able to locate the risk factors section in all offerings with ease, however, rule revisions also provide that the currently required cross reference to that section on the cover page of the prospectus now identify with specificity (e.g. by page number) the location of that section within the prospectus.¹⁵ In addition, rule revisions require that the risk factors section be captioned within the prospectus as "Risk Factors" and clarify that the table of contents required on the back cover of the prospectus must include a reference to the risk factors section and specify the page number on which it begins.¹⁶

Further, rule revisions provide that specific information currently required on the prospectus cover pages may be placed under an appropriate caption elsewhere in the prospectus.¹⁷ Otherwise, the prospectus cover pages must continue to contain information

¹⁴ Commenters noted that, if prospectuses are printed in a folio manner, moving pricing-related information to the front of the prospectus may not result in earlier printing of the remainder of the prospectus. Thus, the Commission is providing the flexibility to "wrap" the "pricing-related information" section. Of course, whether the price-related information is set forth in the front or wrapped, the information set forth in the prospectus must be presented in a clear, concise and understandable fashion, as required by Rule 421(b) under the Securities Act, 17 CFR 230.421(b). See also Rule 421(a) under the Securities Act, 17 CFR 230.421(a), which requires that information in a prospectus be set forth in a fashion so as not to obscure any of the required information or any information necessary to keep the required information from being incomplete or misleading; and Securities Act Release No. 6900 (June 17, 1991) (56 FR 28979).

¹⁵ See revisions to Regulation S-K Item 501(c)(4), 17 CFR 229.501(c)(4), and Regulation S-B Item 501(a)(4), 17 CFR 228.501(a)(4). As revised, the rules also require that the cross reference be printed in bold-face roman type at least as high as twelve-point modern type and at least two points leaded.

¹⁶ See revisions to Item 503(c)(1), 17 CFR 229.503(c)(1) and 17 CFR 228.503(c)(1); Item 502(g), 17 CFR 229.502(g); Item 502(f), 17 CFR 228.502(f).

¹⁷ See revisions to Item 502 (a), (b), (c) and (f) of Regulation S-K, 17 CFR 229.502(a), 229.502(b), 229.502(c) and 229.502(f); revisions to Item 502 (a), (b) and (c) of Regulation S-B, 17 CFR 228.502(a), 229.502(b) and 228.502(c); and revisions to the Instruction following Item 502(f) of Regulation S-B, 17 CFR 228.502(f). These revisions relate to disclosure regarding: The availability of Exchange Act information about the registrant, the nature of reports to be given to security holders, undertakings with respect to information incorporated by reference, and the enforceability of civil liabilities against certain foreign persons.

currently specified by Commission rules.¹⁸

The "pricing-related information" section may include those portions of a prospectus that may change as a result of pricing, such as use of proceeds, capitalization, pro forma financial information, dilution, selling shareholder information and shares eligible for future sale.¹⁹ The pricing information portion itself may be included in the price-related information section. These adopted rule revisions which allow re-ordering of information within a prospectus for convenience in printing do not alter existing requirements with respect to the filing of post-effective amendments or supplements with the Commission when material changes or additions affect information set forth in the prospectus contained in an effective registration statement. However, other rule revisions discussed below do alter existing requirements.

2. Changes in Offering Size and Estimated Price Range

To prevent delays in printing prospectuses that arise when the size of an offering is changed after the effective date of the registration statement, or the pricing of the securities falls outside the estimated range, the Commission under specified conditions is eliminating or streamlining the filings that result. Although originally contemplated only for Rule 430A offerings, the adopted revisions provide the same flexibility for all registered offerings.

a. Registration of Classes of Securities

In order to minimize the instances in which an increase in the offering size would result in the need to file a new registration statement, rule revisions are being adopted to increase registrants' flexibility with respect to the amount of securities being registered in an offering. Under the revised rules, an issuer is permitted to register securities in an offering by specifying only the title of the class of securities to be registered and the proposed maximum aggregate offering price.²⁰ Except in the case of

¹⁸ See Item 501(c) of Regulation S-K, 17 CFR 229.501(c) (outside front cover page); Item 502 (d), (e) and (g) of Regulation S-K, 17 CFR 229.502(d), 229.502(e), and 229.502(g) (inside front cover page and outside back cover page); Item 501 of Regulation S-B, 17 CFR 228.501 (outside front cover page); and Item 502 (d), (e) and (f) of Regulation S-B, 17 CFR 228.502(d), 228.502(e) and 228.502(f) (inside front cover page and outside back cover page).

¹⁹ See Instruction to Item 503(c) of Regulations S-K and S-B, 17 CFR 229.503(c) and 228.503(c).

²⁰ See revisions to Rule 457(o) under the Securities Act, 17 CFR 230.457(o). The amount of securities to be registered and the proposed

the unallocated shelf procedure available to Form S-3-eligible companies, the aggregate dollar amount associated with each class of securities offered must be disclosed in the "Calculation of Registration Fee" table. Where issuers register a greater amount of securities than needed in the offering, such additional securities may be carried forward to a subsequent registration statement without incurring an additional registration fee.²¹

**b. Increases in Offering Size—
Registration of Additional Securities**

When the pricing terms of an offering are finalized, it is not unusual for changes to be made in the offering size through adjustments to both price and volume.²² Where this process requires registration of additional securities, the revised rules and forms permit the filing of an abbreviated registration statement to register the additional amount of securities to be offered and sold.²³ Such an abbreviated registration is available to an issuer that is registering additional securities in an amount and at a price that together represent no more than a 20% increase in the maximum aggregate offering price set forth in the "Calculation of Registration Fee" table in the earlier effective registration statement.²⁴ Such registration would

maximum offering price per unit are no longer required to be set forth in the "Calculation of Registration Fee" table. Of course, an issuer may continue to specify such information therein if it so chooses and relies upon Rule 457(a). Regardless of the method chosen for the "Calculation of Registration Fee" table, however, the registrant continues to be required to specify in the prospectus the amount of securities being offered and, where the registrant is not a reporting company, a bona fide estimate of the range of the maximum offering price. See Rule 501(c)(6) of Regulation S-K, 17 CFR 229.501(c)(6) and Rule 501(6) of Regulation S-B, 17 CFR 228.501(6).

²¹ See revisions to Rule 429, 17 CFR 230.429. Under Rule 429, in a new registration statement filed in the future for another offering of that class of securities, the registrant would indicate in a footnote to the "Calculation of Registration Fee" table that part of the registration fee had been paid previously in connection with an earlier registration statement. The footnote must specify the exact dollar amount of the fee being carried over and the related registration statement file number.

²² While participants in a registered distribution may only offer the amount of securities registered to be offered, it is possible that indications of interest received in response to such offers may exceed the amount registered to be offered. Sales of securities in excess of the volume initially registered will not result in Section 5 liability if the participants in the distribution did not solicit indications of interest in an amount in excess of that registered and the procedures discussed in this section are followed.

²³ See revisions to General instructions of Forms SB-1, SB-2, S-1, S-2, S-3, S-11, F-1, F-2 and F-3.

²⁴ In the context of an offering from a shelf registration statement, the 20% increase would be measured based upon the amount of securities on the shelf.

consist of: The facing page, a statement incorporating by reference the contents of the earlier registration statement relating to the offering, all required consents and opinions, and the signature page. While not required by the rule, the registrant also may include in the new registration statement, instead of in a filing under Rule 424, any price-related information with respect to the offering that was omitted from the earlier registration statement pursuant to Rule 430A.²⁵ The abbreviated registration statement must be filed prior to the time sales are made and confirmations are sent or given, and will become effective automatically upon filing.²⁶ As adopted, this abbreviated registration format is available regardless of whether the earlier registration statement was prepared in reliance upon Rule 430A.

In addition to providing an abbreviated registration format for such increases in offering size, rule revisions allow such registration statements to be filed promptly even when pricing occurs after the Commission's business hours.²⁷ Such a registration statement may be filed with the Commission by persons other than mandated electronic filers by transmitting a single copy of it via facsimile to the Commission's principal office from 5:30 p.m. to 10 p.m.²⁸ Electronic filers may file such a registration statement from 5:30 p.m. to 10 p.m. by transmitting it through EDGAR.²⁹ Such filings become

²⁵ Consistent with offerings where a new registration statement is not required to be filed as a result of a change of no more than 20% in the size of the offering, information necessary to update disclosure contained in the earlier registration statement as a result of the increase may be reflected in a form of prospectus filed under Rule 424(b), 17 CFR 230.424(b). See *infra* Section II.A.2.c.

²⁶ See Rule 462(b), 17 CFR 230.462(b). The registration statement is deemed to be a part of the earlier registration statement relating to the offering. See, e.g., General Instruction V. to Form S-1.

²⁷ See revisions to Rule 110, 17 CFR 230.110; Rule 402, 17 CFR 230.402; Rule 455, 17 CFR 230.455; and Rule 472, 17 CFR 230.472; Rule 13, 17 CFR 232.13 and Rule 3a, 17 CFR 202.3a.

²⁸ Effective June 7, 1995, the telephone number for that facsimile machine is (202) 942-7333 and the telephone number for the staff person that can answer questions regarding such facsimiles between the hours of 5:30 p.m. and 10 p.m. (Eastern Standard Time or Eastern Daylight Savings Time, whichever is currently in effect) is (202) 942-8900. Filings (other than electronic filings through EDGAR) between 5:30 p.m. and 10 p.m. on Forms SB-1 and SB-2 for this purpose must be sent via this facsimile system to the Commission's principal office rather than to the regional or district offices of the Commission.

²⁹ The new EDGAR form types for purposes of registration statements under Rule 462 are S-1MEF, S-2MEF, S-3MEF, F-1MEF, F-2MEF, F-3MEF, SB-1MEF and SB-2MEF. A post-effective amendment to any of these new form types should be designated as form type POS462B. With respect

automatically effective upon receipt by the Commission of the complete facsimile or EDGAR copy and payment of the filing fee.

To accommodate payment of the filing fee after the close of banking hours, rule revisions provide that payment with respect to such registration statements may be made by: (i) Instructing a bank or wire transfer service to transmit a wire transfer to the Commission of the requisite amount as soon as practicable (but in any event no later than the close of the next business day following the date the registration statement is faxed to the Commission); and (ii) providing specific certifications to the Commission with the abbreviated registration statement.³⁰ Specifically, the registrant must certify to the Commission that: The registrant (or its agent) has so instructed its bank or a wire transfer service to pay the Commission; that it will not revoke such instructions; and that it has sufficient funds in the relevant account to cover the amount of the filing fee. These instructions may be transmitted on the day of filing the registration statement after the close of business of such bank or wire transfer service, provided that the registrant undertakes to confirm receipt of such instructions by the bank of wire transfer service the following business day.

c. Changes in Offering Size; Deviation From Price Range

Currently, a post-effective amendment is not required to be filed where there is a decrease in volume of securities offered or the actual offering price is outside the disclosed estimated price range, unless such decrease or change would change materially the disclosure included in the registration statement at the time of effectiveness.³¹ Under the revised rules, a post-effective amendment does not have to be filed in connection with any registered offering if there is a decrease or increase in the offering size (if such an increase would not require additional securities to be registered) and/or the actual price is outside the estimated price range if, in the aggregate, the new size and price represent no more than a 20% change in the maximum aggregate offering price set forth in the "Calculation of

to other aspects of the adopted proposals and electronic filers, see *also infra* Section IV.

³⁰ See revisions to Rule 111, 17 CFR 230.111. This payment certification document accompanying an abbreviated registration statement should be transmitted by electronic filers under EDGAR form type CORRESP.

³¹ See Securities Act Release No. 6964 (Oct. 22, 1992) (57 FR 48970) for a discussion of the materiality standard as it applies to these changes.

Registration Fee" table in the effective registration statement.³²

3. Manual Signatures and Incorporation by Reference of Opinions and Consents

Under the proposal, rule revisions would have provided that duplicated or facsimile versions of manual signatures could be included on the signature page in place of the manual signatures currently required in a registration statement to increase the size of the offering. In response to comment, the rule revisions being adopted have been expanded to permit duplicated or facsimile versions of manual signatures in any registration statement or post-effective amendment filed under the Securities Act and any reports filed under the Exchange Act.³³ These revisions will provide the same flexibility to all paper filers that is accorded EDGAR filers. In addition, under the revised rules, signatures on required opinions and consents in such filings also may be duplicated or facsimile versions of manual signatures.³⁴ In all cases where duplicated or facsimile versions of manual signatures are used, the registrant must maintain the manually signed version in its files for five years after the filing of the related document and provide it to the Commission or the staff upon request.

Rule revisions also allow opinions and consents required in abbreviated registration statements registering an additional 20% to be incorporated by reference to the extent that the opinions and consents contained in the earlier effective registration statement were drafted to apply to any subsequent registration statement filed solely to increase the offering up to a 20%

³² See revision to Instruction to Paragraph (a) of Rule 430A, 17 CFR 230.430A and revisions to Item 512(a)(1)(ii) of Regulations S-K and S-B, 17 CFR 229.512(a)(1)(ii) and 228.512(a)(1)(ii). This revision pertains to changes in offering size that occur at pricing and does not extend to changes made after that time. While no post-effective amendment is required to be filed, issuers continue to be responsible for evaluating the effect of a volume change or price deviation on the accuracy and completeness of disclosure made to investors. When there is a change in offering size or deviation from the price range beyond the 20% threshold, a post-effective amendment would continue to be required only if such change or deviation materially changes the previous disclosure. Of course, if an increase beyond the 20% threshold requires registration of additional securities, a new registration statement updated in all respects must be filed.

³³ See revisions to Rule 402, 17 CFR 230.402; Rule 12b-11, 17 CFR 240.12b-11; Rule 14d-1, 17 CFR 240.14d-1; and Rule 16a-3, 17 CFR 240.16a-3.

