

SECURITIES AND EXCHANGE COMMISSION

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

[Release Nos. 33-7183; 34-35893; IC-21166; File No. S7-13-95]

RIN 3235-AG49

Use of Abbreviated Financial Statements in Documents Delivered to Investors Pursuant to the Securities Act of 1933 and Securities Exchange Act of 1934

AGENCY: Securities and Exchange Commission.

ACTION: Proposed rule.

SUMMARY: The Securities and Exchange Commission ("Commission") today is soliciting comment on proposed amendments to allow the use of abbreviated financial statements in annual reports delivered to shareholders pursuant to the proxy rules. Comment is also solicited on additional approaches to streamlining annual reports to shareholders. Rule changes also are proposed to allow the use of abbreviated financial statements in other disclosure documents, including prospectuses, that are required to be delivered to investors. In order to encourage individual investor comments and suggestions, the Commission is including in the Release an Appendix directed to investors, which will be published separately and distributed to investors. In addition, during the comment period, the Commission intends to hold focus groups composed of investors to assess investors' views as to the utility of sample abbreviated financial statements, as compared with full financial statements.

DATES: Comments on the proposed amendments should be received on or before October 10, 1995.

ADDRESSES: Comments should be submitted in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Comment letters should refer to File No. S7-13-95. All comments received will be available for public inspection and copying in the Commission's Public Reference Room, 450 Fifth Street NW., Washington, DC 20549.

FOR FURTHER INFORMATION CONTACT: Craig C. Olinger, Associate Chief Accountant, at (202) 942-2960, Kenneth T. Marceron, Staff Accountant, at (202) 942-1781, or Elizabeth M. Murphy or William B. Haseltine, Special Counsels, at (202) 942-2910, Division of Corporation Finance, Securities and

Exchange Commission, 450 Fifth Street NW., Mail Stop 3-12, Washington, DC 20549.

SUPPLEMENTARY INFORMATION: The Commission is proposing amendments to Forms S-1, S-2, S-3, S-4, S-6, S-8, S-11, SB-1, SB-2, F-1, F-2, F-3, F-4, F-7, F-8, F-9, F-10, F-80 and 1-A¹ and Regulation D² under the Securities Act of 1933 ("Securities Act"),³ as well as Forms 10-K and 10-KSB⁴, Rules 13e-3, 13e-4, 14a-3, 14c-3, 14d-1 and 14d-6⁵ and Schedules 13E-4F, 14A, 14C, 14D-1F, and 14D-9F⁶ under the Securities Exchange Act of 1934 ("Exchange Act").⁷ Additionally, a new Item 305 would be added to Regulations S-B and S-K,⁸ and new Securities Act Rule 435 and new Exchange Act Rules 14a-16 and 14c-8 would be created.

I. Executive Summary and Background

The Commission today is publishing for comment proposals to streamline the financial information currently required to be delivered to investors in connection with the annual election of directors pursuant to the Commission's proxy regulations.⁹ This initiative responds to concerns that the growing complexity and volume of financial information, particularly that required in notes to financial statements,¹⁰ render the annual report less readable and useful to the general shareholder body.¹¹

¹ 17 CFR 239.11, 12, 13, 25, 16, 16b, 18, 9, 10, 31, 32, 33, 34, 37, 38, 39, 40, 41 and 90.

² 17 CFR 230.501-508.

³ 15 U.S.C. 77a et seq.

⁴ 17 CFR 249.310 and 310b.

⁵ 17 CFR 240.13e-3, 13e-4, 14a-3, 14c-3, 14d-1 and 14d-6.

⁶ 17 CFR 240.13e-102, 14a-101, 14c-101, 14d-102, and 14d-103.

⁷ 15 U.S.C. 78a et seq.

⁸ 17 CFR Part 228 and 17 CFR Part 229.

⁹ See Rules 14a-3 and 14c-3.

¹⁰ Financial statements prepared in conformity with generally accepted accounting principles ("GAAP") are required to include adequate disclosure of material matters (Statement on Auditing Standards ("SAS") No. 32, *Adequacy of Disclosure in Financial Statements*). Disclosures in notes to the financial statements are intended to provide material information necessary to make the financial statements, in light of the circumstances under which they are made, not misleading (Rule 4-01(a) of Regulation S-X [17 CFR 210.4-01(a)]). In recent decades, numerous requirements have been adopted that specify in detail the content of disclosures required in the notes to the financial statements.

¹¹ See, e.g., Groves, Ray J., "Overload of Financial Disclosure Rules is Defeating the Purpose of the Exercise," *American Banker* (Jan. 3, 1995); Beresford, Dennis R. and Hepp, John A., *Financial Accounting Series: Status Report*, No. 149-B, "Financial Statement Disclosures: Too Many or Too Few?" (May 25, 1995); Deloitte & Touche LLP, *Summary Annual Reporting, Improving Shareholder Communications* (1995), at 3-4; Cook, Michael and Sutton, Michael H., "Summary Annual Reporting: A Cure for Information Overload," *Fin. Executive* (Jan/Feb 1995).

Proponents of annual report simplification believe that streamlined annual reports will allow registrants both to communicate more effectively with shareholders in the annual report by being able to highlight key financial items and to reduce the costs of preparing and delivering the annual report. These commentators are of the view that a large segment of a company's shareholder body does not review and analyze the detailed information in the notes to the financial statements, particularly in determining whether to vote for director nominees, and companies therefore should not have to incur the cost of delivery of the full set of financial statements in the annual report.

Various approaches have been suggested to accomplish the streamlining. One, which is contained in rule amendments proposed today, would permit an eligible registrant to use financial statements with significantly abbreviated notes ("abbreviated financial statements") in annual reports to shareholders. The annual report would prominently identify the financial statements as abbreviated and state that the registrant will provide upon request, and without charge, a copy of the full financial statements. The full financial statements would be required to be filed in the registrant's annual report on Form 10-K, 10-KSB or 20-F;¹² registrants are already required to advise shareholders in the proxy statement or annual report that the Form 10-K or 10-KSB will be provided upon request and without charge. This would continue under the proposed rules.

In summary, disclosure required in the notes to the abbreviated financial statements would include:

- the significant accounting policies of the registrant;
- certain matters materially affecting the comparability of amounts reported in the financial statements;
- circumstances identified in explanatory language added to the independent accountant's report, contingencies, loan defaults, and subsequent events; and
- related party transactions.

The abbreviated financial statements contemplated by the proposed rule would omit a significant number of notes to financial statements that are required under GAAP. Appendix A to this release summarizes the common disclosures that would be omitted from the abbreviated financial statements under the proposals. In general, the disclosures that would be omitted from

¹² 17 CFR 249.220f.

the abbreviated financial statements contain quantitative detail and related explanatory information regarding amounts included in the financial statements. Detailed quantitative disclosures and related explanatory material regarding many off-balance sheet items also would be omitted. For example, disclosure enumerating the composition of inventories and fixed assets, the terms and conditions of borrowings, the components of income tax expense and related deferred taxes, the status of pension fund assets and obligations, the assets and operating results of business and geographic segments, the details of restructuring charges and the characteristics of on-balance sheet and off-balance sheet financial instruments (including derivative instruments), among other things, would be omitted.

Other approaches for streamlining the annual report to shareholders include the concept of a summary annual report, the subject of a 1983 research study prepared for the Financial Executives Research Foundation ("FERF").¹³ The summary annual report concept is discussed in this release, and comments are solicited on the approach. Comment is also being solicited as to whether the Commission should allow registrants total flexibility, subject to the requirements of state corporate law and trading market listing agreements, by rescinding the proxy requirements regarding delivery of the annual report to shareholders.

Similar concerns about the complexity and volume of financial information, particularly in the notes to the financial statements, as well as the use of the annual report to shareholders in the integrated disclosure system, underlie additional rule proposals that would allow the use of abbreviated financial statements in the full spectrum of other disclosure documents required to be delivered to investors, such as prospectuses and transactional proxy statements.¹⁴ Use of abbreviated

financial statements in these circumstances raises additional issues, including the extent to which those making investment decisions would be willing to rely on the abbreviated financial statements and the practicality of requiring delivery of full financial statements upon request in various transactional contexts. A number of Commission registration forms, most notably Forms S-3 and F-3, already use a model of incorporation by reference, and delivery of incorporated documents upon request. The Commission invites comment as to the appropriateness and utility of such approach for both investors and issuers generally, and specifically with respect to each class of disclosure document covered by the proposed rulemaking.

The Commission recognizes that the feasibility of this initiative requires the confidence of registrants that they will not be subject to liability for failure to deliver the full financial statements in the annual report or other mandated disclosure documents. The rules proposed today include a safe harbor from liability for non-delivery of the note disclosures allowed to be excluded from the abbreviated financial statements. The proposals would not change the disclosure currently required outside the company's financial statements in mandated disclosure documents.

This initiative is part of the Commission's overall efforts to improve the effectiveness and efficiency of its disclosure system.¹⁵ Both the Commission and the Financial Accounting Standards Board ("FASB") recognize that an important part of that effort is to evaluate current financial disclosures to assess their continued utility and cost effectiveness.¹⁶

deliver abbreviated financial statements of that entity to investors, provided that the eligibility criteria are met.

¹⁵ See, e.g., Securities Act Release No. 7053 (April 19, 1994) [59 FR 21644] and Securities Act Release Nos. 7117, 7118 and 7119 (December 1, 1994) [59 FR 65628, 65632, and 65637] adopting amendments to Form 20-F and Regulation S-X [17 CFR 210] designed to streamline the financial information and reconciliation requirements for both foreign and domestic companies.

¹⁶ In response to the Financial Accounting Standards Advisory Council's 1994 Annual FASB Agenda Survey, survey respondents selected "Comprehensive Review of Financial Statement Disclosures" from a list of projects not currently on FASB's agenda and indicated that it should be given high priority by FASB. While FASB has not yet added a formal project to its agenda, the Chairman of FASB has indicated that FASB will be devoting significant resources to this issue. See Beresford, Dennis R. and Hepp, John A., *Financial Accounting Series: Status Report*, No. 149-B, "Financial Statement Disclosures: Too Many or Too Few?" at 7 (May 25, 1995).

II. Proposed Amendments To Permit Use of Abbreviated Financial Statements

A. Content of Abbreviated Financial Statements

The proposed rule amendments would permit eligible registrants to use abbreviated financial statements in specified disclosure documents delivered to shareholders and investors. The content of the abbreviated financial statements is set forth in proposed new Item 305(b) of Regulations S-K and S-B.¹⁷

The face of the abbreviated financial statements would have to include a prominent statement identifying them as such.¹⁸ Abbreviated financial statements would include balance sheets, statements of income and cash flows, and statements of changes in stockholders' equity that conform with GAAP and Regulation S-X with respect to classifications, measurements and periods presented.¹⁹ The notes to the abbreviated financial statements would be limited to the items specified in proposed Item 305.²⁰

¹⁷ Proposed Item 305 of Regulations S-B and S-K. References throughout the release to provisions of proposed Item 305 of Regulation S-K should be read to include the comparable provisions in proposed Item 305 of Regulation S-B. The two items are identical in all substantive respects, except that all but one of the references to Regulation S-X in proposed Item 305 of Regulation S-K are omitted from proposed Item 305 of Regulation S-B or changed to refer to Item 310 of Regulation S-B [17 CFR 228.310] (there is a reference to Article 2 of Regulation S-X [17 CFR 210.2] regarding accountants' reports in both the proposed Regulation S-K and S-B Items).