³⁴ See revisions to Rule 402, 17 CFR 230.402; Rule 439, 17 CFR 230.439; Rule 12b-11, 17 CFR 240.12b-11; Rule 14d-1, 17 CFR 240.14d-1; and Rule 16a-3, 17 CFR 240.16a-3.

threshold.³⁵ Where opinions and consents cannot be incorporated, duplicated or facsimile versions of manual signatures may be included in the new opinion or consent required to be filed in the abbreviated registration statement.

4. Rule 430A Pricing Period

As was proposed, the Commission is extending the period during which a prospectus supplement containing pricing and other related information omitted from a registration statement may be filed pursuant to Rule 430A under the Securities Act.³⁶ The "pricing" period is extended from five to fifteen business days after the effective date of the registration statement or any post-effective amendment thereto. Although originally proposed as an extended ten-business-day period, the adopted fifteen-business-day period should provide additional flexibility for purposes of complying with T+3, without defeating the purpose of that limitation.³⁷

Where a Rule 430A offering is not priced within the fifteen-day period, a post-effective amendment updated in all respects that either restarts the pricing period or contains the Rule 430A pricing information (*i.e.* similar to a traditional pricing amendment) must be filed and effective prior to sales. While no changes to this requirement are being made, other rule revisions are being adopted to minimize the delay that could result. Such a post-effective amendment, which must be filed prior to the time sales are made and confirmations are sent, will become effective upon filing if the prospectus contained therein contains no material changes from, or additions to, the prospectus previously filed as part of the effective registration statement other than the price-related information omitted from the registration statement in reliance on Rule 430A.³⁸ A company filing a post-effective amendment that

³⁵ See Rule 411(c) under the Securities Act, 17 CFR 230.411(c), new Rule 439(b) under the Securities Act, 17 CFR 230.439(b), and changes to General Instructions of Forms SB-1, SB-2, S-1, S-2, S-3, S-11, F-1, F-2 and F-3. In addition, Items 601(b)(24) of Regulations S-K and S-B, 17 CFR 229.601(b)(24) and 17 CFR 228.601(b)(24), are revised so that a power of attorney included in the earlier registration statement relating to the offering also may relate to the short-form registration statement filed to register the additional securities.

³⁶ See revisions to Rule 430A(a)(3), 17 CFR 230.430A(a)(3).

³⁷ The principal purpose of the original five-day limitation was to prevent delayed offerings being made under Rule 430A by persons that do not meet the criteria for use of shelf registration. See Securities Act Release No. 6714 (May 27, 1987) (52 FR 21252).

³⁸ See Rule 462(c), 17 CFR 230.462(c).

reflects other material prospectus changes or additions (other than the "20% increase in offering size" changes) would follow current procedures under which the post-effective amendment is subject to selective review and is declared effective.

5. Immediate Takedowns From a Shelf Registration

The Four Firms proposal requested that the Commission permit immediate takedowns after a shelf registration statement becomes effective. As indicated in the Proposing Release, immediate offerings from an effective shelf registration statement currently are permitted. At the time of effectiveness, information in the shelf registration statement is required to the extent it is known or reasonably available to the registrant.³⁹ Accordingly, if an offering of securities is certain at the time the shelf registration statement becomes effective, the relevant information (*e.g.* description of securities, plan of distribution and use of proceeds) must be disclosed with respect to the securities subject to the immediate takedown and the Rule 430A undertakings should be included (if the issuer wants Rule 430A pricing flexibility).

6. Acceleration of Effectiveness

As was proposed, adopted rule revisions allow requests to accelerate effectiveness of registration statements to be transmitted to the Commission by fax transmission. In addition, rule revisions permit oral requests for acceleration to be made,⁴⁰ provided that the Commission previously receives a letter indicating that the registrant and the managing underwriter may make oral requests for acceleration and that they are aware of their obligations under the Securities Act.⁴¹

In order to facilitate the ability of the Commission staff, pursuant to delegated authority, to reach a determination to accelerate effectiveness based on the public availability of information and

³⁹ See Rule 409, 17 CFR 230.409.

⁴⁰ See Securities Act Rule 461(a), 17 CFR 230.461(a). Both an authorized representative of the registrant and an authorized representative of the managing underwriter will be required to make such request orally. The rule revisions do not adopt a requirement suggested by some commenters that an oral request be followed by transmission to the Commission of a written request, nor are facsimile or duplicate versions required to be followed by transmission to the Commission of the manually signed versions.

⁴¹ See Securities Act Rule 461(a), 17 CFR 230.461(a). The liability of persons who sign the registration statement, the underwriters and others under section 11(a) of the Securities Act, 15 U.S.C. 77k(a), is based upon the registration statement at the time it becomes effective.

other factors set forth in section 8(a) of the Securities Act,⁴² persons making oral acceleration requests should be prepared to provide orally the prospectus dissemination information that typically is set forth in a written acceleration request. Such information generally includes: The date of the preliminary prospectus distributed, the approximate dates of distribution, the number of prospectus underwriters and dealers to whom the preliminary prospectus was furnished, the number of prospectuses so distributed, and the number of prospectuses distributed to others, identifying them in general terms.⁴³ In addition, in the case of non-reporting companies, an affirmative statement from the managing underwriter may be requested with regard to whether it has been informed by participating underwriters and dealers that copies of the preliminary prospectus have been or are being distributed to all persons to whom it is then expected to mail confirmations not less than 48 hours prior to the time it is expected to mail such confirmations.⁴⁴

7. T+4 Settlement for Firm Commitment Offerings Priced After the Close of the Market

As discussed elsewhere in this release, the Commission is eliminating the current exemption contained in Rule 15c6-1 for firm commitment offerings, thus bringing those transactions under a T+3 settlement standard. In response to the Four Firms proposal, the Commission proposed an amendment to Rule 15c6-1 that would establish four business days after the trade date ("T+4") as the standard settlement cycle for firm commitment offerings priced after 4:30 p.m. The vast majority of commenters who addressed this proposal expressed support for settlement on a T+4 basis.⁴⁵ Several of these commenters reasoned that it is difficult to print and deliver the final prospectus within a T+3 settlement time frame when the securities are priced late in the day. These commenters also

opined that the potential systemic and market risks associated with the T+4 provision should be limited because most of the secondary trading in the subject securities will not begin until the opening of the market on the next business day and, therefore, the primary issuance of securities will be available to settle secondary trading in the security.

The T+4 provision in the Four Firms proposal was intended to provide time to deliver prospectuses by settlement. Establishing T+4 as the standard for this category of offerings also will provide certainty and reduce confusion as to the appropriate settlement cycle. Accordingly, the Commission is adopting the amendment for settlement of specific offerings on a T+4 basis with only minor technical corrections.⁴⁶

8. Investment Companies

The Commission requested comment on whether the Four Firms proposal should apply to investment companies. Commenters did not believe that open-end investment companies would require any special provisions to facilitate T+3 settlement because they are engaged in the continuous offerings of securities with pre-printed prospectuses, but endorsed the application of the Four Firms proposal to closed-end investment companies and unit investment trusts ("UITs"). The revisions to Rule 430A (the extension of the pricing period and changes to offering size and price range), to Rule 461(a) (facsimile or oral accelerations of effective dates), and to Rule 15c6-1 (T+4 settlement for firm commitment offerings priced after 4:30 p.m.) by their terms apply to the registration statements of closed-end investment companies and UITs.⁴⁷ The Investment Company Act permits UITs, but not closed-end investment companies, to increase the size of an offering by post-effective amendment.⁴⁸

⁴⁶ See Rule 15c6-1(c), 17 CFR 15c6-1(c). As proposed, this paragraph provided an exemption for securities sold pursuant to a firm commitment offering. This language has been amended to clarify that the exemption applies to contracts for the sale of such securities and that the exemption only applies to sales from the issuer to the underwriter and initial sales by broker-dealers participating in the offering.

⁴⁷ As noted previously, the revised rules permit duplicated or facsimile versions of manual signatures in all reports filed under the Exchange Act, as well as registration statements filed under the Securities Act. The Commission is adopting similar revisions for investment companies. See revisions to Rule 8b-11, 17 CFR 270.8b-11.

⁴⁸ See Section 24(e)(1) of the Investment Company Act, 15 U.S.C. 80a-24(e)(1); see also Rule 485(b)(1)(i), 17 CFR 270.485(b)(1)(i), which provides for the immediate effectiveness of a post-effective amendment filed by a UIT for the purpose

Therefore, the Commission is adopting rule and form revisions that will permit closed-end investment companies to take advantage of the short-form registration statement that permits an increase in offering size.⁴⁹ Under the rule and form amendments, as adopted, the Commission is not making any changes to re-order investment company prospectuses because the current prospectus requirements appear to provide sufficient flexibility to accommodate expedited printing of prospectuses.

B. The SIA Approach

The second part of the Commission's proposal was based on the proposal submitted by the SIA. The SIA proposal was predicated on the premise that prospectus delivery could be accomplished much more quickly if issuers could convey the Section 10(a) prospectus information in multiple documents delivered to investors at different times, rather than in a traditional, integrated final prospectus prepared through last-minute mass printing, shipping and mailing.

Rule 434 under the Securities Act,⁵⁰ which is based upon the SIA approach, is being adopted largely as proposed. Rule 434 permits participants in registered firm commitment underwritten offerings of securities for cash and specified registered offerings for cash made on an agency basis (hereinafter, "eligible offerings") to convey prospectus information in more than one document and allows such documents to be delivered to investors at separate intervals and in varying manners. Rule 434 does not require that a final, integrated prospectus be delivered to investors. In the aggregate, however, all required information will still be disclosed to investors prior to or at the same time as a confirmation is sent, either through physical delivery or, in the case of short-form registered offerings,⁵¹ through physical delivery and delivery by publication.

of increasing the amount of securities proposed to be offered under Section 24(e)(1).

⁴⁹ Modifications to the registration statement form for closed-end investment companies, Form N-2 (17 CFR 274.11a), provide for the registration of additional securities pursuant to new Rule 462(b). Revisions to (i) paragraph (b) of Rule 483, which sets forth the exhibit requirements for investment company registration statement forms, provide that a power of attorney filed for a registration statement form also relates to a related registration statement form filed pursuant to Rule 462(b), and (ii) paragraph (c) of Rule 483 provide that a consent may be incorporated by reference into a registration statement form filed pursuant to Rule 462(b) from a related registration statement form.

⁵⁰ 17 CFR 230.434.

⁵¹ "Short-form" registration is used herein to refer to registration on Commission Forms S-3 or F-3.

⁴² 15 U.S.C. 77h(a).

⁴³ See Rule 418(a)(7), 17 CFR 230.418(a)(7). See also Rule 460, 17 CFR 230.460.

⁴⁴ See Rule 418(a)(7)(vi), 17 CFR 230.418(a)(7)(vi) and Securities Act Release No. 4968 (Apr. 24, 1969) (34 FR 7235). Of course, this information is not applicable to delayed shelf offerings.

⁴⁵ One commenter argued that a T+4 standard was unnecessary because the override provision in paragraph (a) of Rule 15c6-1, if broadly interpreted, would provide sufficient flexibility to after-market offerings. See letter from John Brandow, Davis Polk & Wardwell to Jonathan Katz, Securities and Exchange Commission, dated April 3, 1995. As discussed elsewhere in this release, the Commission is instead adopting a specific override provision for firm commitment offerings.

1. Non-Short-Form Registered Offerings

As adopted, in eligible offerings not using short-form registration, persons may comply with their prospectus delivery obligations by delivering a preliminary prospectus,⁵² a term sheet, if necessary,⁵³ and a confirmation.⁵⁴ The term sheet is required to include all information material to investors with respect to the offering that is not disclosed in the delivered preliminary prospectus or the confirmation.⁵⁵

Neither the process of filing registration statements and amendments thereto, nor the Commission's registration statement review process, is intended to be altered in connection with the adoption of Rule 434.⁵⁶ Rule 434 requires that the preliminary prospectus and the term sheet, taken together, not materially differ from the disclosure included in the effective registration statement.⁵⁷ The term sheet

To be eligible to use short-form registration for a primary offering, an issuer must have a public float of \$75 million and must have been reporting with the Commission for one year. See General Instructions I.A.3. and I.B.1. to Form S-3 and General Instructions I.A.1. and I.B.1. to Form F-3.

⁵² "Preliminary prospectus" is used herein to refer to either a preliminary prospectus used in reliance on Rule 430, 17 CFR 230.430, or a prospectus omitting information in reliance on Rule 430A(a), 17 CFR 230.430A(a).

⁵³ In order to reflect industry nomenclature, "term sheet" is used in this release to refer to the document called a "supplementing memorandum" in the Proposing Release. In addition, "abbreviated term sheet" is now used in place of "abbreviated supplementing memorandum." Regardless of the nomenclature used, these documents constitute supplements to prospectuses subject to completion.

⁵⁴ The preliminary prospectus, the term sheet and the confirmation may be delivered together or separately under Rule 434, provided that the former two are sent or given prior to or with the confirmation. See Rule 434(b)(1), 17 CFR 230.434(b)(1). See also Rule 434(c)(1), 17 CFR 230.434(c)(1) with respect to the preliminary or base prospectus, the abbreviated term sheet and the confirmation. Note that the prospectus delivery obligations pursuant to Rule 15c2-8 under the Exchange Act are independent of those discussed in this section. A term sheet or abbreviated term sheet generally may not be sent or given prior to the preliminary or base prospectus given the limitations set by section 5(b)(1) of the Securities Act and the definition of "prospectus" set forth in section 2(10) of the Securities Act. The Commission will raise no objection where a preliminary or base prospectus being delivered separately is sent or given in a manner reasonably calculated to arrive prior to or at the same time with the term sheet or abbreviated term sheet but the term sheet or abbreviated term sheet nevertheless precedes the preliminary or base prospectus.

⁵⁵ See Rule 434(b)(3), 17 CFR 230.434(b)(3).

⁵⁶ As under current practice, the staff will continue to consider whether recirculation of a prospectus is needed when there are material changes in disclosure arising after the prospectus subject to completion has been given to investors. See Rules 460 and 461(b), 17 CFR 230.460 and 230.461(b).

⁵⁷ See Rule 434(b)(2), 17 CFR 230.434(b)(2). The disclosure in the preliminary prospectus and term sheet would be measured against the disclosure set

must be filed with the Commission within two business days after the earlier of pricing or first use.⁵⁸ Thus, term sheets generally will not be reviewed prior to use. Except in the case of delayed shelf offerings, the term sheet is deemed to be a party of the registration statement as of the time such registration statement was declared effective.⁵⁹ In the case of such delayed offerings, the term sheet is deemed to be a part of the registration statement as of the time the term sheet is filed with the Commission.⁶⁰

Several commenters on the Proposing Release suggested that the Commission require that a second preliminary prospectus (either an updated version or another copy of the version previously circulated) be circulated to investors either with the term sheet or shortly before the term sheet is delivered.⁶¹ Circulation of a second preliminary prospectus is not required by Rule 434 as adopted, but nothing in the Rule precludes offering participants from doing so.

As adopted, Rule 434 is not limited with respect to the amount of time that could elapse between delivery of the preliminary prospectus and the term sheet. Further, the rule does not contain any limitation on the magnitude of changes from the disclosure set forth in the circulated preliminary prospectus that the term sheet may contain. As noted above, however, the Rule is not available for non-short-form registered offerings if the disclosure in the preliminary prospectus and term sheet materially differ from the disclosure contained in the prospectus filed as a part of the effective registration statement.

2. Short-Form Registered Offerings

In Rule 434 eligible offerings using short-form registration, persons may

forth in the registration statement as of its effective date, including omitted Rule 430A price-related information deemed a part thereof by virtue of Rule 430A(b), 17 CFR 230.430A(b).

⁵⁸ See Rule 424(b)(7), 17 CFR 230.424(b)(7). Each filed copy of a term sheet or abbreviated terms sheet, like other filings under Rule 424, must contain in the upper right corner of its cover page a reference to the part of Rule 424 under which the filing is made (i.e. Rule 424(b)(7)) and the file number of the registration statement to which the prospectus relates. See Rule 424(e), 17 CFR 230.424(e).

⁵⁹ See Rule 434(d), 17 CFR 230.434(d).

⁶⁰ *Id.*

⁶¹ See, e.g., letter from John Olson *et al.*, American Bar Association to Jonathan Katz, Securities and Exchange Commission, dated April 14, 1995; letter from Edward Adams, Fredrikson & Byron to Jonathan Katz, Securities and Exchange Commission, dated March 31, 1995; and letter from Steven Machov, Merrill Corporation to Jonathan Katz, Securities and Exchange Commission, dated April 3, 1995.

comply with their prospectus delivery obligations by delivering a preliminary or base prospectus,⁶² an abbreviated term sheet⁶³ and a confirmation. An abbreviated term sheet must contain, unless previously disclosed in the circulated preliminary or base prospectus or in the registrant's Exchange Act filings incorporated by reference into the prospectus: (i) The description of securities required by Item 202 of Regulation S-K, or a fair and accurate summary thereof;⁶⁴ and (ii) information regarding material changes required by Item 11 of Form S-3 or Form F-3.⁶⁵ Under new Rule 434, certain offering-specific disclosure included in a traditional final prospectus⁶⁶ will be required only in the prospectus supplement filed with the Commission.⁶⁷ This information could include, for example, use of proceeds and syndicate and specific plan of distribution information.

Registrants will be required to indicate on the cover page of their registration statement, by checking a box, that reliance on Rule 434 for prospectus delivery is intended. Persons checking the box, however, would not be required to rely on Rule 434 if they later determined to deliver prospectus information otherwise in connection with the offering.

Any term sheet or abbreviated term sheet sent or given in reliance upon Rule 434 must state on the top center of the front cover page that it is a supplement to a prospectus and identify

⁶² "Base prospectus" is used herein to refer to a prospectus contained in a registration statement at the time of effectiveness (or as subsequently revised) that omits information that is not yet known concerning an offering pursuant to Rule 415, 17 CFR 230.415.

⁶³ The abbreviated term sheet is filed with the Commission in accordance with Rule 424(b)(7), 17 CFR 230.424(b)(7). See Rule 434(d), 17 CFR 230.434(d), with respect to abbreviated term sheets being deemed a part of the registration statement.

⁶⁴ 17 CFR 229.202.

⁶⁵ See Rule 434(c)(3), 17 CFR 230.434(c)(3).

⁶⁶ Offering-specific information required to be filed but permitted not to be delivered physically under Rule 434 short-form registered offerings is set forth in Items 501-510 of Regulation S-K, 17 CFR 229.502-229.510. In addition, a summarized version of the description of securities set forth in Item 202 of Regulation S-K, 17 CFR 229.202, may be delivered physically rather than the full description filed with the Commission.

⁶⁷ See Rule 434(c)(2), 17 CFR 230.434(c)(2). For example, the final prospectus traditionally delivered to investors in shelf offerings has included information set forth in both the base prospectus and a prospectus supplement. In shelf offerings relying on Rule 434, information in the prospectus supplement will not be delivered physically to investors, except to the extent it is disclosed pursuant to the abbreviated term sheet. The prospectus supplement in such offerings, however, must be filed with the Commission by the time any confirmation is sent or given to investors. See Rule 434(c)(2)(ii), 17 CFR 230.434(c)(2)(ii).

that prospectus by issuer name and date. The term sheet or abbreviated term sheet also, in that location, must clearly identify that it is a term sheet or abbreviated term sheet used in reliance on Rule 434, must clearly identify the documents that, when taken together, constitute the section 10(a) prospectus, and must be dated as of the approximate date of its first use.⁶⁸

3. Scope of the Proposed Rule

a. Underwritten Offerings for Cash

Rule 434, as adopted, extends only to offerings where the sole consideration given in exchange for securities is cash. Offerings such as exchange offers and business combinations are not included. As noted in the Proposing Release, in those offerings, the final prospectus is traditionally used to begin the process of soliciting votes or consents to a transaction. Thus, the logistical difficulties of prospectus delivery are not associated with those offerings.

The adopted Rule also does not extend to offerings that are made other than on a firm commitment basis with underwriters, except for offerings of investment grade debt made in connection with a medium-term note ("MTN") program registered with the Commission on either a continuous or delayed shelf basis.⁶⁹ Concern has been expressed that exclusion of these MTN securities from the Rule would unnecessarily push such transactions out of the T+3 settlement cycle.⁷⁰ Further, while these MTN securities typically are sold through an underwriter on an agency rather than a firm commitment basis, assurance has been given that, once an agreement has been reached between the investor and the MTN program agent, the preparation and delivery of a prospectus occurs in a manner identical to that in a principal transaction.⁷¹

b. Offerings of Asset-Backed Securities

As adopted, Rule 434 excludes offerings of asset-backed securities ("ABS").⁷² Settlement in connection

with ABS offerings currently takes place outside of the T+3 time frame, on approximately a T+10 cycle, and is likely to continue to do so. As noted in the Proposing Release, the existing settlement schedule is the result primarily of factors unique to these offerings, which are the same factors that result in such offerings not lending themselves to use of incremental disclosure. Those factors include: (i) The distinctive structuring process for most ABS offerings, which typically extends almost to the time when the security is priced, whereby a variety of structures may be considered as the sponsor attempts to meet investors' needs' (ii) the time needed for identification of the specific pool of collateral which will support the ABS; and (iii) the necessity of creating shortly before sale of the ABS a prospectus supplement of significant length and complexity that details the characteristics of specific pool assets and the transaction's structure, the summarization of which would not serve as an adequate substitute for the complete description in the prospectus supplement.

c. Offerings of Structured Securities

As adopted, Rule 434 also excludes offerings of structured securities.⁷³ "Structured securities," for purposes of Rule 434, are defined to mean securities whose cash flow characteristics depend upon one or more indices or that have imbedded forwards or options or securities where an investor's investment return and the issuer's payment obligations are contingent on, or highly sensitive to, changes in the value of underlying assets, indices, interest rates or cash flows.⁷⁴ This definition was proposed to be included in Rule 15c6-1 but is set forth in Rule 434 instead Rule 15c6-1 as adopted makes no reference to such securities. As noted in the Proposing Release, these securities usually have terms that are highly complex, with many employing one or more indices as a basis for determining the issuer's payment obligations (e.g., coupon, principal, redemption payments). A structured security's value is derived not only from the creditworthiness of its issuer, but also from any underlying assets, indices, interest rates or cash flow upon which the security is predicated. Because of the complexities associated with these securities, investors may not fully understand the investment risks when purchasing structured securities, especially those with complicated

structures. A complete description of offering-specific information therefore is of particular importance to investors in making an investment decision, given the market risks resulting from the structure of these securities. Otherwise, as noted in the Proposing Release, the incremental distribution of information under the Rule, when combined with the complex nature of these securities, could result in material disclosure not being readily accessible to investors.

d. Investment Companies

As proposed, Rule 434 would have provided that it would not apply to the offering of any security of any company registered under the Investment Company Act. The Commission requested comment on whether the prospectus delivery modifications in the SIA proposal also should apply to closed-end investment companies and UITs. Commenters endorsed the proposed prospectus delivery method for closed-end investment companies and UITs, and the Commission is adopting revisions that apply new Rule 434 to these investment companies.⁷⁵

4. Conforming Amendments to Rule 14c2-8

a. Rule 15c2-8 Amendments

The Commission is adopting the amendments to Rule 15c2-8⁷⁶ as proposed. The amendments expand the use of the terms "preliminary prospectus" and "final prospectus," as currently used in the Rule, to include the terms "prospectus subject to completion" and "Section 10(a) prospectus," respectively, the reflect the terminology of Rule 434. Additionally, the term "sending" is substituted for the term "mailing" to accommodate prospectus delivery by means other than traditional mailing.

Six commenters addressed Rule 15c2-8. None of these commenters objected to the proposed changes, although several of them raised other issues regarding Rule 15c2-8, which are discussed below. The Commission may propose further amendments to Rule 15c2-8 based on its experience with Rule 434, or more generally, to reflect market developments and staff interpretations

⁷⁵ See revisions to Rule 497, 17 CFR 230.497, which sets forth fund prospectus filing requirements with the Commission, that require, parallel to the changes to the general prospectus filing requirements in Rule 424, 17 CFR 230.424(b), the filing of prospectuses allowed under Rule 434 on or prior to the date a confirmation is sent or given to an investor.

⁷⁶ 17 CFR 240.15c2-8.

⁶⁸ See Rule 434(e), 17 CFR 230.434(e).

⁶⁹ See Rule 434(a), 17 CFR 230.434(a). These MTN offerings rely on Rule 415(a)(1) (ix) or (x), respectively.

⁷⁰ See letter from Kevin Moynihan, Merrill Lynch to Jonathan Katz, Securities and Exchange Commission, dated April 7, 1995.

⁷¹ *Id.*

⁷² "Asset-backed security" is defined for purposes of Rule 434 the same way it is defined in General Instruction I.B.5. of Form S-3: a security that is primarily serviced by the cashflows of a discrete pool of receivables or other financial assets, either fixed or revolving, that by their terms convert into cash within a finite time period plus any rights or other assets designed to assure the servicing or timely distribution of proceeds to the securityholders. See Rule 434(f), 17 CFR 230.434(f).

⁷³ See Rule 434(a), 17 CFR 230.434(a).

⁷⁴ See Rule 434(h), 17 CFR 230.434(h).

that have occurred since the Rule was last amended.⁷⁷

b. Rule 15c2-8 Issues Raised by Commenters

In the case of an offering of securities of an issuer that previously has not been required to file reports under section 13(a) and 15(d) of the Exchange Act, Rule 15c2-8(b)⁷⁸ requires that a preliminary prospectus be delivered to any person who is expected to receive a confirmation of sale at least 48 hours prior to sending such confirmation.⁷⁹ Two commenters noted that because preliminary prospectuses generally are not used in offerings of asset-backed securities, some broker-dealers have adopted the practice of delivering the final prospectus to purchasers at least 48 hours prior to mailing the confirmation of an asset-backed security. These commenters urged the Commission either to modify Rule 15c2-8 to acknowledge this industry practice or to except asset-backed securities from Rule 15c2-8(b). In the Commission's view, delivery of the final prospect is at least 48 hours prior to sending the confirmation will satisfy the requirement of Rule 15c2-8(b) in the case of offerings of asset-backed securities where no preliminary prospectus is used.⁸⁰

With respect to the obligations of a managing underwriter to provide copies of the prospectus to participating broker-dealers, two commenters sought interpretive guidance with respect to the terms "sufficient copies" and "reasonable quantities," as used in Rule 15c2-8 (g) and (h),⁸¹ respectively, in light of the recently issued *Brown &*

Wood letter,⁸² which permits electronic delivery of prospectuses in certain circumstances.⁸³ The *Brown & Wood* letter was not intended to modify any obligation that a managing underwriter currently has pursuant to paragraphs (g) or (h) of Rule 15c2-8 to produce, reproduce, or deliver, in such quantities as requested, a preliminary, amended, or final prospectus to broker-dealers participating in the offering. Accordingly, a managing underwriter may discharge its obligations pursuant to Rule 15c2-8 (g) or (h) by delivering a prospectus (or any portion thereof) electronically to a participating broker-dealer, if the recipient broker-dealer expressly consents to delivery in such form.