¹⁸ Proposed Item 305(b)(1) of Regulation S-K.

¹⁹ Proposed Items 305(b) (1) and (2) of Regulation S-K. Updating requirements for the abbreviated financial statements in prospectuses and proxy statements would be consistent with the updating requirements for the full financial statements. Accordingly, domestic issuers would follow the requirements of Rule 3-12 of Regulation S-X [17 CFR 210.3-12], while foreign issuers would follow the requirements of Rule 3-19 of Regulation S-X [17 CFR 210.3-19]. See proposed Regulation S-K Items 305(c) and (f)(2). Pursuant to proposed Regulation S-B Item 305(c), small business issuers would update their abbreviated financial statements in accordance with Item 310(d) of Regulation S-B [17 CFR 228.310(d)].

²⁰ The abbreviated financial statement proposals do not affect other disclosure requirements, such as the registrant's description of business, legal proceedings discussions, supplementary financial information, or Management's Discussion & Analysis ("MD&A") (Items 101, 103, 302, and 303 of Regulations S-B and S-K [17 CFR 228.101, 103, 302 and 303 and 229.101, 103, 302 and 303]). Registrants that currently cross-reference, but do not reiterate, data set forth in the notes to the financial statements in the MD&A section of their disclosure documents could not cross-reference notes omitted from the abbreviated financial statements. It is the current practice of many registrants to include supplementary financial information pursuant to Item 302 of Regulations S-K and S-B in an unaudited note to the financial

Continued

¹³ "Summary Reporting of Financial Information—Moving Toward More Readable Annual Reports," Deloitte, Haskins & Sells (1983) ("FERF Report").

¹⁴ These documents include: (1) prospectuses required to be delivered in connection with offerings of securities pursuant to the Securities Act; (2) proxy or information statements required to be furnished pursuant to Section 14 of the Exchange Act [15 U.S.C. 78n]; (3) documents furnished to investors in connection with tender offers or going private transactions; (4) offering circulars delivered in connection with Regulation A [17 CFR 230.251-263] offerings; and (5) disclosure required to be furnished in connection with Regulation D offerings. If the disclosure document is required to include financial statements of another entity, such as an acquired business, significant subsidiary, or guarantor, the registrant also could choose to

As proposed, the disclosures required in the notes to the abbreviated financial statements are intended to be an extraction of all disclosures included in the registrant's full financial statements that are responsive to the matters specified by Item 305.²¹ Disclosures responsive to a particular matter may be located in several places in the notes to the full financial statements. Proposed Item 305 would require all disclosures included in the notes to the full financial statements that are responsive to a matter specified in Item 305 to be included in the notes to the abbreviated financial statements, regardless of the source of the underlying disclosure requirement or the location of the disclosure in the full financial statements. For example, requirements regarding the disclosure of accounting policies are primarily contained in Accounting Principles Board ("APB") Opinion No. 22,²² but various other FASB and AICPA pronouncements specifically require disclosure of accounting policies with respect to certain matters.²³ In practice, some registrants include all accounting policy disclosures in a single note, while others integrate certain accounting policy disclosures within the detailed disclosure of the matters to which the policies relate. Under the proposed requirements, registrants would have to identify and describe in the notes to the abbreviated financial statements all significant accounting policies used in the preparation of the financial statements, regardless of the particular manner in which they are presented in the notes to the full financial statements.

The specific matters proposed to be required in the notes to the abbreviated financial statements are as follows:²⁴

1. *Basis of presentation.* A note to the abbreviated financial statements would explain that although such statements were prepared using GAAP for measurement and classification, substantially all of the notes necessary for a fair presentation in accordance with GAAP and Regulation S-X have

statements. Registrants using abbreviated financial statements would be required to disclose supplementary financial information outside of the financial statements elsewhere in the disclosure document.

²¹ Proposed Item 305(b)(3) of Regulation S-K.

²² *Disclosure of Accounting Policies.*

²³ Disclosures responsive to a particular matter may emanate from requirements in various accounting pronouncements. SAS No. 69, *The Meaning of Present Fairly in Conformity with Generally Accepted Accounting Principles in the Independent Auditor's Report*, defines the sources of accounting principles generally accepted in the United States.

²⁴ Proposed Item 305(b)(3)(i)-(xiii) of Regulation S-K.

been omitted.²⁵ The note also would state that the disclosures in the notes to the abbreviated financial statements are limited to those matters specified by Commission rules, and comply with Commission rules for presentation of abbreviated financial statements. The note would contain a reference to the complete note disclosures in the full financial statements.

2. *Accounting policies.* A description of all significant accounting policies used in the preparation of the financial statements, including a description of the accounting principles followed by the reporting entity and the methods of applying those principles that materially affect the determination of financial position, cash flows or results of operations, as specified by APB Opinion No. 22 and related pronouncements, would be provided.²⁶

3. *Changes in accounting principle.* The nature of, and justification for, a change in accounting principle, and the effects of the change, as specified by APB Opinion No. 20²⁷ and related pronouncements, would be furnished.

4. *Restatements and reclassifications.* The nature and effects of a correction of an error in previously issued financial statements, as specified by APB Opinion No. 20 and related pronouncements, would be furnished. Also, the nature and reasons for a change in the reporting entity, and effects of the change, as specified by APB Opinion No. 20 and related pronouncements, would be furnished. Further, the nature and effects of reclassifications materially affecting amounts reported in previously issued financial statements would be explained.

5. *Changes in accounting estimate.* The nature and effects of changes in accounting estimate, as specified by APB Opinion No. 20 and related pronouncements, would be furnished.

6. *Business combinations.* The nature of business combinations during the most recent fiscal year and quantitative disclosures of the effects of the business combinations, as specified by APB Opinion No. 16²⁸ and related pronouncements, would be furnished.

²⁵ The note to the abbreviated financial statements containing basis of presentation disclosures that is included by small business issuers in their delivery documents would refer only to GAAP since small business issuers are not required to comply with Regulation S-X.

²⁶ "Related pronouncement" as used throughout this section refers to a pronouncement constituting GAAP as defined in SAS No. 69 that requires disclosure regarding a matter that would have to be disclosed in the notes to the abbreviated financial statements under proposed Item 305 of Regulation S-K.

²⁷ *Accounting Changes.*

²⁸ *Business Combinations.*

7. *Discontinued operations.* The nature of business operations that were discontinued during the most recent fiscal year, and quantitative disclosures of the effects of the discontinuation, as specified by APB Opinion No. 30²⁹ and related pronouncements, would be furnished.

8. *Circumstances identified in explanatory language added to the independent accountant's standard report.* If the independent accountant's report on the entity's full financial statements includes explanatory language added to the standard report, a note would describe the circumstances identified in SAS No. 58³⁰ necessitating the explanatory language and would include all disclosure set forth in notes to the full financial statements that bears upon an understanding of those circumstances. Disclosure would also be provided for explanatory paragraphs that emphasize a matter regarding the financial statements.

9. *Loss contingencies.* If the entity is exposed to loss contingencies for which a loss exceeding the amount accrued in the financial statements is reasonably possible, a note would describe the nature of the loss and disclose either the amount or range of reasonably possible additional loss, or management's view that such amount or range of loss cannot be estimated, as specified by SFAS No. 5³¹ and related pronouncements.

10. *Events of default under credit agreements.* As presently required by Regulation S-X,³² the facts and amounts concerning any default in principal, interest, sinking fund, or redemption provisions with respect to any material issue of securities or credit agreements, or any breach of covenant of a related indenture or agreement, which default or breach existed at the date of the most recent balance sheet date being filed and has not been subsequently cured, would be described. If a default or breach exists but acceleration of the obligation has been waived for a stated period of time beyond the date of the most recent balance sheet being filed, the amount of the obligation and the period of the waiver would have to be stated.

11. *Related party transactions.* The nature of related party relationships, and a description of transactions, amounts and balances, as specified by

²⁹ *Reporting the Results of Operations—the Effects of Disposal of a Segment of a Business, and Extraordinary, Unusual and Infrequently Occurring Events and Transactions.*

³⁰ *Reports on Audited Financial Statements.*

³¹ *Accounting for Contingencies.*

³² Rule 4-08(c) of Regulation S-X [17 CFR 210.4-08(c)].

SFAS No. 57³³ and related pronouncements, would be furnished.

12. *Bankruptcies and quasi-reorganizations.* Entities entering into, operating under, or emerging from proceedings under the federal bankruptcy code during the most recent fiscal year would have to provide all the disclosures specified by AICPA Statement of Position No. 90-7.³⁴ As presently required by Regulation S-X and related interpretations,³⁵ entities effecting a quasi-reorganization during the most recent fiscal year would disclose the nature and effects of the quasi-reorganization.

13. *Subsequent events.* All events occurring subsequent to the date of the most recent balance sheet for which disclosure was required to be made in the full financial statements would be disclosed.

If none of the matters identified in Items 3 through 13 above apply to a registrant, the note disclosures included in abbreviated financial statements of that registrant would be limited to a description of the basis of presentation of the abbreviated financial statements and the registrant's accounting policies.

The types of disclosures commonly provided in full financial statements that would be omitted from the notes to the abbreviated financial statements are summarized in Appendix A to the release. Comment is requested as to whether any of the items specified for inclusion should not be deemed necessary in a presentation of abbreviated financial statements, or whether there are other specific items included in full financial statements that should be required disclosure in abbreviated financial statements in order to provide essential information to investors. For example, should the disclosures regarding the amounts, terms, risks, or fair values of financial instruments (including derivatives) specified by SFAS Nos. 105, 107, and 119,³⁶ or the information about stock options valuation to be required by the forthcoming FASB standard on stock compensation,³⁷ be required?