One commenter suggested revising Rule 15c2-8(b) to require delivery of the preliminary prospectus at least 48 hours, but not more than 60 days, prior to sending the confirmation. Another commenter suggested that the Commission require the managing underwriter to deliver the final prospectus to offering participants by the close of business on T + 2, so that such participants may send the prospectus to investors no later than T + 3. Consistent with the adoption of both the SIA proposal and the Four Firms proposal, the Commission believes that offering participants should have as much flexibility as possible to determine how to comply with their prospectus delivery obligations within T + 3, without the burden of additional restrictions, and therefore has determined not to amend the Rule as suggested at this time. As noted, however, the Commission may propose additional amendments to Rule 15c2-8 based on its experience with Rule 434.

III. Revision of the Rule 15c6-1 Exemption

In the Proposing Release, the Commission proposed to establish A + 3 as the presumptive settlement date for firm commitment offerings by eliminating the exemption from T + 3 settlement for sales for cash in connection with firm commitment offerings.⁸⁴ However the Commission proposed to allow managing

underwriters flexibility to choose T + 3, T + 4, or T + 5 settlement under specific conditions, including written notice to prospective purchasers and the exchanges prior to pricing.⁸⁵ The Commission also proposed exemptions from T + 3 settlement for firm commitment offerings of asset-backed and structured securities. These amendments were proposed to reduce the confusion caused by different settlement cycles for new issue and secondary market trades, while also providing flexibility to settle certain firm commitment offerings beyond T + 3 when the standard settlement cycle cannot be met.

Most commenters supported elimination of the general exclusion for firm commitment offerings. As one commenter noted, establishing a T + 3 settlement standard for these transactions will reduce risk, provide certainty in the form of a written standard, and avoid bifurcation of the settlement cycle.⁸⁶ Several commenters cited specific categories of securities requiring settlement cycles longer than T + 3.⁸⁷ Most commenters, however, preferred to resolve difficulties in settling offerings through a general override provision rather than specific exemptions of classes of securities.

The majority of comments that addressed the merits of the proposed override provisions expressed support for a specific override provision for firm commitment offerings but objected to the terms of Rule 15c6-1(e) as proposed. Several commenters asserted that the T + 5 maximum settlement period did not provide adequate flexibility for settlement of certain firm commitment offerings. Furthermore, many of the commenters argued that the requirement of written notice to all perspective purchasers on or before pricing was burdensome and should be eliminated.⁸⁸ Commenters disagreed

⁷⁷ Rule 15c2-8(d) was last amended in Exchange Act Release No. 25546 (Apr. 4, 1988) (53 FR 11841).

⁷⁸ 17 CFR 240.15c2-8(b).

⁷⁹ This requirement is satisfied by delivering a preliminary prospectus that is current at the time of its delivery.

⁸⁰ This interpretation of paragraph (b) is consistent with the longstanding staff position that delivery of a final prospectus at least 48 hours prior to sending the confirmation is required in cases where no preliminary prospectus is circulated and the offering is sold solely on the basis of a final prospectus.

⁸¹ 17 CFR 240.15c2-8 (g) and (h). Paragraph (g) requires a managing underwriter to take reasonable steps to ensure that all broker-dealers participating in an offering are promptly furnished with "sufficient copies, as requested by them" of each preliminary, amended, or final prospectus to enable such participating brokers-dealers to comply with their obligations under Rule 15c2-8 (b), (c), (d), and (e). Similarly, paragraph (h) requires a managing underwriter to take reasonable steps to ensure that any broker-dealer participating in an offering or trading in the registered security is furnished "reasonable quantities of the final prospectus * * * as requested by him" in order to enable to broker-dealer to comply with sections 5(b) (1) and (2) of the Securities Act.

⁸² See *supra* footnote 6.

⁸³ These commenters inquired whether Rule 15c2-8 (g) and (h) would permit a managing underwriter to deliver the pre-printed portion of the prospectus by traditional methods, followed by the remainder (or "wrap" portion), containing only the pricing and other "last minute" disclosure, by electronic transmission. These commenters advised that the recipient broker-dealers would be expected to duplicate the remainder (or "wrap" portion) and assemble the two parts for delivery to investors.

⁸⁴ See 17 CFR 240.15c6-1(b)(2).

⁸⁵ Rule 15c6-1(a) contains a general override provision that permits the parties to a contract to specify an alternate settlement cycle if the agreement is made at the time of the trade. Complying with this provision in the context of a firm commitment offering may be difficult because of the need to obtain the express agreement of all parties participating in the offering.

⁸⁶ See letter from Brent Taylor, J.P. Morgan Securities, Inc. to Jonathan Katz, Securities and Exchange Commission, dated March 20, 1995.

⁸⁷ In addition to asset-backed securities and structured securities, commenters raised settlement concerns in connection with medium term note programs registered under short-form shelf registration, capital market debt transactions, securities exempt from registration under section 3(a)(4) or 3(a)(11) of the Securities Act, and certain transactions involving swaps.

⁸⁸ Specifically, several commenters asserted that the settlement period may not be known sufficiently in advance of pricing to provide written

over the manner in which an alternate settlement date should be established, though most commenters concurred that such authority should not be granted solely to the managing underwriter.

To address the various issues raised by the commenters in connection with the proposed modifications of the exemption for firm commitment offerings, the Commission is amending Rule 15c6-1 to eliminate the exemption for firm commitment offerings and to include a specific override provision⁸⁹ which will permit the establishment of an alternate settlement date for the sale of all securities subject to a firm commitment offering upon agreement by the managing underwriter and the issuer of the securities. This override provision does not contain the notice requirements in the proposed override position and does not limit the settlement period to a maximum of T + 5. The Commission has decided not to adopt a provision exempting offerings of particular classes of securities. Instead, the Commission believes that an alternate settlement cycle can be established for these offerings through the override provision for firm commitment offerings.

In adopting the proposed amendments to Rule 15c6-1, the Commission seeks to provide flexibility for settlement beyond T + 3 for certain firm commitment offerings that require such treatment in light of the special characteristics of the subject securities. The Commission is mindful of the concern that lack of certainty in settlement standards may create confusion in the marketplace. Accordingly, the Commission stresses that the override position is not intended to dilute the presumption in favor of application of the T + 3 settlement cycle in connection with firm commitment offerings. Instead, the override provision is intended to be used only in those circumstances when T + 3 settlement is not feasible.

Furthermore, the Commission recognizes that it is important that the registered clearing agencies, through which settlement of firm commitment offerings and secondary market trades will occur, receive notice of non-standard settlement dates. The Commission encourages issuers and

notice and that such notice is duplicative of the information provided orally and in the confirmation.

⁸⁹ See Rule 15c6-1(d), 17 CFR 15c6-1(d). This specific override provision would not extend to offerings of investigation grade debt made in connection with a medium-term note program sold through an underwriter on an agency basis. Such transportation may, however, be accomplished in accordance with the general override provision set forth in Rule 15c6-1(a), 17 CFR 240.15c6-1(a).

underwriters to notify promptly the registered clearing agencies of the settlement period of an offering. It may be appropriate for the clearing agencies as self-regulatory organizations under the Exchange Act to modify their rules to require such notice at such times and in such manners as the clearing agencies need to make provision for non-standard settlement cycles. The Commission will monitor the use of the override provision on an ongoing basis.

IV. EDGAR Usage

After the effective date of these proposals and until the necessary form types are available through the EDGAR system, registrants that are mandated electronic filers should file in paper format those documents relating to the proposals being adopted other than the abbreviated registration form filed pursuant to Rule 462(b).⁹⁰ All other documents unrelated to the proposals being adopted must continue to be filed electronically by mandated electronic filers. The necessary form types are expected to be available with the release of a new version of the EDGARLink software in Autumn 1995. Notice will be provided in the SEC Digest, the **Federal Register** and on the EDGAR Bulletin Board when the new EDGAR form types are available.

V. Cost-Benefit Analysis

Five commenters responded to the Commission's request for comments regarding the costs and benefits of the proposed rules. Four of the five commenters expected the cost of printing and shipping of prospectuses to decline as a result of the proposed rules.⁹¹ The other commenter stated that the increased administrative burdens and costs that may be imposed on dealers as a result of multiple or duplicate mailings of various documents could negate the intended benefit of the SIA approach.⁹² One commenter, a financial printer, provided empirical data on the

proposals. The printer concluded that, in three basic scenarios regarding the printing and delivery of a Form S-1, a reduction in costs ranging from 8% to 88% would be obtainable as a result of the new delivery alternatives available under the proposed rules.⁹³ The Commission believes the new rule and amendments provide market participants with additional flexibility that should result in lower transaction costs, while not diminishing investor protection.

VI. Summary of Final Regulatory Flexibility Analysis

The Commission has prepared a Final Regulatory Flexibility Analysis ("FRFA"), pursuant to the requirements of the Regulatory Flexibility Act,⁹⁴ regarding the rule and amendments to existing regulations being adopted. The FRFA notes that the new rule and amendments will provide entities with greater flexibility and efficiency with respect to the timing of printing and delivery of prospectus information, thereby facilitating compliance with Rule 15c6-1 under the Exchange Act and access to the public securities markets. As discussed more fully in the analysis, the new rule and amendments to Securities Act regulations should decrease costs associated with fulfilling entities' prospectus delivery obligations under the Securities Act. The amendments to Exchange Act rules and forms are not anticipated to have any significant economic impact on entities. The new rule may impose minimal additional reporting, recordkeeping or compliance requirements, while the amendments do not impose any new reporting, recordkeeping or compliance requirements on any entities. No alternatives to the new rule and amendments consistent with their objectives and the Commission's statutory mandate were found.

The overall effect of the new rule and amendments is to provide entities increased efficiency in raising capital from the public securities markets. The aspects that provide for the incremental delivery of prospectus information will apply to any entity engaged in a public distribution with respect to an eligible offering. The amendments to Securities Act regulations should streamline the registration process and thereby facilitate compliance with prospectus delivery within T+3. The new rule and amendments to Securities Act regulations also will apply to certain

⁹⁰ Only those documents that are filed pursuant to Rule 424(b)(7), Rule 462(c) and Rule 497(h)(2) may be filed in paper format. See *supra* footnotes 29 and 30 and accompanying text.

⁹¹ See letter from Karl Barnickol, American Society of Corporate Secretaries to Jonathan Katz, Securities and Exchange Commission, dated April 10, 1995; Joel Brenner, Storch & Brenner (on behalf of R.R. Donnelley Financial), to Jonathan G. Katz, Secretary, Securities and Exchange Commission, dated March 31, 1995; W. Scott Jardine, Niké Securities L.P., to Jonathan Katz, Securities and Exchange Commission, dated March 31, 1995; Larry W. Martin, John Nuveen & Co. Incorporated, to Jonathan Katz, Securities and Exchange Commission, dated March 30, 1995.

⁹² See Letter from George Miller, Public Securities Association to Jonathan Katz, Securities and Exchange Commission, dated April 10, 1995.

⁹³ See letter from Joel Brenner, Storch & Brenner (on behalf of R.R. Donnelley Financial), to Jonathan G. Katz, Secretary, Securities and Exchange Commission, dated March 31, 1995.

⁹⁴ 5 U.S.C. 604 (1988).

investment companies registered under the investment Company Act, i.e. closed-end investment companies and unit investment trusts. The amendments to regulations under section 15(c) of the Exchange Act will reflect the availability of expedited delivery of prospectus information provided by the new rule and amendments to the Securities act regulations.

A copy of the FRFA may be obtained from Michael Mitchell, Division of Corporation Finance, Securities and Exchange Commission, 450 Fifth Street, NW., Mail Stop 3-3, Washington, DC 20549, (202) 942-2900.

VII. Effective Date

The new rule and the revisions to rules and forms are effective June 7, 1995, in accordance with the Administrative Procedures Act, which allows for effectiveness in less than 30 days after publication, *inter alia*, for "a substantive rule which grants or recognizes an exemption or relieves a restriction" and "as provided by the agency for good cause found and published with the rule." 5 U.S.C. 553 (d)(1) and (d)(3). The adopted rule and revisions primarily lessen restrictions of existing rules in that they either provide a more efficient way for offering participants to accomplish prospectus delivery or they streamline the registration and prospectus preparation and printing processes. In addition, the Commission finds there is good cause for the adopted rule and revisions to become effective on June 7, 1995 since they are designed to allow market participants to accomplish prospectus delivery in eligible offerings in a T+3 settlement cycle. Since the T+3 settlement cycle will become effective on June 7, 1995, the adoption of the rule and revisions on that date will ensure that potential market disruption relating to prospectus delivery prior to settlement of such offerings would be avoided. The exemption from Rule 15c6-1 for certain firm commitment offerings also is being eliminated in this time frame because of its potential for market disruption if allowed to go into effect. Any possible negative effect of eliminating that exemption is offset by the adoption of an expanded provision allowing such offerings to settle outside of the Rule 15c6-1 mandated time frame if the participants in the offering so elect.

VIII. Statutory Bases

The new rule and the amendments to the Commission's rules and forms under the Securities Act and amendments to the Commission's rules under the Exchange Act are being adopted

pursuant to sections 6, 7, 8, 10 and 19(a) of the Securities Act and sections 3, 4, 10, 12, 13, 14, 15, 16 and 23 of the Exchange Act. The revisions to the Commission's rules and forms under the Investment Company Act are being adopted pursuant to sections 8(b) and 38(a) under the Investment Company Act, as amended.

List of Subjects in 17 CFR Parts 202, 228, 229, 230, 232, 239, 240, 270 and 274

Administrative practice and procedure, Brokers, Investment companies, Reporting and recordkeeping requirements, Securities, Small businesses.

Text of Amendments

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

PART 202—[AMENDED]

1. The authority citation for part 202 continues to read in part as follows:

Authority: 15 U.S.C. 77s, 77t, 78d-1, 78u, 78w, 78II(d), 79r, 79t, 77sss, 77uuu, 80a-37, 80a-41, 80b-9, and 80b-11, unless otherwise noted.

* * * * *

2. By revising the seventh sentence of the introductory text of § 202.3a to read as follows:

§ 202.3a Instructions for filing fees.

* * * Filing fees paid pursuant to Section 6(b) of the Securities Act of 1933 or pursuant to Section 307(b) of the Trust Indenture Act of 1939 should be designated as "restricted," except that filing fees paid with respect to registration statements filed pursuant to Rule 462(b) (§ 230.462(b) of this chapter) should be designated as "unrestricted." * * *

PART 228—INTEGRATED DISCLOSURE SYSTEM FOR SMALL BUSINESS ISSUERS

3. 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, 78II, 80a-8, 80a-29, 80a-30, 80a-37, 80b-11, unless otherwise noted.

4. By revising paragraph (a)(4) of § 228.501 to read as follows:

§ 228.501 (Item 501) Front of registration statement and outside front cover of prospectus.

* * * * *

(a) * * *

(4) Cross reference to, and identify the location within the prospectus of (e.g.,

by page number or other specific location), the risk factors section of the prospectus, printed in bold-face roman type at least as high as twelve-point modern type and at least two points leaded;

* * * * *

5. By amending § 228.502 by revising the introductory text, removing the heading from paragraph (a)(1) and replacing the "," at the end of paragraph (a)(1) with a ":", adding a heading and introductory text to paragraph (a), adding a sentence at the end of paragraph (b), adding a sentence at the end of paragraph (c), revising paragraph (f) and including the introduction paragraph to read as follows:

§ 228.502 (Item 502) Inside front and outside back cover pages of prospectus.

On the inside front cover page of the prospectus, except as otherwise specified and except that the outside back cover page may be used for paragraphs (e) and (f), disclose the following:

(a) *Available information.* On the inside front cover page of the prospectus or under an appropriate caption elsewhere in the prospectus:

* * * * *

(b) * * * Such disclosure need not be included on the inside front cover page of the prospectus if it is included under an appropriate caption elsewhere in the prospectus.

(c) * * * Such disclosure need not be included on the inside front cover page of the prospectus if it is included under an appropriate caption elsewhere in the prospectus.

* * * * *

(f) *Table of contents.* Include a detailed table of contents showing the various sections or subdivisions of the prospectus, including any risk factors section set forth in the prospectus pursuant to Item 503(c) (§ 228.503(c)), and the page number on which each such section or subdivision begins.

Instruction to Item 502

Canadian issuers should, in addition to the disclosure required by this Item, provide the information required by Item 502(f) of Regulation S-K. Such disclosure need not be included on the inside front cover page of the prospectus if it is included under an appropriate caption elsewhere in the prospectus.

6. By revising paragraph (b) and paragraph (c) of § 228.503 to read as follows:

§ 228.503 (Item 503) Summary information and risk factors.

* * * * *

(b) *Address and telephone number.* Include in the prospectus the complete

mailing address and telephone number of the small business issuer's principal executive offices.

(c) Risk factors. (1) Discuss under the caption "Risk Factors" any factors that make the offering speculative or risky. These factors may include no operating history, no recent profit from operations, poor financial position, the kind of business in which the small business issuer is engaged or proposes to engage, or no market for the small business issuer's securities.

(2) The risk factor discussion should immediately follow the summary section. If no summary section is necessary, the risk factor discussion should immediately follow the cover page of the prospectus or, if included, a pricing information section that immediately follows the cover page.

Instruction to Item 503(c). "Pricing information" as used in paragraph (c) of this section shall mean price and price-related information of the type that may be omitted from the prospectus in an effective registration statement in reliance on Rule 430A(a) (§ 230.430A(a) of this chapter) and information disclosed in a prospectus but subject to change as a result of pricing.

7. By adding one sentence to the end of paragraph (a)(1)(ii) of § 228.512 to read as follows:

§ 228.512 (Item 512) Undertakings.

* * * * *

(a) * * *

(1) * * *

(ii) * * * Notwithstanding the foregoing, any increase or decrease in volume of securities offered (if the total dollar value of securities offered would not exceed that which was registered) and any deviation from the low or high end of the estimated maximum offering range may be reflected in the form of prospectus filed with the Commission pursuant to Rule 424(b) (§ 230.424(b) of this chapter) if, in the aggregate, the changes in volume and price represent no more than a 20% change in the maximum aggregate offering price set forth in the "Calculation of Registration Fee" table in the effective registration statement.

* * * * *

8. By amending § 228.601 to revise the third sentence of paragraph (b)(24) to read as follows:

§ 228.601 (Item 601) Exhibits.

* * * * *

(b) * * *

(24) Power of attorney. * * * A power of attorney that is filed with the Commission must relate to a specific filing or an amendment, provided, however, that a power of attorney relating to a registration statement under

the Securities Act or an amendment thereto also may relate to any registration statement for the same offering that is to be effective upon filing pursuant to Rule 462(b) under the Securities Act (§ 230.462(b) of this chapter. * * *

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

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

Authority: 15 U.S.C. 77e, 77f, 77g, 77h, 77i, 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.

* * * * *

10. The authority citation following § 229.503 is removed.

11. By revising paragraph (c)(4) of § 229.501 to read as follows:

§ 229.501 (Item 501) Forepart of registration statement and outside front cover page of prospectus.

* * * * *

(c) * * *

(4) Cross reference to and identify the location within the prospectus of (e.g., by page number or other specific location), where applicable, the discussion in the prospectus prescribed by Item 503 of Regulation S-K (§ 229.503) of material risks in connection with the purchase of the securities, printed in bold-face roman type at least as high as twelve-point modern type and at least two points leaded;

* * * * *

12. By amending § 229.502 by revising the introductory text, revising the introductory text of paragraph (a), adding a sentence at the end of paragraph (b), adding a sentence at the end of paragraph (c), revising the last sentence of the introductory text of paragraph (f), and revising paragraph (g) to read as follows:

§ 229.502 (Item 502) Inside front and outside back cover pages of prospectus.

The following information, to the extent applicable, shall appear on the inside front cover page of the prospectus, except as otherwise specified and except that the information required by paragraphs (e) and (g) of this Item may be set forth on the outside back cover page.

(a) Available information. Registrants subject to the reporting requirements of

section 13(a) or 15(d) of the Exchange Act immediately prior to the filing of the registration statement shall, on the inside front cover page of the prospectus or under an appropriate caption elsewhere in the prospectus:

* * * * *

(b) * * * Such disclosure need not be included on the inside front cover page of the prospectus if it is included under an appropriate caption elsewhere in the prospectus.

(c) * * * Such disclosure need not be included on the inside front cover page of the prospectus if it is included under an appropriate caption elsewhere in the prospectus.

* * * * *

(f) * * * Such disclosure need not be included on the inside front cover page of the prospectus if it is included under an appropriate caption elsewhere in the prospectus.

* * * * *

(g) Table of contents. Include a reasonably detailed table of contents showing the subject matter of the various sections or subdivisions of the prospectus, including any risk factors section set forth in the prospectus pursuant to Item 503(c) (§ 229.503(c)), and the page number on which each such section or subdivision begins.

13. By revising paragraph (b) and paragraph (c) of § 229.503 to read as follows:

§ 229.503 (Item 503) Summary information, risk factors and ratio of earnings to fixed charges.

* * * * *

(b) Address and telephone number. Registrants shall include in the prospectus the complete mailing address, including zip code, and the telephone number, including area code, of their principal executive offices.

(c) Risk factors. (1) Registrants, where appropriate, shall set forth under the caption "Risk Factors" a discussion of the principal factors that make the offering speculative or one of high risk; these factors may be due, among other things, to such matters as an absence of an operating history of the registrant, an absence of profitable operations in recent periods, the financial position of the registrant, the nature of the business in which the registrant is engaged or proposes to engage, or, if common equity or securities convertible into or exercisable for common equity are being offered, the absence of a previous market for the registrant's common equity.

(2) The risk factor discussion should immediately follow the summary section. If no summary section is

necessary, the risk factor discussion should immediately follow the cover page of the prospectus or, if included a pricing information section that immediately follows the cover page.

Instruction to Item 503(c). "Pricing information" as used in paragraph (c) of this section shall mean price and price-related information of the type that may be omitted from the prospectus in an effective registration statement in reliance on Rule 430A(a) (§ 230.430A(a) of this chapter) and information disclosed in a prospectus but subject to change as a result of pricing.

* * * * *

14. By revising paragraph (a)(1)(ii) of § 229.512 to read as follows:

§ 229.512 (Item 512) Undertakings.

* * * * *

- (a) * * *
- (1) * * *

(ii) To reflect in the prospectus any facts or events arising after the effective date of the registration statement (or the most recent post-effective amendment thereof) which, individually or in the aggregate, represent a fundamental change in the information set forth in the registration statement.

Notwithstanding the foregoing, any increase or decrease in volume of securities offered (if the total dollar value of securities offered would not exceed that which was registered) and any deviation from the low or high end of the estimated maximum offering range may be reflected in the form of prospectus filed with the Commission pursuant to Rule 424(b) (§ 230.424(b) of this chapter) if, in the aggregate, the changes in volume and price represent no more than 20% change in the maximum aggregate offering price set forth in the "Calculation of Registration Fee" table in the effective registration statement.

* * * * *

15. By amending § 229.601 to revise the fourth sentence of paragraph (b)(24) to read as follows:

§ 229.601 (Item 601) Exhibits.

* * * * *

- (b) * * *

(24) *Power of attorney.* * * * A power of attorney that is filed with the Commission shall relate to a specific filing or an amendment thereto, provided, however, that a power of attorney relating to a registration statement under the Securities Act or an amendment thereto also may relate to any registration statement for the same offering that is to be effective upon filing pursuant to Rule 462(b) under the Securities Act (§ 230.462(b) of this chapter). * * *

* * * * *

16. Guide 4 (referenced in § 229.801(d)) is amended by removing the first sentence of the Guide.

Note: The text of Guide 4 does not and the amendments will not appear in the Code of Federal Regulations.

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

17. The authority citation for part 230 is revised 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), 78t, 80a-8, 80a-29, 80a-30, and 80a-37, unless otherwise noted.

* * * * *

18. The authority citations following §§ 230.429, 230.439 and 230.461 are removed.

19. By amending paragraph (a) of § 230.110 by revising the phrase "paragraphs (b) and (c)" to read "paragraphs (b), (c) and (d)" and adding paragraph (d) to read as follows:

§ 230.110 Business hours of the Commission.

* * * * *

(d) *Filings by facsimile.* Registration statements and post-effective amendments thereto filed by facsimile transmission pursuant to Rule 462(b) (§ 230.462(b)) and Rule 455 (§ 230.455) may be filed with the Commission each day, except Saturdays, Sundays and federal holidays, from 5:30 p.m. to 10 p.m., Eastern Standard Time or Eastern Daylight Savings Time, whichever is currently in effect.

20. By amending § 230.111 by designating the existing text as paragraph (a) and adding paragraph (b) to read as follows:

§ 230.111 Payment of fees.

* * * * *

(b) Notwithstanding paragraph (a) of this section, for registration statements filed pursuant to Rule 462(b) (§ 230.462(b)) and Rule 110(d) (§ 230.110(d)), payment of filing fees for the purposes of this section may be made by:

(1) The registrant or its agent instructing its bank or a wire transfer service to transmit to the Commission the applicable filing fee by a wire transfer of such amount from the issuer's account or its agent's account to the Commission's account at Mellon Bank as soon as practicable but no later than the close of the next business day following the filing of the registration statement; and

(2) The registrant submitting with the registration statement at the time of filing a certification that:

(i) The registrant or its agent has so instructed its bank or a wire transfer service;

(ii) The registrant or its agent will not revoke such instructions; and

(iii) The registrant or its agent has sufficient funds in such account to cover the amount of such filing fee.

Note to paragraph (b): Such instructions may be sent on the date of filing the registration statement after the close of business of such bank or wire transfer service, provided that the registrant undertakes in the certification sent to the Commission with the registration statement that it will confirm receipt of such instructions by the bank or wire transfer service during regular business hours on the following business day.

21. By amending § 230.402 to add paragraphs (d) and (e) to read as follows:

§ 230.402 Number of copies; binding; signatures.

* * * * *

(d) Notwithstanding any other provision of this section, if a registration statement is filed pursuant to Rule 462(b) (§ 230.462(b)) and Rule 110(d) (§ 230.110(d)), one copy of the complete registration statement, including exhibits and all other papers and documents filed as a part thereof shall be filed with the Commission. Such copy should not be bound and may contain facsimile versions of manual signatures in accordance with paragraph (e) of this section.

(e) Duplicated or facsimile versions of manual signatures of persons required to sign any document filed or submitted to the Commission under the Act, shall be considered manual signatures for purposes of the Act and rules and regulations thereunder, provided that, the original manually signed document is retained by the filer for a period of five years and upon request the filer furnishes to the Commission or the staff the original manually signed document.

22. By amending § 230.424 by adding paragraph (b)(7) before the Instruction, by revising the heading "Instruction:" to read "Instruction 1:", and adding Instruction 2 to read as follows:

§ 230.424 Filing of prospectuses; number of copies.

* * * * *

- (b) * * *

(7) Ten copies of a term sheet or abbreviated term sheet sent or given in reliance upon Rule 434 under the Act (§ 230.434) shall be filed with the Commission pursuant to this paragraph no later than the second business day following the earlier of the date of determination of the offering price, or the date it is first used after effectiveness in connection with a

public offering or sales, or transmitted by a means reasonably calculated to result in filing with the Commission by that date. In addition to the information required by paragraph (e) of this section, each copy of such term sheet or abbreviated term sheet shall include the information required by Rule 434(e) (§ 230.434(e)).