³³ *Related Party Disclosures.*

³⁴ *Financial Reporting Entities and Reorganization Under the Bankruptcy Code.*

³⁵ Rule 5-02.31(b) of Regulation S-X [17 CFR 210.5-02.31(b)]. See also Accounting Series Release 25 and Staff Accounting Bulletins 78 and 86, *Quasi-Reorganizations.*

³⁶ *Disclosure of Information about Financial Instruments with Off-Balance Sheet Risk and Financial Instruments with Concentrations of Credit Risk, Disclosures about Fair Value of Financial Instruments, and Disclosure about Derivative Financial Instruments and Fair Value of Financial Instruments, respectively.*

³⁷ A draft of a Final Statement on stock compensation has been sent to the FASB's Stock

Proposed Item 305 specifies every matter that would require disclosure in the notes to the abbreviated financial statements; the Item does not provide for the discretionary addition by registrants of note disclosures regarding other matters. Comment is solicited as to whether the Item should allow for additional discretionary note disclosures. Commenters remarking on this issue are asked to address whether, if proposed Item 305 expressly permitted the discretionary note disclosures: (1) registrants would be more or less likely to use the abbreviated financial statement format; (2) the disclosures included in the notes to the abbreviated financial statements would be more or less useful to investors; and (3) whether registrants would feel compelled routinely to add note disclosures regarding discretionary matters similar to those included at the discretion of other registrants.

As an alternative to the disclosures specified in the proposed rules, comment is requested as to whether note disclosures in abbreviated financial statements should be limited to only those matters regarding the manner in which the full financial statements were prepared. For example, should disclosures be limited to a description of the registrant's significant accounting policies, changes in those policies, and material restatements and reclassifications of previously reported amounts? Should disclosures be further limited to only include changes in those matters, and to exclude descriptions of accounting policies that have not changed during the reporting period? Should the abbreviated financial statements also include a list of the notes that have been omitted?

B. Use of Abbreviated Financial Statements—Specified Disclosure Documents

As discussed in the introduction to this release, the primary impetus to the abbreviated financial statement initiative has been suggestions to streamline the financial information required to be included in annual reports to shareholders, so as to make the reports more readable and useful to the general shareholder body. Underlying these suggestions is the premise that, at least in the case of voting on the election of directors, many, if not most, shareholders do not use the detailed information contained in the financial statement footnotes to make their voting decision.

Compensation Task Force and other interested persons for review and comment. FASB hopes to issue a Final Statement in July.

The proposed amendments also would extend the abbreviated financial statement approach to other disclosure documents required to be delivered to investors, including those prospectuses currently required to include financial statements. While the transactional context of these documents and the use of the information as a basis for an investment decision present additional issues to those raised by the annual report, the Commission is interested in commenters' views as to whether the concept of allowing delivery of more summary information, while assuring that more extensive information is available in Commission filings and promptly upon request from the company, should be extended throughout the Commission's disclosure scheme. This model already currently exists in the distinction between the annual report required to be delivered to shareholders and the Form 10-K annual report required to be filed with the Commission. Registration on Form S-2 similarly uses this model.

The Commission also solicits comment as to the extent to which the availability of financial disclosure documents through electronic media warrants a reassessment of the regulatory framework that is based on delivery of disclosure documents in hard copy to investors.³⁸ By mid-1996, most registrants under the Securities Act, Exchange Act and Investment Company Act will be required to file their disclosure documents electronically through the Commission's Electronic Data Gathering, Analysis and Retrieval ("EDGAR") system.³⁹ Public access to these reports is currently available through a wide variety of private vendors, as well as through the Commission.⁴⁰ Today, it is estimated

³⁸ In recognition of developments in electronic media, 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.

³⁹ To date, 6,250 Exchange Act registrants are filing on EDGAR, and 2,500 under the Investment Company Act. The remaining domestic registrants will be required to file on EDGAR by May 1996. Foreign issuers may file on EDGAR on a voluntary basis.

⁴⁰ For example, EDGAR filings are available through Dow Jones and Lexis/Nexis. One of the subscribers to the EDGAR data base has made it available on the Internet.

that more than 16% of the public has access through home computers to this information.⁴¹ These developments have changed and will continue to change how investors access information about public companies, and provide a significant opportunity to enhance the efficacy and efficiency of the disclosure process under the federal securities laws.⁴²

The manner in which the abbreviated financial statements scheme would apply to specified disclosure documents varies according to the nature of the document, as described in this section. In all cases, the rules would provide that the full financial statements would be deemed a part of the related disclosure document, so that liability for this information would remain unchanged.⁴³ Comment is requested generally on whether the proposed system of delivering abbreviated financial statements to investors and filing the full financial statements would benefit the investing public. Comment also is solicited as to whether issuers should be permitted to include abbreviated financial statements in each type of disclosure document covered by the proposed amendments.

1. Annual Reports to Shareholders

a. **Abbreviated Financial Statements.** Companies that are subject to the proxy and information statement rules because they have a class of securities registered under Section 12 of the Exchange Act⁴⁴ must furnish shareholders an annual report containing specified information, including financial statements.⁴⁵ Under the proposal, registrants could choose to use abbreviated financial statements in their annual reports to shareholders. If the Form 10-K or 10-KSB containing the full financial statements was on file with the Commission, the copy of the annual report to shareholders would simply be submitted to the Commission, as is currently the case. If the Form 10-K or 10-KSB was not yet on file, the annual report to shareholders submitted to the Commission would have to be accompanied by a copy of the full financial statements. This is to assure

the availability of the full financial statements in the Commission's public files at the time the annual report to shareholders with the abbreviated financial statements is being used.

Under the proposed rules, registrants using abbreviated financial statements in their annual report to shareholders would not be able to incorporate the financial statements from such annual report, but would have to file the full financial statements in their Form 10-K or 10-KSB report filed with the Commission. This would assure that investors would be able to easily access the complete financial statements in Commission filings.⁴⁶ Comment is requested as to whether registrants should be permitted to incorporate the abbreviated financial statements from the annual report to shareholders and include the additional information (*i.e.*, the omitted notes and the accountant's report on the full financial statements) in the Form 10-K or 10-KSB when filed.

b. **Summary Annual Reports.** Another alternative to simplifying the annual report requirements is the summary annual reporting concept that was the subject of the 1983 FERF Report. The summary annual report discussed in the FERF Report contemplated use of condensed financial statements without traditional financial statement notes. Certain information customarily contained in the notes, *e.g.* material accounting changes, significant acquisitions and dispositions, material contingencies, specified information on significant equity investees, would be included in the summary annual report under the Disclosure Guidelines outlined in the FERF Report. The summary report would not include the full MD&A, or the full stock price and dividend information and business description currently mandated by Rules 14a-3 or 14c-3.⁴⁷ Under the summary annual report approach, registrants would still be required to deliver financial information to shareholders annually. The rules could provide significantly greater flexibility as to the form and content of such

reports and could expressly permit the use of condensed financial statements. The disclosure guidelines included in the FERF Report are set forth in Appendix B to this release.

c. **Rescission of the Rules Governing the Annual Report to Shareholders.** Rescission of the rules governing the annual report to shareholders would give registrants the most flexibility in determining how to communicate directly with their shareholders, subject to requirements of state corporate law and any trading market for the registrant's securities.⁴⁸

The Exchange Act's periodic reporting provisions require the filing of annual and quarterly reports with the Commission. The requirement to deliver specified information, including audited financial statements, was implemented as part of the Commission's proxy rules. Registrants not subject to the Commission's proxy rules, such as foreign private issuers, registrants subject to Section 15(d)⁴⁹ reporting requirements, or registrants with only Section 12 registered debt securities, are not required to deliver annual reports to their investors.

In adopting the requirement to deliver audited financial statements and other specified information to shareholders prior to their voting in the annual election of directors, the Commission noted that existing common practice was to deliver this information. However, in formalizing the practice, it reaffirmed its belief that the information was important to enable investors "to appraise the financial position and results of operations of the issuer."⁵⁰

Comment is requested as to whether the Commission should continue to require a registrant to deliver to its shareholders full financial statements, MD&A and the other information specified by Rules 14a-3 and 14c-3 in advance of the annual election of directors. If not, should the rules be amended to provide for a more streamlined disclosure using the model of abbreviated financial statements proposed today, the summary annual report concept outlined in the FERF report or some other simplification approach? Should the current requirement simply be rescinded and registrants permitted total discretion to determine the form and content of their annual report to shareholders, subject to the requirements of state corporate law

⁴¹ Gates, Bill, "In Praise of a Free Market Approach," *The Guardian* (June 22, 1995) at 7.

⁴² See Langevoort, Donald C., "Information Technology and the Structure of Securities Regulation," *Harvard Law Review* (February 1985), and Arnold, Jerry L., Greene, Edward F., and Keller, Earl C., "The Impact of Electronic Technology at the S.E.C.: An Analysis of Policies Governing the Content and Dissemination of Corporate Disclosures" (Financial Executives Institute and SEC and Financial Reporting Institute, 1987).

⁴³ Proposed Rules 435(c); 13e-3(e)(4)(iv); 13e-4(d)(1)(j); 14a-16; 14c-8 and 14d-1(b)(3)(iii).

⁴⁴ 15 U.S.C. 78l.

⁴⁵ Exchange Act Rules 14a-3 and 14c-3.

⁴⁶ As noted above, full, rather than abbreviated, financial statements would be required in Forms 10-K, 10-KSB, and 20-F. Technical revisions would be made to Forms 10-K and 10-KSB.

⁴⁷ A number of companies have used a variation of the summary annual report approach following staff interpretative letters issued in 1987. See *General Motors* (avail. January 20, 1987) and *McKesson Corp.* (avail. May 15, 1987). Under the interpretative guidance in the letters, a registrant may provide summary financial information in the annual report to shareholders, provided the full financial statements are otherwise delivered to shareholders, for example, as an attachment to the annual meeting proxy statement.

⁴⁸ Applicable state law and self-regulatory organization rules may require that certain specified financial information be furnished to security holders on an annual basis.

⁴⁹ 15 U.S.C. 78o(d).

⁵⁰ Exchange Act Release No. 8000 (Dec. 5, 1966) [31 FR 15750].

and stock exchange or NASDAQ listing requirements and antifraud prohibitions? If the requirements were rescinded, do commenters expect that registrants would discontinue delivery of annual reports if not subject to other requirements to do so? If the annual report rules were amended to allow use of abbreviated financial statements or summary annual reports or rescinded altogether, should the rules require registrants to provide a mechanism by which shareholders could make a standing request for the company to deliver annually a copy of the Form 10-K or 10-KSB report? If the annual report rules were rescinded, do commenters expect that those registrants delivering annual reports would include full financial statements, or would they provide summary financial data? Are there other alternatives to streamlining the annual report to shareholders?

2. Securities Act Disclosure Documents

Under the proposed amendments, the Part I item in each Securities Act registration form⁵¹ requiring the registrant to include financial statements in the prospectus delivered to investors would be amended to provide eligible registrants with the option of including in the prospectus either full or abbreviated financial statements. Registrants choosing to include full financial statements in the prospectus would deliver to investors and file with the Commission the same information, in the same format, that they deliver and file under current requirements.