Instruction 1: * * *

Instruction 2: Notwithstanding paragraphs (b)(1), (b)(2), (b)(4) and (b)(5) of this section, a form of prospectus sent or given in reliance on Rule 434(c) (§ 230.434(c)) with respect to securities registered on Form S-3 or Form F-3 (§ 239.13 or § 239.33 of this chapter), other than an abbreviated term sheet filed pursuant to paragraph (b)(7) of this section, shall be filed with the Commission on or prior to the date on which a confirmation is sent or given.

* * * * *

23. By adding a sentence at the end of paragraph (b) to § 230.429 to read as follows:

§ 230.429 Prospectus relating to several registration statements.

* * * * *

(b) * * * Where a combined prospectus is being used pursuant to paragraph (a) of this section, a note should be added to the "Calculation of Registration Fee" table in the latest registration statement or any amendment thereto, stating the number or amount of securities being carried forward and the amount of the filing fee associated with such securities that was previously paid with the earlier registration statement(s).

24. By amending § 230.430A by removing the word "five" and adding, in each place it appears, the word "fifteen" in paragraph (a)(3) and by adding a sentence at the end of Instruction to paragraph (a) to read as follows:

§ 230.430A Prospectus in a registration statement at the time of effectiveness.

* * * * *

Instruction to paragraph (a): * * *

Notwithstanding the foregoing, any increase or decrease in volume (if the total dollar value of securities offered would not exceed that which was registered) and any deviation from the low or high end of the range may be reflected in the form of prospectus filed with the Commission pursuant to Rule 424(b)(1) (§ 230.424(b)(1)) or Rule 497(h) (§ 230.497(h)) if, in the aggregate, the changes in volume and price represent no more than a 20% change in the maximum aggregate offering price set forth in the "Calculation of Registration Fee" table in the effective registration statement.

* * * * *

25. By adding § 230.434 to read as follows:

§ 230.434 Prospectus delivery requirements in firm commitment underwritten offerings of securities for cash.

(a) Where securities are offered for cash in a firm commitment underwritten offering or investment grade debt securities are offered for cash on an agency basis under a medium term note program, and such securities are neither asset-backed securities nor structured securities, and the conditions described in paragraph (b) or paragraph (c) of this section are satisfied, then:

(1) The prospectus subject to completion and the term sheet described in paragraph (b) of this section, taken together, and the prospectus subject to completion and the abbreviated term sheet described in paragraph (c) of this section, taken together, shall constitute prospectuses that meet the requirements of section 10(a) of the Act (15 U.S.C. 77j(a)) for purposes of section 5(b)(2) of the Act (15 U.S.C. 77e(b)(2)) and section 2(10)(a) of the Act (15 U.S.C. 77b(10)(a)); and

(2) The section 10(a) prospectus described in paragraph (a)(1) of this section shall have:

(i) Been sent or given prior to or at the same time that a confirmation is sent or given for purposes of section 2(10)(a) of the Act; and

(ii) Accompanied or preceded the transmission of the securities for purpose of sale or for delivery after sale for purposes of Section 5(b)(2) of the Act.

(b) With respect to offerings of securities that are registered on a form other than Form S-3 or Form F-3 (§ 239.13 or § 239.33 of this chapter), and with respect to offerings of securities by only those investment companies registered under the Investment Company Act of 1940 (15 U.S.C. 80a-1 *et seq.*) that register their securities on Form N-2 (§ 274.11a-1 of this chapter) or Form S-6 (§ 239.16 of this chapter), the following conditions are satisfied:

(1) A prospectus subject to completion and any term sheet described in paragraph (b)(3) of this section, together or separately, are sent or given prior to or at the same time with the confirmation;

(2) Such prospectus subject to completion and term sheet, together, are not materially different from the prospectus in the registration statement at the time of its effectiveness or an effective post-effective amendment thereto (including, in both, instances, information deemed to be a part of the registration statement at the time of effectiveness pursuant to Rule 430A(b) (§ 230.430A(b)); and

(3) A term sheet under this paragraph (b) shall set forth all information material to investors with respect to the offering that is not disclosed in the prospectus subject to completion or the confirmation.

(c) With respect to offerings of securities registered on Form S-3 or Form F-3 (§ 239.13 or § 239.33 of this chapter), the following conditions are satisfied.

(1) A prospectus subject to completion and the abbreviated term sheet described in paragraph (c)(3) of this section, together or separately, are sent or given prior to or at the same time with the confirmation;

(2) A form of prospectus that:

(i) Discloses information previously omitted from the prospectus filed as part of an effective registration statement in reliance upon Rule 430A (§ 230.430A), to the extent not set forth in the abbreviated term sheet (as described in paragraph (c)(3) of this section), shall be filed pursuant to Rule 424(b) (§ 230.424(b)) on or prior to the date on which a confirmation is sent or given; or

(ii) Discloses the public offering price, description of securities, to the extent not set forth in the abbreviated term sheet (as described in paragraph (c)(3) of this section), and specific method of distribution or similar matters shall be filed pursuant to Rule 424(b) (§ 230.424(b)) on or prior to the date on which a confirmation is sent or given; and

(3) The abbreviated term sheet under this paragraph (c) shall set forth, if not previously disclosed in the prospectus subject to completion or the registrant's Exchange Act filings incorporated by reference into the prospectus:

(i) The description of securities required by Item 202 of Regulation S-K (§ 229.202 of this chapter), or a fair and accurate summary thereof; and

(ii) All material changes to the registrant's affairs required to be disclosed pursuant to Item 11 of Form S-3 or Form F-3 (§ 239.13 or § 239.33 of this chapter), as applicable.

(d) Except in the case of offerings pursuant to Rule 415(a)(1)(x), (§ 230.415(a)(1)(x)), the information contained in any term sheet or abbreviated term sheet described under this section shall be deemed to be a part of the registration statement as of the time such registration statement was declared effective. In the case of offerings pursuant to Rule 415(a)(1)(x) (§ 230.415(a)(1)(x)), the information contained in any term sheet or abbreviated term sheet described under this section shall be deemed to be a part of the registration statement as of the

time such information is filed with the Commission.

Instruction: With respect to the obligation to file any form of prospectus, term sheet, or abbreviated term sheet used in reliance on this section, see Rule 424(b) (§ 230.424(b)) or Rule 497(h) (§ 230.497(h)).

(e) Any term sheet or abbreviated term sheet described under this section shall, in the top center of the cover page thereof, state that such document is a supplement to a prospectus and identify that prospectus by issuer name and date; clearly identify that such document is a term sheet or abbreviated term sheet used in reliance on Rule 434; set forth the approximate date of first use of such document; and clearly identify the documents that, when taken together, constitute the Section 10(a) prospectus.

(f) For purposes of this section, *asset-backed securities* shall mean asset-backed securities as defined in General Instruction I.B.5. of Form S-3 (§ 239.13 of this chapter).

(g) For purposes of this section, *prospectus subject to completion* shall mean any prospectus that is either a preliminary prospectus used in reliance on Rule 430 (§ 230.430), a prospectus omitting information in reliance upon Rule 430A (§ 230.430A), or a prospectus omitting information that is not yet known concerning a delayed offering pursuant to Rule 415(a)(i)(x) (§ 230.415(a)(1)(x)) that is contained in a registration statement at the time of effectiveness or as subsequently revised.

(h) For purposes of this section, *structured securities* shall mean securities whose cash flow characteristics depend upon one or more indices or that have embedded forwards or options or securities where an investor's investment return and the issuer's payment obligations are contingent on, or highly sensitive to, changes in the value of underlying assets, indices, interest rates or cash flows.

(i) For purposes of this section, *investment grade securities* shall mean investment grade securities as defined in General Instruction I.B.2. of Form S-3 or Form F-3 (§ 239.13 or § 239.33 of this chapter).

(j) For the purposes of this section, a firm commitment underwritten offering shall include a firm commitment underwritten offering of securities by a closed-end company or by a unit investment trust registered under the Investment Company Act of 1940.

26. By designating the existing text as paragraph (a) and adding paragraph (b) to § 230.439 to read as follows:

§ 230.439 Consent to use of material incorporated by reference.

(a) * * *

(b) Notwithstanding paragraph (a) of this section, any required consent may be incorporated by reference into a registration statement filed pursuant to Rule 462(b) under the Act (§ 230.462(b)) from a previously filed registration statement relating to that offering, provided that, the consent contained in the previously filed registration statement expressly provides for such incorporation.

27. By revising the second and third sentences of § 230.455 to read as follows:

§ 230.455 Place of filing.

* * * Registration statements on Form SB-1 or SB-2 may be filed with the Commission either at its principal office or at the Commission's regional or district offices as specified in General Instruction A to each of those forms, except that registration statements and post-effective amendments thereto on such forms that are filed pursuant to Rule 462(b) (§ 230.462(b)) and Rule 110(d) (§ 230.110(d)) shall be filed at the Commission's principal office. Such material may be filed by delivery to the Commission through the mails or otherwise; provided, however, that only registration statements and post-effective amendments thereto filed pursuant to Rule 462(b) (§ 230.462(b)) and Rule 110(d) (§ 230.110(d)) may be filed by means of facsimile transmission.

28. By amending § 230.457 to revise paragraph (o) read as follows:

§ 230.457 Computation of fee.

* * * * *

(o) Where an issuer is offering securities, the registration fee may be calculated on the basis of the maximum aggregate offering price of all the securities listed in the "Calculation of Registration Fee" Table. The number of shares or units of securities need not be included in the "Calculation of Registration Fee" Table. If the maximum aggregate offering price increases prior to the effective date of the registration statement, a pre-effective amendment must be filed to increase the maximum dollar value being registered and the additional filing fee shall be paid.

29. By revising the first sentence of paragraph (a) and adding two new sentences immediately after the first sentence of paragraph (a) to § 230.461 to read as follows:

§ 230.461 Acceleration of effective date.

(a) Requests for acceleration of the effective date of a registration statement

shall be made by the registrant and the managing underwriters of the proposed issue, or, if there are no managing underwriters, by the principal underwriters of the proposed issue, and shall state the date upon which it is desired that the registration statement shall become effective. Such requests may be made in writing or orally, provided that, if an oral request is to be made, a letter indicating that fact and stating that the registrant and the managing or principal underwriters are aware of their obligations under the Act must accompany the registration statement for a pre-effective amendment thereto) at the time of filing with the Commission. Written requests may be sent to the Commission by facsimile transmission. * * *

* * * * *

30. By revising the section heading, designating the existing text as paragraph (a), and adding paragraphs (b) and (c) to § 230.462 to read as follows:

§ 230.462 Immediate effectiveness of certain registration statements and post-effective amendments.

(a) * * *

(b) A registration statement and any post-effective amendment thereto shall become effective upon filing with the Commission if:

(1) The registration statement is for registering additional securities of the same class(es) as were included in an earlier registration statement for the same offering and declared effective by the Commission;

(2) The new registration statement is filed prior to the time confirmations are sent or given; and

(3) The new registration statement registers additional securities in an amount and at a price that together represent no more than 20% of the maximum aggregate offering price set forth for each class of securities in the "Calculation of Registration Fee" table contained in such earlier registration statement.

(c) If the prospectus contained in a post-effective amendment filed prior to the time confirmations are sent or given contains no substantive changes from or additions to the prospectus previously filed as part of the effective registration statement, other than price-related information omitted from the registration statement in reliance on Rule 430A of the Act (§ 230.430A), such post-effective amendment shall become effective upon filing with the Commission.

31. By amending § 230.472 to add paragraph (e) to read as follows:

§ 230.472 Filing of amendments; number of copies.

* * * * *

(e) Notwithstanding any other provision of this section, if a post-effective amendment is filed pursuant to Rule 462(b) (§ 230.462(b)) and Rule 110(d) (§ 230.110(d)), one copy of the complete post-effective amendment, including exhibits and all other papers and documents filed as a part thereof shall be filed with the Commission. Such copy should not be bound and may contain facsimile versions of manual signatures in accordance with Rule 402(e) (§ 230.402(e)).

32. By amending § 230.483 to add a sentence at the end of paragraph (b) and to designate the existing text of paragraph (c) as paragraph (c)(1) and adding paragraph (c)(2) to read as follows:

§ 230.483 Exhibits for certain registration statements, financial data schedule.

* * * * *

(b) * * * A power of attorney that is filed with the Commission shall relate to a specific filing, an amendment thereto, or a related registration statement that is to be effective upon filing pursuant to Rule 462(b) (§ 230.462(b)) under the Act.

(c)(1) * * *

(2) In a registration statement filed pursuant to Rule 462(b) (§ 230.462(b)) by a closed-end company, any required consent may be incorporated by reference into the registration statement from a previously filed registration statement related to the offering, provided that the consent contained in the previously filed registration statement expressly provides for such incorporation. Any consent filed in a Rule 462(b) (§ 230.462(b)) registration statement may contain duplicated or facsimile versions of required signatures, and such signatures shall be considered manually filed for the purposes of the Act and the rules thereunder.

33. By amending § 230.497 to designate the existing text of paragraph (h) as paragraph (h)(1) and adding paragraph (h)(2) to read as follows:

230.497 Filing of investment company prospectuses—number of copies.

(h) * * *

(2) Ten copies of each term sheet or abbreviated term sheet sent or given in reliance upon Rule 434 (§ 230.434) shall be filed with the Commission no later than the second business day following the earlier of the date of determination of the offering price, or the date it is first used after effectiveness in connection with a public offering or sales, or

transmitted by a means reasonably calculated to result in filing with the Commission by that date.

* * * * *

PART 232—REGULATION S—GENERAL RULES AND REGULATIONS FOR ELECTRONIC FILERS

34. 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.

35. By adding paragraph (a)(3) before the Note to § 232.13 to read as follows:

§ 232.13 Date of filing; adjustment of filing date.