For registration statements on forms not permitting incorporation by reference of financial statements, registrants choosing to include abbreviated financial statements in the prospectus would put the information required by proposed Item 305 in Part I. The full financial statements would be filed in Part II of the registration statement,⁵² but not delivered to investors except upon specific request. If requested, a copy of the full financial statements would have to be provided. Comment is requested as to whether, in order to avoid unnecessary duplication in filing, the proposal should permit a registrant either to file the full financial statements in their entirety in Part II, or to file only the remaining financial information—that is, the independent

accountant's report on the full financial statements plus the notes omitted from the disclosure document, which, taken together with the abbreviated financial statements, would constitute the full financial statements meeting the requirements of GAAP and Regulation S-X. This latter option would be feasible only if the omitted notes were grouped so the presentation would be clear when the abbreviated financial statements were considered together with the omitted notes. If the option to file only the remaining financial information in Part II were adopted, should delivery of the remaining financial information suffice in the event of a request from a potential investor? Comment is solicited on whether the option to file only the remaining financial information would be useful to registrants, whether the presentation would be clear to members of the financial community obtaining and using this information, and whether such a presentation would be permitted by existing auditing standards.

In addition, comment is solicited on whether, rather than requiring full financial statements to be physically filed, in whole or in part, in Part II of the registration statement, incorporation by reference should be permitted. If the registrant had previously filed full financial statements for the same period as required in the related disclosure document, for example in a report on Form 10-K, would it be acceptable to provide this information by incorporation by reference, which is currently not permitted for any of the "long form" registration statements?

Registrants eligible to use short form registration statements providing for the incorporation by reference of previously filed documents⁵³ also could elect to use abbreviated financial statements.⁵⁴ In general, full financial statements would not be required to be filed in Part II of these forms, since these would be incorporated by reference from the registrant's periodic Exchange Act filings. Where restated financial statements of the registrant, or financial statements of businesses acquired or to be acquired, are not incorporated by reference from a previously filed report and therefore required to be included in a prospectus, abbreviated financial statements of those entities could be included in the prospectus and

delivered to investors.⁵⁵ The full financial statements would be required to be filed with the Commission in Part II of the registration statement, and delivered to investors upon request.⁵⁶

With respect to securities registered on Form S-4 or F-4, registrants and companies being acquired⁵⁷ would have the same options regarding delivery of abbreviated financial statements described above, depending on whether they furnish the Form S-1, S-2, or S-3 level of disclosure.⁵⁸ Comment is solicited on whether the use of abbreviated financial statements is appropriate in the context of a business combination. It appears that streamlining the financial information presented to investors would be particularly useful in this context, where the information for the registrant and other entities can grow quite voluminous. Comment also is solicited on whether the current requirement in Forms F-4 and S-4 that, if incorporation by reference is used, the prospectus must be sent to security holders no later than 20 business days prior to the meeting or the date on which action is to be taken should also

⁵⁵ Forms S-2, F-2, S-3, F-3, S-4 and F-4 require financial statements of the registrant to be restated if: (1) there has been a change in accounting principles or a correction of an error where such change or correction requires a material retroactive restatement of financial statements; (2) where one or more business combinations accounted for by the pooling of interests method of accounting have been consummated subsequent to the most recent fiscal year and the acquired businesses, considered in the aggregate, are significant pursuant to Rule 11-01(b) [17 CFR 210.11-01(b)]; or (3) in certain situations involving a material disposition of assets not in the ordinary course of business.

⁵⁶ With respect to Form S-2, in addition to the options currently available, a registrant not choosing to deliver its Form 10-K could elect to include abbreviated financial statements in the prospectus, or instead choose to deliver with the prospectus its latest annual report to security holders that included abbreviated financial statements. With respect to Form S-8, documents required to be delivered upon request, such as the annual report to security holders, could contain abbreviated financial statements. No financial statements are required in the prospectus or registration statement other than those incorporated by reference. Accordingly, this form would not be amended, except for a technical provision in Part II to assure that the full financial statements are incorporated by reference (proposed revision to Item 3(a) of Form S-8).

⁵⁷ See Part II.C below for further discussion of Forms S-4 and F-4.

⁵⁸ Pursuant to Item 17(b) of Form S-4, if the company being acquired is not subject to the reporting requirements of either Section 13(a) [15 U.S.C. 78m(a)] or 15(d) of the Exchange Act, or, because of Section 12(i) [15 U.S.C. 78l(i)] of the Exchange Act, has not furnished an annual report to security holders pursuant to Exchange Act Rule 14a-3 or 14c-3 for its latest fiscal year, the registrant would furnish financial statements as would have been required to be included in a Rule 14a-3 or 14c-3 annual report except that the financial statements need not be audited in certain circumstances.

⁵¹ Part I of Securities Act registration statements sets forth the information required in the prospectus.

⁵² Part II of Securities Act registration statements sets forth the information not required in the prospectus. A new Part II Item would be added to each of the forms to require filing of the full financial statements with the Commission.

⁵³ Forms S-2, S-3, F-2, and F-3.

⁵⁴ Since Form S-3 and F-3 registrants generally incorporate their financial statements into the prospectus by reference from Exchange Act reports and are not required to deliver this information, they ordinarily would not use abbreviated financial statements, but the forms would be amended so this option would be available.

apply when abbreviated financial statements are being used.⁵⁹

The proposals would apply to filings relating to roll-up transactions, whether or not involving a Form F-4 or S-4.⁶⁰ Comment is solicited on whether abbreviated financial statements should be permissible in the roll-up context. Since roll-ups are subject to a 60 day solicitation period, investors desiring full financial statements would have the opportunity to send for them and consider them before making a voting or tendering decision.

Under the proposed amendments, abbreviated financial statements could be included by eligible issuers in offering statements on Form 1-A under Regulation A and furnished to purchasers of securities offered pursuant to Regulation D. Comment is solicited on whether it is appropriate to provide issuers conducting exempt offerings pursuant to Regulation A or D with the option to distribute abbreviated financial statements to investors, and whether such issuers would find this to be a useful option.

Since, under current requirements, Regulation D issuers are required to furnish financial statement information to purchasers, but are not required to file this information with the Commission, issuers opting to furnish abbreviated financial statements to purchasers would not be required to file the full financial statements with the Commission. They would, however, have to deliver the full financial statements to requesting purchasers. Comment is solicited as to whether Regulation D issuers choosing to distribute abbreviated financial statements to purchasers should have to file the full financial statements with the Commission, and if so, the method by which they should be filed. Specific consideration should be given to whether the fact that Regulation D issuers would not have to file the full financial statements with the Commission would impair the objectives of the proposed amendments.

3. Proxy and Information Statements

Registrants could use abbreviated financial statements in proxy and information statements requiring financial statements. The full financial statements would be appended to the proxy or information statement filed with the Commission and delivered to security holders only upon request.⁶¹ It

⁵⁹ General Instruction A.2 to both Forms F-4 and S-4.

⁶⁰ Item 901(c) of Regulation S-K [17 CFR 229.901(c)].

⁶¹ This appended information would be publicly available unless the related proxy or information

would not, however, be necessary to append the information if the full financial statements for the same period had previously been filed in the registrant's Form 10-K or 10-KSB and any Forms 10-Q or 10-QSB⁶² necessary to provide interim financial disclosure. Proxy or information statements for mergers or other business combinations,⁶³ which permit incorporation by reference in a manner comparable to that in Form S-4 registration statements, could include abbreviated financial statements in the same manner as Form S-4.

4. Tender Offers and Going Private Transactions

Currently, the rules governing tender offers and going private transactions permit the delivery to investors of summary financial information, with full financial statements being filed with the Commission in the associated Schedule.⁶⁴ As proposed, abbreviated financial statements could be used for these transactions as well, whether financial statements are required in the disclosure document or included voluntarily. Comment is solicited on whether the eligibility requirements should vary depending on whether the financial statements involved are those of the bidder, the affiliate engaging in the transaction, or the subject company.

C. Eligibility to Use Abbreviated Financial Statements

As proposed, both reporting and non-reporting registrants would be permitted to include abbreviated financial statements in the specified disclosure documents delivered to investors, in lieu of full financial statements required by the applicable form, provided that two conditions are met. First, the report of the independent accountant on the full financial statements of the registrant must express an opinion that is unqualified as to scope of the audit and as to accounting principles used, and must not contain a disclaimer of opinion.⁶⁵ Second, a reporting registrant would have to be current in filing all of its Exchange Act reports at the time the abbreviated financial statements are delivered.⁶⁶ Comment is requested as to whether a further condition should be that an issuer filing reports under the Exchange Act must have timely filed all

statement was the subject of a confidential treatment request.

⁶² 17 CFR 249.308a, 249.308b.

⁶³ Item 14 of Schedule 14A.

⁶⁴ See Rules 13e-3, 13e-4, and 14d-6; Schedules 13E-3 [17 CFR 240.13e-100], 13E-4 [17 CFR 240.13e-101], and 14D-1 [17 CFR 240.14d-100].

⁶⁵ Proposed Item 305(a)(1) of Regulation S-K.

⁶⁶ Proposed Item 305(a)(2) of Regulation S-K.

required reports during the most recent 12 months, or since becoming subject to the Exchange Act, whichever is shorter.

Comment also is requested as to whether use of the proposed rule should be limited to companies that are subject to Section 13(a) or 15(d) of the Exchange Act, precluding the use of abbreviated financial statements in initial public offerings. If so, should the rule contain a reporting history requirement, e.g., 12 or 18 months? Comment also is requested as to whether other eligibility criteria should be established, such as size of the issuer or other condition. Comment is further requested on whether eligibility should be limited based on certain financial statement attributes.

In addition to financial statements of the registrant, disclosure documents may be required to include financial statements of other entities, such as a business acquired or to be acquired, 50 percent or less owned entity accounted for by the equity method, or guarantor.⁶⁷ The proposed rules would base eligibility for the use of abbreviated financial statements of such entities on a combination of: (1) the registrant's eligibility, i.e., the registrant would have to have filed with its full financial statements an acceptable independent accountant's report and be current in its filing of Exchange Act reports;⁶⁸ and (2) the acceptability of the independent accountant's report on the other entity's full financial statements.⁶⁹ Whether the other entity had filed all required Exchange Act reports would not affect the registrant's ability to include abbreviated financial statements of that entity. The same criteria would apply to the use of abbreviated financial statements of the company being acquired in a registration statement on Form S-4 or F-4 or a merger proxy or information statement.

Comment is requested as to whether this eligibility standard is appropriate regarding financial statements of a company other than the registrant. Comment also is requested concerning

⁶⁷ Rules 3-05, 3-09 and 3-10 of Regulation S-X [17 CFR 210.3-05, 3-09 and 3-10] and Item 310(c) of Regulation S-B [17 CFR 228.310(c)] require the financial statements of a business acquired or to be acquired, 50 percent or less owned entity accounted for by the equity method, or guarantor to be included in registrants' disclosure documents in certain circumstances.