(a) * * *

(3) Notwithstanding paragraph (a)(2) of this section, any registration statement or any post-effective amendment thereto filed pursuant to Rule 462(b) (§ 230.462(b) of this chapter) by direct transmission commencing on or before 10 p.m. Eastern Standard Time or Eastern Daylight Savings Time, whichever is currently in effect, shall be deemed filed on the same business day.

* * * * *

PART 239—FORMS PRESCRIBED UNDER THE SECURITIES ACT OF 1933

36. 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, 79, 79m, 79n, 79q, 79t, 80a-8, 80a-29, 80a-30 and 80a-37, unless otherwise noted.

§ 239.9 [Amended]

* * * * *

37. By amending Form SB-1 (referenced in § 239.9) by adding three check boxes to the cover page immediately before "Calculation of Registration Fee," by adding a Note to appear immediately after the Calculation of Registration Fee table, and by adding paragraph H to General Instructions to read as follows:

Note: The text of Form SB-1 does not and the amendments will not appear in the Code of Federal Regulations.

Form SB-1—Registration Statement Under the Securities Act of 1933

* * * * *

If this Form is filed to register additional securities for an offering pursuant to Rule 462(b) under the Securities Act, check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering. []

If this Form is a post-effective amendment filed pursuant to Rule 462(c) under the

Securities Act, check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering. []

If delivery of the prospectus is expected to be made pursuant to Rule 434, please check the following box. []

* * * * *

Calculation of Registration Fee

Note: If the filing fee is calculated pursuant to Rule 457(o) under the Securities Act, only the title of the class of securities to be registered, the proposed maximum aggregate offering price for that class of securities and the amount of registration fee need to appear in the Calculation of Registration Fee table. Any difference between the dollar amount of securities registered for such offerings and the dollar amount of securities sold may be carried forward on a future registration statement pursuant to Rule 429 under the Securities Act.

* * * * *

General Instructions

* * * * *

H. *Registration of additional securities.* With respect to the registration of additional securities for an offering pursuant to Rule 462(b) under the Securities Act, the registrant may file a registration statement consisting only of the following: The facing page; a statement that the contents of the earlier registration statement, identified by file number, are incorporated by reference; required opinions and consents; the signature page; and any price-related information omitted from the earlier registration statement in reliance on Rule 430A that the registrant chooses to include in the new registration statement. The information contained in such a Rule 462(b) registration statement shall be deemed to be a part of the earlier registration statement as of the date of effectiveness of the Rule 462(b) registration statement. Any opinion or consent required in the Rule 462(b) registration statement may be incorporated by reference from the earlier registration statement with respect to the offering, if: (i) Such opinion or consent expressly provides for such incorporation; and (ii) such opinion relates the securities registered pursuant to Rule 462(b). See Rule 411(c) and Rule 439(b) under the Securities Act.

* * * * *

§ 239.10 [Amended]

38. By amending Form SB-2 (referenced in § 239.10) by adding three check boxes to the cover page immediately before "Calculation of Registration Fee," by adding two sentences to the end of the Note following the Calculation of Registration Fee table, and by adding paragraph C to General Instructions to read as follows:

Note: The text of Form SB-2 does not and the amendments will not appear in the Code of Federal Regulations.

Form SB-2—Registration Statement Under the Securities Act of 1933

* * * * *

If this Form is filed to register additional securities for an offering pursuant to Rule 462(b) under the Securities Act, please check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering. []

If this Form is a post-effective amendment filed pursuant to Rule 462(c) under the Securities Act, check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering. []

If delivery of the prospectus is expected to be made pursuant to Rule 434, please check the following box []

* * * * *

Calculation of Registration Fee

* * * * *

Note: * * * If the filing fee is calculated pursuant to Rule 457(o) under the Securities Act, only the title of the class of securities to be registered, the proposed maximum aggregate offering price for that class of securities and the amount of registration fee need to appear in the Calculation of Registration Fee table. Any difference between the dollar amount of securities registered for such offerings and the dollar amount of securities sold may be carried forward on a future registration statement pursuant to Rule 429 under the Securities Act.

* * * * *

General Instructions

* * * * *

C. Registration of additional securities. With respect to the registration of additional securities for an offering pursuant to Rule 462(b) under the Securities Act, the registrant may file a registration statement consisting only of the following: The facing page; a statement that the contents of the earlier registration statement, identified by file number, are incorporated by reference; required opinions and consents; the signature page; and any price-related information omitted from the earlier registration statement in reliance on Rule 430A that the registrant chooses to include the new registration statement. The information contained in such a Rule 462(b) registration statement shall be deemed to be a part of the earlier registration statement as of the date of effectiveness of the Rule 462(b) registration statement. Any opinion or consent required in the Rule 462(b) registration statement may be incorporated by reference from the earlier registration statement with respect to the offering, if: (i) Such opinion or consent expressly provides for such incorporation; and (ii) such opinion relates to the securities registered pursuant to Rule 462(b). See Rule 411(c) and Rule 439(b) under the Securities Act.

§ 239.11 [Amended]

39. By amending Form S-1 (referenced in § 239.11) by adding three check boxes to the cover page immediately before "Calculation of Registration Fee," and by adding two sentences to the end of the Note

following the Calculation of Registration Fee table, and by adding paragraph V. to General Instructions to read as follows:

Note: The text of Form S-1 does not and the amendments will not appear in the Code of Federal Regulations.

Form S-1—Registration Statement Under the Securities Act of 1933

* * * * *

If this Form is filed to register additional securities for an offering pursuant to Rule 462(b) under the Securities Act, please check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering. []

If this Form is a post-effective amendment filed pursuant to Rule 462(c) under the Securities Act, check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering. []

If delivery of the prospectus is expected to be made pursuant to rule 434, please check the following box. []

* * * * *

Calculation of Registration Fee

* * * * *

Note: * * * If the filing fee is calculated pursuant to Rule 457(o) under the Securities Act, only the title of the class of securities to be registered, the proposed maximum aggregate offering price for that class of securities and the amount of registration fee need to appear in the Calculation of Registration Fee table. Any difference between the dollar amount of securities registered for such offerings and the dollar amount of securities sold may be carried forward on a future registration statement pursuant to Rule 429 under the Securities Act.

General Instructions

* * * * *

V. Registration of Additional Securities

With respect to the registration of additional securities for an offering pursuant to Rule 462(b) under the Securities Act, the registrant may file a registration statement consisting only of the following: The facing page; a statement that the contents of the earlier registration statement, identified by file number, are incorporated by reference; required opinions and consents; the signature page; and any price-related information omitted from the earlier registration statement in reliance on Rule 430A that the registrant chooses to include in the new registration statement. The information contained in such a Rule 462(b) registration statement shall be deemed to be a part of the earlier registration statement as of the date of effectiveness of the rule 462(b) registration statement. Any opinion or consent required in the Rule 462(b) registration statement may be incorporated by reference from the earlier registration statement with respect to the offering, if: (i) Such opinion or consent expressly provides for such incorporation;

and (ii) such opinion relates to the securities registered pursuant to rule 462(b). See Rule 411(c) and rule 439(b) under the Securities Act.

* * * * *

§ 239.12 [Amended]

40. By amending Form S-2 (referenced in § 239.12) by adding three check boxes to the cover page immediately before "Calculation of Registration Fee," by adding two sentences to the end of the Note following the Calculation of Registration Fee table, and by adding paragraph III. to General Instructions to read as follows:

Note: The text of Form S-2 does not and the amendments will not appear in the Code of Federal Regulations.

Form S-2—Registration Statement under the Securities Act of 1933

* * * * *

If this Form is filed to register additional securities for an offering pursuant to Rule 462(b) under the Securities Act, please check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering. []

If this Form is a post-effective amendment filed pursuant to Rule 462(c) under the Securities Act, check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering. []

If delivery of the prospectus is expected to be made pursuant to rule 434, please check the following box. []

* * * * *

Calculation of Registration Fee

* * * * *

Note: * * * If the filing fee is calculated pursuant to Rule 457(o) under the Securities Act, only the title of the class of securities to be registered, the proposed maximum aggregate offering price for that class of securities and the amount of registration fee need to appear in the Calculation of Registration Fee table. Any difference between the dollar amount of securities registered for such offering and the dollar amount of securities sold may be carried forward on a future registration statement pursuant to Rule 429 under the Securities Act.

General Instructions

* * * * *

III. Registration of Additional Securities. With respect to the registration of additional securities for an offering pursuant to Rule 462(b) under the Securities Act, the registrant may file a registration statement consisting only of the following: the facing page; a statement that the contents of the earlier registration statement, identified by file number, are incorporated by reference; required opinions and consents; the signature page; and any price-related information

omitted from the earlier registration statement in reliance on Rule 430A that the registrant chooses to include in the new registration statement. The information contained in such a Rule 462(b) registration statement shall be deemed to be a part of the earlier registration statement as of the date of effectiveness of the Rule 462(b) registration statement. Any opinion or consent required in the Rule 462(b) registration statement may be incorporated by reference from the earlier registration statement with respect to the offering, if: (i) such opinion or consent expressly provides for such incorporation; and (ii) such opinion relates to the securities registered pursuant to Rule 462(b). See Rule 411(c) and Rule 439(b) under the Securities Act.

* * * * *

§ 239.13 [Amended]

41. By amending Form S-3 (referenced in § 239.13) by adding three check boxes to the cover page immediately before "Calculation of Registration Fee," by adding three sentences to the end of the Note following the Calculation of Registration Fee table, and by adding paragraph IV. to General Instructions to read as follows:

Note: The text of Form S-3 does not and the amendments will not appear in the Code of Federal Regulations.

Form S-3—Registration Statement Under the Securities Act of 1933

If this Form is filed to register additional securities for an offering pursuant to Rule 462(b) under the Securities Act, please check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering. [] _____

If this Form is a post-effective amendment filed pursuant to Rule 462(c) under the Securities Act, check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering. [] _____

If delivery of the prospectus is expected to be made pursuant to Rule 434, please check the following box. [] _____

Calculation of Registration Fee

* * * * *

Note: * * * If the filing fee is calculated pursuant to Rule 457(o) under the Securities Act, only the title of the class of securities to be registered, the proposed maximum aggregate offering price for that class of securities and the amount of registration fee need to appear in the "Calculation of Registration FEE" Table ("Fee Table"). Where two or more classes of securities are being registered pursuant to General Instruction II.D, however, the Fee Table need only specify the maximum aggregate offering price for all classes; the Fee Table need not specify by each class the proposed maximum aggregate offering price (See General Instruction II.D). Any difference between the dollar amount of securities registered for such offerings and the dollar amount of

securities sold may be carried forward on a future registration statement pursuant to Rule 429 under the Securities Act.

General Instructions

* * * * *

IV. Registration of additional securities. With respect to the registration of additional securities for an offering pursuant to Rule 462(b) under the Securities Act, the registrant may file a registration statement consisting only of the following: The facing page; a statement that the contents of the earlier registration statement, identified by file number, are incorporated by reference; required opinions and consents; the signature page; and any price-related information omitted from the earlier registration statement in reliance on Rule 430A that the registrant chooses to include in the new registration statement. The information contained in such a Rule 462(b) registration statement shall be deemed to be a part of the earlier registration statement as of the date of effectiveness of the Rule 462(b) registration statement. Any opinion or consent required in the Rule 462(b) registration statement may be incorporated by reference from the earlier registration statement with respect to the offering, if: (i) Such opinion or consent expressly provides for such incorporation; and (ii) such opinion relates to the securities registered pursuant to Rule 462(b). See Rule 411(c) and Rule 439(b) under the Securities Act.

* * * * *

§ 239.18 [Amended]

42. By amending Form S-11 (referenced in § 239.18) by adding paragraph G. to General Instructions, by adding three check boxes to the cover page immediately before "Calculation of Registration Fee" and by adding two sentences to the end of the Note following the Calculation of Registration Fee table to read as follows:

Note: The text of Form S-11 does not and the amendments will not appear in the Code of Federal Regulations.

Form S-11—For Registration Under the Securities Act of 1933 of Securities of Certain Real Estate Companies

General Instructions

* * * * *

G. Registration of additional securities. With respect to the registration of additional securities for an offering pursuant to Rule 462(b) under the Securities Act, the registrant may file a registration statement consisting only of the following: The facing page; a statement that the contents of the earlier registration statement, identified by file number, are incorporated by reference; required opinions and consents; the signature page; and any price-related information omitted from the earlier registration statement in reliance on Rule 430A that the registrant chooses to include in the new registration statement. The information contained in such a Rule 462(b) registration statement shall be deemed to be a part of the earlier registration statement as of the date of

effectiveness of the Rule 462(b) registration statement. Any opinion or consent required in the rule 462(b) registration statement may be incorporated by reference from the earlier registration statement with respect to the offering, if: (i) Such opinion or consent expressly provides for such incorporation; and (ii) such opinion relates to the securities registered pursuant to Rule 462(b). See Rule 411(c) and rule 439(b) under the Securities Act.

* * * * *

Form S-11—Registration Statement under the Securities Act of 1933

* * * * *

If this Form is filed to register additional securities for an offering pursuant to Rule 462(b) under the Securities Act, please check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering. [] _____

If this Form is a post-effective amendment filed pursuant to Rule 462(c) under the Securities Act, check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering. [] _____

If delivery of the prospectus is expected to be made pursuant to Rule 434, please check the following box. [] _____

* * * * *

Calculation of Registration Fee

* * * * *

Note: * * * If the filing fee is calculated pursuant to Rule 457(o) under the Securities Act, only the title of the class of securities to be registered, the proposed maximum aggregate offering price for that class of securities and the amount of registration fee needed to appear in the Calculation of Registration Fee table. Any difference between the dollar amount of securities registered for such offerings and the dollar amount of securities sold may be carried forward on a future registration statement pursuant to Rule 429 under the Securities Act.