⁶⁸ Proposed Item 305(a) of Regulation S-K.

⁶⁹ Proposed Item 305(d) of Regulation S-K. Financial statements of other entities may be included in Commission filings in certain circumstances other than those specified by Rules 3-05, 3-09 and 3-10 of Regulation S-X. The proposed rules also would permit the use of abbreviated financial statements of those entities, provided that all conditions for their use are otherwise met.

whether the ability of a registrant to include abbreviated financial statements of a third party should be based solely on the registrant's eligibility, or whether different or additional eligibility criteria should be established. For example, should a Form S-4 registrant be permitted to include abbreviated financial statements of a target company if the target company has an acceptable independent accountant's report on its full financial statements but the registrant does not satisfy the abbreviated financial statement eligibility criteria?

Investment companies registered under the Investment Company Act of 1940,⁷⁰ and business development companies, a type of investment company with securities registered under Section 12 of the Exchange Act, would not be eligible to use abbreviated financial statements. The Commission does not believe that it is necessary to extend the proposed amendments to these types of companies because they generally have fewer note disclosures. As proposed, the amendments would allow insurance companies that are the issuers of variable life insurance contracts and register on Form S-6 under the Securities Act to provide abbreviated financial statements in the prospectus for these types of securities. Insurance companies that issue variable annuity contracts and register on Forms N-3⁷¹ or N-4⁷² would continue to be required to provide their full financial statements, which currently are made available to investors only upon request in a Statement of Additional Information. The Commission requests comment on whether insurance companies should be permitted to use abbreviated financial statements in connection with the sale of variable annuity contracts.

D. Foreign Issuers

Pursuant to the proposed amendments, foreign issuers that meet the eligibility requirements would be able to elect to include abbreviated financial statements in delivered disclosure documents. This would include Canadian issuers using the multijurisdictional disclosure system ("MJDS").⁷³ As is currently the case

with full financial statements of foreign issuers, the informational content of the abbreviated financial statements of foreign issuers would have to be substantially similar to the abbreviated financial statements of domestic issuers⁷⁴ and would be provided for the periods specified by Rule 3-19 of Regulation S-X.⁷⁵

As with full financial statements of foreign issuers, the abbreviated financial statements could be prepared either on the basis of U.S. GAAP or on a comprehensive body of accounting principles other than U.S. GAAP.⁷⁶ If the abbreviated financial statements were prepared on a basis other than U.S. GAAP, the required note disclosures would include the same matters as those required in the abbreviated financial statements of domestic issuers, and an additional note containing the quantitative reconciling information required by Item 17(c) or Item 18(c), as applicable, of Form 20-F also would be provided. However, a foreign issuer that follows Item 17 of Form 20-F in preparing its full financial statements would omit from the notes to the abbreviated financial statements any disclosures that are not required by Item 17, even if those disclosures otherwise would be required by proposed Item 305. Comment is solicited as to whether a more abbreviated or otherwise different reconciliation should be required.

E. Use of Abbreviated Financial Statements to be at Registrant's Option

Under the proposed amendments, a registrant would have the option whether or not to include abbreviated financial statements each time it prepared one of the specified disclosure documents for delivery to investors, provided that the registrant met the eligibility criteria for using abbreviated statements described above. For example, a registrant could elect to include abbreviated financial statements in its annual report to shareholders delivered to investors, but decide to include full financial statements in a Securities Act prospectus delivered a few months later, or vice versa. The registrant also might choose to include abbreviated financial statements relating to its existing business in a proxy statement and full financial statements relating to an acquired business in the same proxy statement, or vice versa.

However, with respect to a particular disclosure document, for purposes of

comparability and consistency, the proposed rules would require the interim financial statements of a particular entity to be presented in the same manner as the annual financial statements of that entity. For example, if a prospectus included abbreviated annual financial statements of the registrant, the interim financial statements of the registrant included in the same prospectus also would have to be abbreviated.⁷⁷

Comment is solicited as to whether registrants should be able to include abbreviated financial statements in some of the specified delivery documents and not others, or whether they should be required to make an election and consistently include abbreviated or full financial statements in their delivery documents. Comment also is solicited as to whether interim financial statements of a particular entity should be presented in the same manner as the entity's annual financial statements. Additional comment is requested on whether it would be appropriate for a registrant to select one option with respect to its own financial statements and a different one regarding the financial statements of another entity whose financial statements are required in the disclosure document.

F. Report of the Independent Accountant on the Abbreviated Financial Statements

Proposed Item 305 would require the abbreviated financial statements delivered to investors to be accompanied by a report of the independent accountant. The rule would specify that the report must contain: (1) a statement that the abbreviated financial statements were examined in connection with an audit of the registrant or other entity's full financial statements; (2) a complete description of the opinion rendered by the independent accountant on the full financial statements, including any explanatory language included in the report on the full financial statements;

⁷⁷ Proposed Item 305(b)(5)(i) of Regulation S-K. While interim financial statements prepared under existing rules (Article 10 of Regulation S-X) omit substantially all footnote disclosures required under GAAP, disclosures required to be included under Article 10 differ in certain respects from those proposed for annual abbreviated financial statements. For example, Article 10 calls for disclosure of material changes in the status of long-term contracts, while Item 305(b)(3) does not. If issuers were not required to conform the basis of presentation of annual and interim financial statements, certain matters required to be disclosed in interim financial statements would be included in a disclosure document that would not have been disclosed in the abbreviated annual financial statements, had the matter occurred during the most recently completed fiscal year.

⁷⁰ 15 U.S.C. 80a-1, *et seq.*

⁷¹ 17 CFR 274.11b.

⁷² 17 CFR 274.11c.

⁷³ In order to provide Canadian issuers using the MJDS with the same flexibility to deliver disclosure documents with abbreviated financial statements as all other issuers, the Commission proposes to amend the MJDS registration forms to permit eligible Canadian issuers to include abbreviated financial statements in MJDS disclosure documents delivered to U.S. investors, notwithstanding the Canadian requirements that would otherwise apply.

⁷⁴ See Items 17 and 18 of Form 20-F.

⁷⁵ 17 CFR 210.3-19. Proposed Item 305(f)(2) of Regulation S-K.

⁷⁶ Proposed Item 305(f)(1) of Regulation S-K.

and (3) a statement of the independent accountant's opinion that the content of the abbreviated financial statements complies with Item 305.⁷⁸ It is contemplated that an independent accountant's report satisfying the requirements of proposed Item 305 would fall within the auditing guidance contained in SAS No. 62,⁷⁹ which governs reporting on financial statements prepared on a basis of accounting prescribed in a regulatory provision that results in an incomplete presentation but one that is otherwise in conformity with GAAP. Comment is solicited as to whether a report in the form prescribed by proposed Item 305 is appropriate and sufficient, or whether additional or different statements or explanations would be desirable. Also, comment is requested as to whether auditing guidance other than SAS No. 62 would be applicable to a report on abbreviated financial statements, or whether the reporting objectives under the proposed rule would require the accounting profession to develop new guidance governing the form of such report and procedures necessary to its issuance.

G. Abbreviated Interim Financial Statements

Proposed Item 305 also would state that, like full financial statements, abbreviated financial statements required with respect to an interim period should be prepared in conformity with GAAP and Regulation S-X,⁸⁰ except that note disclosures to the abbreviated interim financial statements would be limited only to any of the thirteen items set forth above not previously disclosed in the abbreviated annual financial statements. As currently required in interim financial statements, loss contingencies would have to be disclosed even though a significant change since year end may not have occurred.⁸¹

H. Delivery of Full Financial Statements to Requesting Investors

Registrants choosing to include abbreviated financial statements in disclosure documents delivered to investors would have to furnish the full audited financial statements and the independent accountant's report thereon to any person making a written or oral request, at no cost to the person making the request.⁸² Comment is solicited on whether registrants should

be permitted to send only the remaining financial information rather than the complete full financial statements. Which format would be more useful to investors? Comment also is solicited on whether a means should be provided that would enable security holders who receive abbreviated financial statements in an annual report and request delivery of the full financial information also to indicate that they would like to receive automatically full financial information or the entire Form 10-K or 10-KSB in future years.

As proposed, if Form 10-K (and/or Form 10-Q) financial statements were delivered to investors in compliance with the delivery requirement, registrants could deliver only the portion of those reports that contain the financial statements.⁸³ The delivered information would have to be for the same periods covered by the abbreviated financial statements.⁸⁴

A statement setting forth the registrant's obligation to furnish the full financial statements and the name, address and telephone number of the person designated by the registrant to receive requests would have to be included in the disclosure document.⁸⁵

The registrant would be required to deliver the requested information by a means reasonably calculated to result in the information reaching the requesting investor within five business days from the date the request is received. Comment is solicited as to whether a delivery period should be specified in the rule, and if so, whether the proposed time period is appropriate, both from an investor's and registrant's perspective, or should it be shorter or longer. Should the rule simply require prompt delivery, with promptness being determined according to the context? Comment also is solicited as to whether the delivery period should be shorter than five business days when the abbreviated financial statements are delivered to investors in connection with certain types of transactions, e.g., mergers and exchange offers, where the investor does not initiate the transaction, has no control over the timing of the transaction, and will be affected financially by the transaction even if the investor does not act. Commenters also should address whether the delivery

period should be longer when the requested delivery is not in connection with any specific transaction.

Further comment is solicited on whether the rule should specify the appropriate means of delivery, and, if so, the means that should be specified. Finally, comment is requested as to whether availability of the full financial statements by public filing at the Commission, and from the registrant upon investor request, is sufficiently practical, timely and effective for meeting investor requirements.

I. Safe Harbor Provisions

The Commission recognizes that the utility of the abbreviated financial statement proposal will depend on companies' perception of their vulnerability to liability for the omission of certain financial statement notes pursuant to the provisions of proposed Item 305.⁸⁶ The proposed rules, therefore, include a safe harbor provision stating that disclosure contained in disclosure documents will not be materially misleading or omit to state a material fact on the basis of the exclusion from the abbreviated financial statements of the information permitted to be excluded from the financial statement notes pursuant to proposed Item 305. The safe harbor would cover cases where, for example, an investor claimed that the information included in the abbreviated financial statements in the delivered document failed to include information that was in the full financial statements included in the filed document. Comment is requested as to both the efficacy of the proposed safe harbor provisions and their appropriateness.

As discussed above in Part II.A, proposed Item 305 would not provide for inclusion of note disclosures regarding matters other than those specified by the Item,⁸⁷ although comment is solicited on whether registrants should be permitted to add discretionary note disclosures. As proposed, the safe harbor would not be available to issuers that included additional notes. Commenters are asked to address whether the protection of the safe harbor provisions should be available to registrants who add

⁸³ *Id.*

⁸⁴ *Id.*

⁸⁵ With respect to delivery of annual reports or proxy or information statements that include abbreviated financial statements, in addition to setting forth this statement, registrants would continue to be required to provide the Rule 14a-3(b)(10) [17 CFR 240.14a-3(b)(10)] undertaking to provide persons from whom proxy authority is solicited with a Form 10-K or 10-KSB upon written request.

⁸⁶ Safe harbors with respect to the omission of notes from abbreviated financial statements would be provided in proposed Securities Act Rule 435 and Exchange Act Rules 13e-3, 13e-4, 14a-16, 14c-8 and 14d-1. These rules also would provide that the omitted information is deemed part of the disclosure document.

⁸⁷ This would not preclude the registrant from discussing such information in the delivered disclosure document, but only cause that discussion to be set forth outside of the abbreviated financial statements.

⁷⁸ Proposed Item 305(b)(4) of Regulation S-K.

⁷⁹ *Special Reports*.

⁸⁰ Article 10 of Regulation S-X specifies the content of interim financial statements.

⁸¹ Proposed Item 305(b)(5)(ii) of Regulation S-K.

⁸² Proposed Item 305(e) of Regulation S-K.

discretionary note disclosures, and if so, should the protection extend only to the note disclosures specified by Item 305, or to the voluntarily included notes as well?

III. Request for Comment

Any interested person wishing to submit written comments on the proposed amendments that would permit abbreviated financial statements to be included in disclosure documents, as well as other matters that might have an impact on the proposed amendments, is requested to do so. Comment is solicited from the point of view of investors, registrants, accountants and financial analysts. Comment is specifically requested on the extent to which the information currently contained in notes to the financial statements is used by investors to conduct a thorough analysis of a registrant's financial condition and future prospects. The Commission also requests comment on whether the proposed rules, if adopted, would have an adverse impact on competition that is neither necessary nor appropriate in furthering the purposes of the Exchange Act. Comments responsive to this inquiry will be considered by the Commission in complying with its responsibilities under Section 23(a) of the Exchange Act.⁸⁸

IV. Cost-Benefit Analysis

To evaluate fully the costs and benefits associated with the proposals, the Commission requests commenters to provide views and empirical data as to the costs and benefits associated therewith. The proposals are expected to benefit registrants by allowing more flexibility in accounting and lowering costs associated with printing and mandated across the board delivery of information that may be used directly only by a portion of investors. Full financial statements of these entities will continue to be required in Commission filings. Furthermore, the proposals are expected to make financial statement note disclosures more useful and meaningful to the individual investor.

V. Summary of Initial Regulatory Flexibility Analysis

An Initial Regulatory Flexibility Analysis has been prepared in accordance with 5 U.S.C. 603 concerning the proposed amendments. The analysis notes that the proposed amendments are intended to respond to concerns regarding the increasing volume and complexity of financial

information that is included in prospectuses and other documents delivered to investors. The proposed amendments are intended to make the financial information presented to investors more readable and understandable by streamlining the note disclosure and focusing on matters of particular significance to investors.

As discussed more fully in the analysis, some of the registrants that the proposed amendments would affect are small entities, as defined by the Commission's rules. The proposed amendments would decrease the cost for all issuers choosing to rely on them, including small businesses.

The analysis discusses several possible alternatives to the proposed amendments including, among others, establishing different compliance or reporting requirements for small entities or exempting them from all or part of the proposed requirements. Given the fact that small business issuers would receive a favorable impact from the proposed rules and that use of the proposed rules would be at the issuer's option, the Commission does not believe that any of the alternatives are preferable at this time.

Comments are encouraged on any aspect of this analysis. A copy of the analysis may be obtained by contacting William B. Haseltine, Office of Disclosure Policy, Division of Corporation Finance, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549.

VI. Statutory Basis

The amendments to Forms 1-A, S-1, S-2, S-3, S-4, S-6, S-8, S-11, SB-1, SB-2, F-1, F-2, F-3, F-4, F-7, F-8, F-9, F-10 and F-80 and new Rule 435 are being proposed pursuant to Sections 6, 7, 10 and 19(a) of the Securities Act. The amendments to Rules 13e-3, 13e-4, 14a-3, 14c-3, 14d-1 and 14d-6, Schedules 13E-4F, 14A, 14C, 14D-1F and 14D-9F and Forms 10-K and 10-KSB and new Rules 14a-16 and 14c-8 are being proposed pursuant to Sections 12, 13, 14 and 23(a) of the Exchange Act.

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

Accountants, Accounting, Reporting and recordkeeping requirements, and Securities.

Text of the Proposals

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

PART 228—INTEGRATED DISCLOSURE SYSTEM FOR SMALL BUSINESS ISSUERS

1. The authority citation for part 228 continues to read as follows:

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

2. By amending Part 228 by adding § 228.305 to read as follows:

§ 228.305 (Item 305) Abbreviated financial statements.

Note: The term *full financial statements* as used throughout this Item refers to financial statements filed with the Commission meeting the requirements of Item 310 of Regulation S-B (§ 228.310).

(a) *Eligibility.* A small business issuer, other than an investment company registered under the Investment Company Act of 1940 [15 U.S.C. 80a-1 *et seq.*] or a business development company under that Act, that meets the following conditions may furnish abbreviated financial statements in a document to be furnished to investors or security holders, as permitted by the Form or Schedule governing the requirements of that document:

(1) The small business issuer has filed with its full financial statements an independent accountant's report that complies with the requirements of Article 2 of Regulation S-X (17 CFR 210.2) and does not contain a qualification as to scope of audit, or as to accounting principles used, or a disclaimer of opinion. However, if the full financial statements of the small business issuer filed with the Commission are not required to be audited, neither this condition nor the requirement to provide an independent accountant's report pursuant to paragraph (b)(4) of this Item shall apply; and

(2) If the small business issuer is a reporting company, all reports due must have been filed.

(b) *Information to be included in abbreviated financial statements.* Abbreviated financial statements shall include the following information:

(1) A balance sheet as of the end of the most recent fiscal year and statements of income and cash flows for each of the two most recent fiscal years prepared in conformity with accounting principles generally accepted in the United States ("U.S. GAAP"), except that note disclosures specified by U.S. GAAP shall not be included unless specified in paragraph (b)(3) of this Item. The face of the financial statements shall include a prominent

⁸⁸ 15 U.S.C. 78w(a).

statement identifying them as "abbreviated financial statements."

(2) A statement of changes in stockholders' equity prepared in conformity with Item 310(a) of Regulation S-B (§ 228.310(a)) for each of the two most recent fiscal years.

(3) *Notes to the financial statements.* The disclosures required in the notes to the abbreviated financial statements shall be an extraction of all note disclosures included in the small business issuer's full financial statements that are responsive to the matters specified in paragraphs (b)(3)(ii) through (b)(3)(xiii) of this Item. To facilitate the extraction of all disclosures responsive to the specified matters, the primary authoritative pronouncements concerning the specified matters are identified in paragraphs (b)(3)(ii) through (b)(3)(xiii) of this Item. The term "related pronouncements" as used in paragraphs (b)(3)(ii) through (b)(3)(xiii) of this Item refers to pronouncements constituting U.S. GAAP as defined in Statement of Auditing Standards ("SAS") No. 69 that requires disclosure regarding the matter specified for disclosure in the abbreviated financial statements. The notes shall disclose the following:

(i) *Basis of presentation.* The small business issuer shall state that the abbreviated financial statements have been prepared using U.S. GAAP for measurement and classification. The registrant also shall state that substantially all note disclosures necessary for a fair presentation under U.S. GAAP have been omitted, and that the note disclosures are limited to those matters specified by Commission rules for inclusion in abbreviated financial statements. Additionally, the small business issuer shall state that the note disclosures comply with Commission rules for presentation of abbreviated financial statements. A reference to the complete disclosures in the full financial statements shall be provided.

(ii) *Accounting policies.* The small business issuer shall provide a description of all significant accounting policies used in the preparation of the financial statements. Disclosure of accounting policies shall identify and describe the accounting principles followed by the reporting entity and the methods of applying those principles that materially affect the determination of financial position, cash flows or results of operations, as specified by Accounting Principles Board ("APB") Opinion No. 22 and related pronouncements.

(iii) *Changes in accounting principle.* The small business issuer shall disclose the nature of, and justification for, a

change in accounting principle, and the effects of the change, as specified by APB Opinion No. 20 and related pronouncements.

(iv) *Restatements and reclassifications.* The small business issuer shall disclose the following matters:

(A) The nature and effects of a correction of an error in previously issued financial statements, as specified by APB Opinion No. 20 and related pronouncements.

(B) The nature and reasons for a change in the reporting entity, and effects of the change, as specified by APB Opinion No. 20 and related pronouncements. Combinations of entities under common control and similar reorganizations described in APB Opinion No. 16 and related pronouncements shall be considered changes in the reporting entity for purposes of this item.

(C) The nature and effects of reclassifications materially affecting amounts reported in previously issued financial statements.

(v) *Changes in accounting estimate.* The small business issuer shall disclose the nature and effects of a change in accounting estimate, as specified by APB Opinion No. 20 and related pronouncements.

(vi) *Business combinations.* The small business issuer shall disclose the following with respect to business combinations:

(A) The nature of business combinations accounted for as a pooling of interests and the disclosures of the effects of the business combinations, as specified by APB Opinion No. 16 and related pronouncements.

(B) The nature of business combinations accounted for as a purchase and the disclosures specified by APB Opinion No. 16 and related pronouncements.

(vii) *Discontinued operations.* The small business issuer shall disclose the nature of discontinued operations and provide the quantitative disclosures of the effects of the discontinued operations, as specified by APB Opinion No. 30 and related pronouncements.

(viii) *Circumstances identified in explanatory language added to the independent accountant's standard report.* The small business issuer shall disclose the nature and effects of circumstances for which the independent accountant's report on the full financial statements includes explanatory language. These circumstances are identified in paragraph 11 of SAS No. 58. The notes shall include all disclosures regarding the matter considered necessary by the

independent accountant in rendering an opinion on the full financial statements unqualified as to adequacy of disclosure. However, disclosure need not be provided where the explanatory language merely reports that the independent accountant's opinion is based in part on the work of another independent accountant. Disclosure shall be provided for explanatory paragraphs that emphasize a matter regarding the financial statements.

(ix) *Loss contingencies.* The small business issuer shall disclose the nature of loss contingencies and estimated amount or range of reasonably possible loss in excess of amounts accrued in the financial statements, as specified by Statement of Financial Accounting Standards ("SFAS") No. 5 and related pronouncements. A statement that the amount or range of probable or reasonably possible loss cannot be reasonably estimated shall be included if applicable.

(x) *Events of default under credit agreements.* The small business issuer shall disclose the facts and amounts concerning any default in principal, interest, sinking fund, or redemption provisions with respect to any material issue of securities or credit agreements, or any breach of covenant of a related indenture or agreement, which default or breach existed at the date of the most recent balance sheet being filed and which has not been subsequently cured. If a default or breach exists but acceleration of the obligation has been waived for a stated period of time beyond the date of the most recent balance sheet being filed, the small business issuer shall state the amount of the obligation and the period of the waiver.