* * * * *

§ 239.31 [Amended]

43. By amending Form F-1 (referenced in § 239.31) by adding three check boxes to the cover page immediately before "Calculation of Registration Fee," by adding two sentences to the end of the Note following the Calculation of Registration Fee table, and by adding paragraph V. to General Instructions to read as follows:

Note: The text of Form F-1 does not and the amendments will not appear in the Code of Federal Regulations

Form F-1—Registration Statement under the Securities Act of 1933

* * * * *

If this Form is filed to register additional securities for an offering pursuant to Rule 462(b) under the Securities Act, please check

the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering. [] _____

If this Form is a post-effective amendment filed pursuant to rule 462(c) under the Securities Act, check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering. [] _____

If delivery of the prospectus is expected to be made pursuant to Rule 434, please check the following box. [] _____

* * * * *

Calculation of Registration Fee

* * * * *

Note: * * * If the filing fee is calculated pursuant to Rule 457(o) under the Securities Act, only the title of the class of securities to be registered, the proposed maximum aggregate offering price for that class of securities and the amount of registration fee need to appear in the Calculation of Registration Fee table. Any difference between the dollar amount of securities registered for such offerings and the dollar amount of securities sold may be carried forward on a future registration statement pursuant to Rule 429 under the Securities Act.

General Instructions

* * * * *

V. *Registration of additional securities.* With respect to the registration of additional securities for an offering pursuant to Rule 462(b) under the Securities Act, the registrant may file a registration statement consisting only of the following: The facing page; a statement that the contents of the earlier registration statement, identified by file number, are incorporated by reference; required opinions and consents; the signature page; and any price-related information omitted from the earlier registration statement in reliance on Rule 430A that the registrant chooses to include in the new registration statement. The information contained in such a Rule 462(b) registration statement shall be deemed to be a part of the earlier registration statement as of the date of effectiveness of the Rule 462(b) registration statement. Any opinion or consent required in the rule 462(b) registration statement may be incorporated by reference from the earlier registration statement with respect to the offering, if: (i) such opinion or consent expressly provides for such incorporation; and (ii) such opinion relates to the securities registered pursuant to Rule 462(b). See Rule 411(c) and Rule 439(b) under the Securities Act.

* * * * *

44. By amending Form F-2 (referenced in § 239.32) by adding three check boxes to the cover page immediately before "Calculation of Registration Fee," by adding two sentences to the end of the Note following the Calculation of Registration Fee table, and by adding paragraph IV. to General Instructions to read as follows:

Note: The text of Form F-2 does not and the amendments will not appear in the Code of Federal Regulations.

Form F-2—Registration Statement under the Securities Act of 1933

* * * * *

If this Form is filed to register additional securities for an offering pursuant to Rule 462(b) under the Securities Act, please check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering. [] _____

If this Form is a post-effective amendment filed pursuant to Rule 462(c) under the Securities Act, check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering. [] _____

If delivery of the prospectus is expected to be made pursuant to Rule 434, please check the following box. [] _____

* * * * *

Calculation of Registration Fee

* * * * *

Note: * * * If the filing fee is calculated pursuant to Rule 457(o) under the Securities Act, only the title of the class of securities to be registered, the proposed maximum aggregate offering price for that class of securities and the amount of registration fee need to appear in the Calculation of Registration Fee table. Any difference between the dollar amount of securities registered for such offerings and the dollar amount of securities sold may be carried forward on a future registration statement pursuant to Rule 429 under the Securities Act.

General Instructions

* * * * *

IV. *Registration of additional securities.* With respect to the registration of additional securities for an offering pursuant to Rule 462(b) under the Securities Act, the registrant may file a registration statement consisting only of the following: The facing page; a statement that the contents of the earlier registration statement, identified by file number, are incorporated by reference; required opinions and consents; the signature page; and any price-related information omitted from the earlier registration statement in reliance on Rule 430A that the registrant chooses to include in the new registration statement. The information contained in such a Rule 462(b) registration statement shall be deemed to be a part of the earlier registration statement as of the date of effectiveness of the Rule 462(b) registration statement. Any opinion or consent required in the Rule 462(b) registration statement may be incorporated by reference from the earlier registration statement with respect to the offering, if: (i) Such opinion or consent expressly provides for such incorporation; and (ii) such opinion relates to the securities registered pursuant to Rule 462(b). See Rule 411(c) and Rule 439(b) under the Securities Act.

* * * * *

45. By amending Form F-3 (referenced in § 239.33) by adding three check boxes to the cover page immediately before "Calculation of Registration Fee," by adding three sentences to the end of the Note following the Calculation of Registration Fee table, and by adding paragraph IV. to General Instructions to read as follows:

Note: The text of Form F-3 does not and the amendments will not appear in the Code of Federal Regulations.

Form F-3—Registration Statement Under the Securities Act of 1933

* * * * *

If this Form is filed to register additional securities for an offering pursuant to Rule 462(b) under the Securities Act, please check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering. [] _____

If this Form is a post-effective amendment filed pursuant to Rule 462(c) under the Securities Act, check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering. [] _____

If delivery of the prospectus is expected to be made pursuant to Rule 434, please check the following box. [] _____

* * * * *

Calculation of Registration Fee

* * * * *

Note: * * * If the filing fee is calculated pursuant to Rule 457(o) under the Securities Act, only the title of the class of securities to be registered, the proposed maximum aggregate offering price for that class of securities and the amount of registration fee need to appear in the "Calculation of Registration Fee" table ("Fee Table"). Where two or more classes of securities are being registered pursuant to General Instruction II.C, however, the Fee Table need only specify the maximum aggregate offering price for all classes; the Fee Table need not specify by each class the proposed maximum aggregate offering price (See General Instruction II.C). Any difference between the dollar amount of securities registered for such offerings and the dollar amount of securities sold may be carried forward on a future registration statement pursuant to Rule 429 under the Securities Act.

General Instructions

* * * * *

IV. *Registration of additional securities.* With respect to the registration of additional securities for an offering pursuant to Rule 462(b) under the Securities Act, the registrant may file a registration statement consisting only of the following: The facing page; a statement that the contents of the earlier registration statement, identified by file number, are incorporated by reference; required opinions and consents; the signature page; and any price-related information omitted from the earlier registration statement in reliance on Rule 430A that the

registrant chooses to include in the new registration statement. The information contained in such a Rule 462(b) registration statement shall be deemed to be a part of the earlier registration statement as of the date of effectiveness of the Rule 462(b) registration statement. Any opinion or consent required in the Rule 462(b) registration statement may be incorporated by reference from the earlier registration statement with respect to the offering, if: (i) Such opinion or consent expressly provides for such incorporation; and (ii) such opinion relates to the securities registered pursuant to Rule 462(b). See Rule 411(c) and Rule 439(b) under the Securities Act.

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

46. 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, 777ttt, 78c, 78d, 78i, 78j, 78l, 78m, 78n, 78o, 78p, 78q, 78s, 78w, 78x, 78ll(d), 79g, 79t, 80a-20, 80a-23, 80a-29, 80a-37, 80b-3, 80b-4 and 80b-11, unless otherwise noted.

* * * * *

47. The authority citation following § 15c2-8 is removed.

48. By amending § 240.12b-11 to add paragraph (d) to read as follows:

§ 240.12b-11 Number of copies; signatures; binding.

* * * * *

(d) Duplicated or facsimile versions of manual signatures of persons required to sign any registration statement pursuant to sections 12(b) and 12(g) of the Act (15 U.S.C. 78l(b) and 78l(g)), any report or schedule filed pursuant to sections 13 and 15(d) of the Act (15 U.S.C. 78m and 78o(d)), or any amendment or exhibit to such registration statement, report or schedule, that are filed or submitted to the Commission under the Act, shall be considered manual signatures for purposes of the Act and rules and regulations thereunder; provided that, the original signed document is retained by the filer for a period of five years and, upon request, the filer furnishes to the Commission or the staff the original manually signed document.

49. By amending § 240.14d-1 to add paragraph (d) to read as follows:

§ 240.14d-1 Scope of and definitions applicable to Regulations 14D and 14E.

* * * * *

(d) Duplicated or facsimile versions of manual signatures of persons required to sign any document pursuant to Regulation 14D and Regulation 14E that is filed or submitted to the Commission under the Act shall be considered manual signatures for purposes of the

Act and rules and regulations thereunder; provided that, the original signed document is retained by the filer for a period of five years and, upon request, the filer furnishes to the Commission or the staff the original manually signed document.

50. Section 240.15c2-8(b) is amended by revising the word "mailing" to read "sending".

51. Section 240.15c2-8(c) is amended by revising the word "mail" to read "send".

52. Section 240.15c2-8(d) is amended by revising the word "mail" to read "send".

53. Section 240.15c2-8 is amended by adding paragraph (j) to read as follows:

§ 240.15c2-8 Delivery of Prospectus

* * * * *

(j) For purposes of this section, the term *preliminary prospectus* shall include the term *prospectus subject to completion* as used in 17 CFR 230.434(a), and the term *final prospectus* shall include the term *Section 10(a) prospectus* as used in 17 CFR 230.434(a).

54. Amend § 240.15c6-1 by revising the phrase "paragraph (b)" in paragraph (a) to read "paragraphs (b), (c), and (d)"; by revising the phrase "Paragraph (a)" in paragraph (b) to read "Paragraphs (a) and (c)"; by removing paragraph (b)(2); by redesignating paragraph (b)(3) as paragraph (b)(2); and by adding paragraphs (c) and (d) to read as follows:

§ 240.15c6-1 Settlement cycle.

* * * * *

(c) Paragraph (a) of this section shall not apply to contracts for the sale for cash of securities that are priced after 4:30 p.m. Eastern time on the date such securities are priced and that are sold by an issuer to an underwriter pursuant to a firm commitment underwritten offering registered under the Securities Act of 1933 or sold to an initial purchaser by a broker-dealer participating in such offering provided that a broker or dealer shall not effect or enter into a contract for the purchase or sale of such securities that provides for payment of funds and delivery of securities later than the fourth business day after the date of the contract unless otherwise expressly agreed to by the parties at the time of the transaction.

(d) For purposes of paragraphs (a) and (c) of this section, the parties to a contract shall be deemed to have expressly agreed to an alternate date for payment of funds and delivery of securities at the time of the transaction for a contract for the sale for cash of securities pursuant to a firm commitment offering if the managing

underwriter and the issuer have agreed to such date for all securities sold pursuant to such offering and the parties to the contract have not expressly agreed to another date for payment of funds and delivery of securities at the time of the transaction.

55. By amending § 240.16a-3 to add paragraph (i) to read as follows:

§ 240.16a-3 Reporting transactions and holdings.

* * * * *

(i) Duplicated or facsimile versions of manual signatures of persons required to sign any document pursuant to Section 16 of the Act (15 U.S.C. 78p) that is filed or submitted to the Commission under the Act shall be considered manual signatures for purposes of the Act and rules and regulations thereunder; provided that, the original signed document is retained by the filer for a period of five years and, upon request, the filer furnishes to the Commission or the staff the original manually signed document.

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

56. The authority citation for Part 270 continues to read, in part as follows:

Authority: 15 U.S.C. 80a-1 et seq., 80a-37, 80a-39 unless otherwise noted.

* * * * *

57. By amending § 270.8b-11 to add paragraph (e) to read as follows:

§ 270.8b-11 Number of copies; signatures; binding.

* * * * *

(e) Duplicated or facsimile versions of manual signatures of persons required to sign any registration statement or report, including all amendments and exhibits to such statements or reports, that are filed or submitted to the Commission under the Act, shall be considered manual signatures for the purposes of the Act and the rules and regulations thereunder; provided that, the original signed document is retained by the filer for a period of five years and, upon request, the filer furnishes to the Commission or the staff the original manually signed document.

PART 239—FORMS PRESCRIBED UNDER THE SECURITIES ACT OF 1933

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

58. 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.

§§ 239.14 and 274.11a-1 [Amended]

59. By amending Form N-2 (referenced in §§ 239.14 and 274.11a-1) by adding one check box to the cover page immediately before "Calculation of Registration Fee Under the Securities Act of 1933," and by adding two sentences to the end of the first Instruction following the Calculation of Registration Fee Under the Securities Act of 1933 table and by adding paragraph J. to the General Instructions to read as follows:

Note: The text of Form N-2 does not and these amendments will not appear in the Code of Federal Regulations.

Form N-2—Registration Statement Under the Securities Act of 1933

* * * * *

[] This Form is filed to register additional securities for an offering pursuant to Rule 462(b) under the Securities Act and the

Securities Act registration statement number of the earlier effective registration statement for the same offering is _____ .

Calculation of Registration Fee Under the Securities Act of 1933

* * * * *

Instructions

* * * For offerings made pursuant to Rule 430A under the Securities Act, only the title of the class of securities to be registered, the proposed maximum aggregate offering price for that class of securities and the amount of registration fee need to appear in the Calculation of Registration Fee table. Any difference between the dollar amount of securities registered for such offerings and the dollar amount of securities sold may be carried forward on a future registration statement pursuant to Rule 429 under the Securities Act.

General Instructions

* * * * *

J. *Registration additional securities.* With respect to the registration of additional securities for an offering pursuant to Rule 462(b) under the Securities Act, the registrant

may file a registration statement consisting only of the following: The facing page; a statement that the contents of the earlier registration statement, identified by file number, are incorporated by reference; required opinions and consents; the signature page; and any price-related information omitted from the earlier registration statement in reliance on Rule 430A that the registrant chooses to include in the new registration statement. Any opinion or consent required in such a registration statement may be incorporated by reference from the earlier registration statement with respect to the offering, if: (i) Such opinion or consent expressly provides for such incorporation; and (ii) such opinion relates to the securities registered pursuant to Rule 462(b). See Rule 411(c) and Rule 483(c) under the Securities Act.

* * * * *

Dated: May 11, 1995.

By the Commission.

Margaret H. McFarland,

Deputy Secretary.

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