(xi) *Related party transactions.* The small business issuer shall disclose the nature of related party relationships, and a description of transactions, amounts and balances as specified by SFAS No. 57 and related pronouncements.

(xii) *Bankruptcies and quasi-reorganizations.* (A) *Bankruptcies.* Small business issuers entering into, operating under, or emerging from proceedings under the federal bankruptcy code during the most recent fiscal year shall provide all of the disclosures required by AICPA Statement of Position No. 90-7.

(B) *Quasi-reorganizations.* Small business issuers effecting a quasi-reorganization during the most recent fiscal year shall disclose the nature and effects of the quasi-reorganization.

(xiii) *Subsequent events.* The small business issuer shall disclose all events occurring subsequent to the date of the

most recent balance sheet for which disclosure was required in the full financial statements.

(4) *An independent accountant's report.* The report shall state that the abbreviated annual financial statements have been examined in connection with the audit of the full financial statements. The report shall state clearly the opinion of the independent accountant that the abbreviated financial statements comply with the requirements in paragraph (b) of this Item for presentation of abbreviated financial statements. The report shall describe the opinion rendered by the independent accountant on the full financial statements, including any explanatory language.

(5) *Abbreviated interim financial statements.* (i) Where interim financial statements of the registrant are required in a document that includes abbreviated annual financial statements of the registrant, those interim financial statements shall be abbreviated. Where interim financial statements of the registrant are required in a document that includes full annual financial statements of the registrant, those interim financial statements shall not be abbreviated.

(ii) Abbreviated interim financial statements shall be furnished for the same periods as prescribed by Item 310(b) of Regulation S-B (§ 228.310(b)). The abbreviated interim financial statements shall be prepared in conformity with generally accepted accounting principles, except that note disclosures required by generally accepted accounting principles shall not be included unless specified in paragraph (b)(3) of this Item. However, disclosures that would substantially duplicate the disclosure contained in the most recent annual abbreviated financial statements may be omitted, except that contingencies shall be disclosed pursuant to paragraph (b)(3)(ix) of this Item even though a significant change since year end may not have occurred. The abbreviated interim financial statements shall comply with all requirements of Item 310(b) of Regulation S-B governing classification of items on the face of the balance sheet, statement of income, and statement of cash flows.

(c) *Age of abbreviated financial statements at effective date of registration statement or mailing date of proxy statement.* Small business issuers shall update the abbreviated financial statements to cover the same periods as required pursuant to Item 310(g) of Regulation S-B (§ 228.310(g)).

(d) *Abbreviated financial statements of entities other than the registrant.* In

those instances where full financial statements of businesses acquired or to be acquired are required by Item 310(c) of Regulation S-B (§ 228.310(c)), or full financial statements of other entities are required to be included in a small business issuer's filing with the Commission on a form that permits the abbreviation of financial statements, abbreviated financial statements may be furnished for those entities provided that the small business issuer meets the conditions in paragraph (a) of this Item and those entities meet the condition in paragraph (a)(1) of this Item.

Abbreviated financial statements of businesses acquired or to be acquired shall be prepared in accordance with this Item for the respective periods specified by Item 310(c) of Regulation S-B. Where abbreviated financial statements of entities other than the small business issuer are furnished, full financial statements shall also be filed with the Commission as provided in the respective form requirements.

(e) *Delivery of full financial statements to requesting investors.* Small business issuers including abbreviated financial statements in disclosure documents shall deliver without charge to each person to whom the document is furnished, upon the written or oral request of such person and by a means reasonably calculated to result in the information reaching the requesting person within five business days from the date of the request, a copy of the small business issuer's full financial statements and the independent accountant's report thereon filed with the Commission for the same periods covered by the abbreviated financial statements. The small business issuer shall include a statement in bold face or otherwise reasonably prominent type in the disclosure document that the small business issuer will provide a copy of its full financial statements and the independent accountant's report thereon without charge to each person to whom the document is furnished, upon the written or oral request by such person, and shall state the name, address, and telephone number of the person (including title and department) to whom the request for full financial statements should be directed. If Form 10-KSB (17 CFR 249.310b) and/or Form 10-QSB (17 CFR 249.308b) financial statements are permitted to be furnished to requesting persons in satisfaction of the delivery requirement, only the portion of those reports containing the financial statements, and the independent accountant's report thereon, need be delivered.

(f) *Special provisions as to abbreviated financial statements for foreign private issuers.* (1) The abbreviated financial statements may be prepared according to U.S. GAAP, except that note disclosures shall be limited to those specified in paragraph (b)(3) of this item. Alternatively, such abbreviated financial statements may be prepared according to a comprehensive body of accounting principles other than U.S. GAAP. Where the abbreviated financial statements are prepared according to a comprehensive body of accounting principles other than U.S. GAAP, the disclosures specified by Item 18(c) of Form 20-F (17 CFR 249.220f) shall be furnished, except that note disclosures shall be limited to those specified in paragraph (b)(3) of this item. However, foreign private issuers that comply with Item 17 of Form 20-F rather than Item 18 may furnish the disclosure specified by Item 17(c) in the notes to the abbreviated financial statements. Where Item 17(c) permits the omission of a disclosure from the notes to the full financial statements, that disclosure shall not be included in the notes to the abbreviated financial statements even if specified for disclosure by paragraph (b)(3) of this Item.

(2) Abbreviated financial statements shall be provided for the periods specified by Rule 3-19 of Regulation S-X.

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

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

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

* * * * *

4. By amending Part 229 by adding § 229.305 to read as follows:

§ 229.305 (Item 305) Abbreviated financial statements.

Note: The term *full financial statements* as used throughout this Item refers to financial statements filed with the Commission meeting the requirements of Regulation S-X (17 CFR part 210).

(a) *Eligibility.* A registrant, other than an investment company registered under the Investment Company Act of 1940 [15 U.S.C. 80a-1 *et seq.*], or a business development company under

that Act, that meets the following conditions may furnish abbreviated financial statements in a document to be furnished to investors or security holders, as permitted by the Form or Schedule governing the requirements of that document:

(1) The registrant has filed with its full financial statements an independent accountant's report that complies with the requirements of Article 2 of Regulation S-X (17 CFR 210.2) and does not contain a qualification as to scope of audit or as to accounting principles used, or a disclaimer of opinion.

However, if the full financial statements of the registrant filed with the Commission are not required to be audited, neither this condition nor the requirement to provide an independent accountant's report pursuant to paragraph (b)(4) of this Item shall apply; and

(2) If the registrant is subject to the requirement to file reports pursuant to Section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(a) or 78o(d)), it has filed all reports and other materials required to be filed by such requirements.

(b) *Information to be included in abbreviated financial statements.* Abbreviated financial statements shall include the following information:

(1) Balance sheets as of the end of each of the two most recent fiscal years and statements of income and cash flows for each of the three most recent fiscal years prepared in conformity with accounting principles generally accepted in the United States ("U.S. GAAP") and Regulation S-X (17 CFR 210), except that note disclosures specified by U.S. GAAP and Articles 4, 5, 7, and 9 of Regulation S-X (17 CFR 210.4, 210.5, 210.7 and 210.9) shall not be included unless specified in paragraph (b)(3) of this Item. The abbreviated annual financial statements shall comply with all requirements of Regulation S-X governing classification of items on the face of the balance sheet, statement of income, and statement of cash flows, and shall include all disclosures required by Regulation S-X to be included on the face of the balance sheet, statement of income, and statement of cash flows. The face of the financial statements shall include a prominent statement identifying them as "abbreviated financial statements."

(2) A statement of changes in stockholders' equity prepared in conformity with Rule 3-04 of Regulation S-X (17 CFR 210.3-04) for each of the registrant's three most recent fiscal years.

(3) *Notes to the financial statements.* The disclosures required in the notes to

the abbreviated financial statements shall be an extraction of all note disclosures included in the registrant's full financial statements that are responsive to the matters specified in paragraphs (b)(3)(ii) through (b)(3)(xiii) of this Item. To facilitate the extraction of all disclosures responsive to the specified matters, the primary authoritative pronouncements concerning the specified matters are identified in paragraphs (b)(3)(ii) through (b)(3)(xiii) of this Item. The term "related pronouncements" as used in paragraphs (b)(3)(ii) through (b)(3)(xiii) of this Item refers to pronouncements constituting U.S. GAAP as defined in Statement of Auditing Standards ("SAS") No. 69 that require disclosure regarding the matter specified for disclosure in the abbreviated financial statements. The notes shall disclose the following:

(i) *Basis of presentation.* The registrant shall state that the abbreviated financial statements have been prepared using U.S. GAAP for measurement and classification. The registrant also shall state that substantially all note disclosures necessary for a fair presentation under U.S. GAAP and Regulation S-X (17 CFR 210) have been omitted, and that the note disclosures are limited to those specified by Commission rules for inclusion in abbreviated financial statements. Additionally, the registrant shall state that the note disclosures comply with Commission rules for presentation of abbreviated financial statements. A reference to the complete disclosures in the full financial statements shall be provided.

(ii) *Accounting policies.* The registrant shall provide a description of all significant accounting policies used in the preparation of the financial statements. Disclosure of accounting policies shall identify and describe the accounting principles followed by the reporting entity and the methods of applying those principles that materially affect the determination of financial position, cash flows or results of operations, as specified by Accounting Principles Board ("APB") Opinion No. 22 and related pronouncements.

(iii) *Changes in accounting principle.* The registrant shall disclose the nature of, and justification for, a change in accounting principle, and the effects of the change, as specified by APB Opinion No. 20 and related pronouncements.

(iv) *Restatements and reclassifications.* The registrant shall disclose the following matters:

(A) The nature and effects of a correction of an error in previously issued financial statements, as specified by APB Opinion No. 20 and related pronouncements.

(B) The nature and reasons for a change in the reporting entity, and effects of the change, as specified by APB Opinion No. 20 and related pronouncements. Combinations of entities under common control and similar reorganizations described in APB Opinion No. 16 and related pronouncements shall be considered changes in the reporting entity for purposes of this Item.

(C) The nature and effects of reclassifications materially affecting amounts reported in previously issued financial statements.

(v) *Changes in accounting estimate.* The registrant shall disclose the nature and effects of a change in accounting estimate, as specified by APB Opinion No. 20 and related pronouncements.

(vi) *Business combinations.* The registrant shall disclose the following with respect to business combinations:

(A) The nature of business combinations accounted for as a pooling of interests and the disclosures of the effects of the business combinations, as specified by APB Opinion No. 16 and related pronouncements.

(B) The nature of business combinations accounted for as a purchase and the disclosures specified by APB Opinion No. 16 and related pronouncements.

(vii) *Discontinued operations.* The registrant shall disclose the nature of discontinued operations and provide the quantitative disclosures of the effects of the discontinued operations, as specified by APB Opinion No. 30 and related pronouncements.

(viii) *Circumstances identified in explanatory language added to the independent accountant's standard report.* The registrant shall disclose the nature and effects of circumstances for which the independent accountant's report on the full financial statements includes explanatory language. These circumstances are identified in paragraph 11 of SAS No. 58. The notes shall include all disclosures regarding the matter considered necessary by the independent accountant in rendering an opinion on the full financial statements unqualified as to adequacy of disclosure. However, disclosure need not be provided where the explanatory language merely reports that the independent accountant's opinion is based in part on the work of another independent accountant. Disclosure shall be provided for explanatory

paragraphs that emphasize a matter regarding the financial statements.

(ix) *Loss contingencies.* The registrant shall disclose the nature of loss contingencies and estimated amount or range of reasonably possible loss in excess of amounts accrued in the financial statements, as specified by Statement of Financial Accounting Standards ("SFAS") No. 5 and related pronouncements. A statement that the amount or range of probable or reasonably possible loss cannot be reasonably estimated should be included if applicable.

(x) *Events of default under credit agreements.* The registrant shall disclose the facts and amounts concerning any default in principal, interest, sinking fund, or redemption provisions with respect to any material issue of securities or credit agreements, or any breach of covenant of a related indenture or agreement, which default or breach existed at the date of the most recent balance sheet being filed and which has not been subsequently cured. If a default or breach exists but acceleration of the obligation has been waived for a stated period of time beyond the date of the most recent balance sheet being filed, the registrant shall state the amount of the obligation and the period of the waiver.

(xi) *Related party transactions.* The registrant shall disclose the nature of related party relationships, and a description of transactions, amounts and balances as specified by SFAS No. 57 and related pronouncements.

(xii) *Bankruptcies and quasi-reorganizations.* (A) *Bankruptcies.* Registrants entering into, operating under, or emerging from proceedings under the federal bankruptcy code during the most recent fiscal year shall provide all of the disclosures required by AICPA Statement of Position No. 90-7.

(B) *Quasi-reorganizations.* Registrants effecting a quasi-reorganization during the most recent fiscal year shall disclose the nature and effects of the quasi-reorganization.

(xiii) *Subsequent events.* The registrant shall disclose all events occurring subsequent to the date of the most recent balance sheet for which disclosure was required in the full financial statements.

(4) *An independent accountant's report.* The report shall state that the abbreviated annual financial statements have been examined in connection with the audit of the full financial statements. The report shall state clearly the opinion of the independent accountant that the abbreviated financial statements comply with the requirements in

paragraph (b) of this Item for presentation of abbreviated financial statements. The report shall describe the opinion rendered by the independent accountant on the full financial statements, including any explanatory language.

(5) *Abbreviated interim financial statements.* (i) Where interim financial statements of the registrant are required in a document that includes abbreviated annual financial statements of the registrant, those interim financial statements shall be abbreviated. Where interim financial statements of the registrant are required in a document that includes full annual financial statements of the registrant, those interim financial statements shall not be abbreviated.

(ii) Abbreviated interim financial statements shall be furnished for the same periods as prescribed by Rules 3-01 and 3-02 of Regulation S-X (17 CFR 210.3-01 and 210.3-02). The abbreviated interim financial statements shall be prepared in conformity with generally accepted accounting principles and Article 10 of Regulation S-X (17 CFR 210.10), except that note disclosures specified by generally accepted accounting principles and Regulation S-X shall not be included unless specified in paragraph (b)(3) of this Item. However, disclosures that would substantially duplicate the disclosure contained in the most recent annual abbreviated financial statements may be omitted, except that contingencies shall be disclosed pursuant to (b)(3)(ix) of this Item even though a significant change since year end may not have occurred. The abbreviated interim financial statements shall comply with all requirements of Article 10 of Regulation S-X governing classification of items on the face of the balance sheet, statement of income, and statement of cash flows.

(c) *Age of abbreviated financial statements at effective date of registration statement or at mailing date of proxy statement.* Registrants shall update the abbreviated financial statements to cover the same periods as required pursuant to Rule 3-12 of Regulation S-X (17 CFR 210.3-12).

(d) *Abbreviated financial statements of entities other than the registrant.* In those instances where full financial statements of entities other than the registrant are required by Rule 3-05, 3-09 or 3-10 of Regulation S-X (17 CFR 210.3-05, 210.3-09, or 210.3-10), or are otherwise required to be included in a registrant's filing with the Commission on a form that permits the abbreviation of financial statements, abbreviated financial statements may be furnished

for those other entities provided that the registrant meets the conditions in paragraph (a) of this Item and those other entities meet the condition in paragraph (a)(1) of this Item.

Abbreviated financial statements of entities other than the registrant shall be prepared in accordance with this Item for the respective periods specified by Rule 3-05, 3-09 or 3-10 of Regulation S-X. Where abbreviated financial statements of entities other than the registrant are furnished, full financial statements shall also be filed with the Commission as provided in the respective form requirements.

(e) *Delivery of full financial statements to requesting investors.* Registrants including abbreviated financial statements in a disclosure document shall deliver without charge to each person to whom the document is furnished, upon the written or oral request of such person and by a means reasonably calculated to result in the information reaching the requesting person within five business days from the date of the request, a copy of the full financial statements and the independent accountant's report thereon filed with the Commission for the same periods covered by the abbreviated financial statements. The registrant shall include a statement in bold face or otherwise reasonably prominent type in the disclosure document that the registrant will provide a copy of its full financial statements and the independent accountant's report thereon without charge to each person to whom the document is furnished, upon the written or oral request of such person, and shall state the name, address, and telephone number of the person (including title and department) to whom the request for full financial statements should be directed. If Form 10-K (17 CFR 249.310) and/or Form 10-Q (17 CFR 249.308a) financial statements are permitted to be furnished to requesting persons in satisfaction of the delivery requirement, only the portion of those reports containing the financial statements, and the independent accountant's report thereon, need be delivered.

(f) *Special provisions as to abbreviated financial statements for foreign private issuers.* (1) The abbreviated financial statements may be prepared according to U.S. GAAP, except that note disclosures shall be limited to those specified in paragraph (b)(3) of this Item. Alternatively, such abbreviated financial statements may be prepared according to a comprehensive body of accounting principles other than U.S. GAAP. Where the abbreviated financial statements are prepared

according to a comprehensive body of accounting principles other than U.S. GAAP, the disclosures specified by Item 18(c) of Form 20-F (17 CFR 249.220f) shall be furnished, except that note disclosures shall be limited to those specified in paragraph (b)(3) of this Item. However, foreign private issuers that comply with Item 17 of Form 20-F rather than Item 18 may furnish the disclosure specified by Item 17(c) in the notes to the abbreviated financial statements. Where Item 17(c) permits the omission of a disclosure from the notes to the full financial statements, that disclosure shall not be included in the notes to the abbreviated financial statements even if specified for disclosure by paragraph (b)(3) of this Item.

(2) Abbreviated financial statements shall be provided for the periods specified by Rule 3-19 of Regulation S-X (17 CFR 210.3-19).

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

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

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

6. By amending Part 230 by adding § 230.435 to read as follows:

§ 230.435 Abbreviated financial statements.

(a) For purposes of this section: (1) The term *full financial statements* shall mean financial statements filed with the Commission meeting the requirements of Regulation S-X (17 CFR 210), or, for small business issuers, Item 310 of Regulation S-B (§ 228.310 of this chapter).

(2) The term *abbreviated financial statements* shall mean financial statements that include the information specified in Item 305(b) of Regulation S-B (§ 228.305(b) of this chapter) or Item 305(b) of Regulation S-K (§ 229.305(b) of this chapter).

(b) A prospectus containing abbreviated financial statements shall not be deemed materially misleading or omitting material facts from the prospectus within the meaning of the federal securities laws based on the omission from the prospectus of those financial statement footnotes permitted by Item 305 of Regulation S-B (§ 228.305 of this chapter) or Item 305 of Regulation S-K (§ 229.305 of this chapter) deemed a part of the prospectus, provided the registrant has

complied with Item 305 of Regulation S-B or Item 305 of Regulation S-K. (c) The full financial statements that are omitted from a prospectus shall be deemed to be part of the prospectus.

7. By amending § 230.502 of Regulation D by adding a sentence at the end of paragraph (b)(2)(i)(B)(1) to read as follows:

§ 230.502 General conditions to be met.

(b) *Information requirements.* (2) *Type of information to be furnished.*

(i) (B) *Financial statement information.* (1) *Offerings up to \$2,000,000.*

If the issuer satisfies the eligibility criteria in Item 305(a) of Regulation S-B (§ 228.305(a) of this chapter), the issuer may provide the abbreviated financial statements required by Item 305 of Regulation S-B (§ 228.305 of this chapter) rather than the information required in Item 310 of Regulation S-B (§ 228.310 of this chapter).

PART 239—FORMS PRESCRIBED UNDER THE SECURITIES ACT OF 1933

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

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

9. By amending Form SB-1 (referenced in § 239.9) by revising Part F/S and adding Item 7 to Part II to read as follows:

Note—The text of Form SB-1 does not, and this amendment will not, appear in the Code of Federal Regulations.

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

Part F/S—Financial Information Required in Prospectus

Furnish either: (1) the full financial statements required by Item 310 of Regulation S-B (§ 228.310 of this chapter); or (2) the abbreviated financial statements required by Item 305 of Regulation S-B (§ 228.305 of this chapter). The option to furnish abbreviated financial statements is available only to registrants satisfying the eligibility criteria in Item 305(a) of Regulation S-B.

Instruction to Part F/S

Abbreviated financial statements meeting the requirements of Item 305 of Regulation S-B may be furnished with respect to businesses acquired or to be acquired, except

that the information need only be provided for the periods specified by Item 310(c) of Regulation S-B. This option is available only if the business acquired or to be acquired satisfies the eligibility criteria in Item 305(a)(1) of Regulation S-B.

Part II—Information Not Required in Prospectus

Item 7. Financial Statements

If abbreviated financial statements are furnished in the prospectus pursuant to Part F/S of this Form SB-1, furnish the full financial statements required by Item 310 of Regulation S-B and the independent accountant's report thereon.

10. By amending Form SB-2 (referenced in § 239.10) by revising Item 22 to Part I and adding Item 29 to Part II to read as follows:

Note—The text of Form SB-2 does not, and this amendment will not, appear in the Code of Federal Regulations.

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

Item 22. Financial Statements

Furnish either: (a) the full financial statements required by Item 310 of Regulation S-B (§ 228.310 of this chapter); or (b) the abbreviated financial statements required by Item 305 of Regulation S-B (§ 228.305 of this chapter). The option to furnish abbreviated financial statements is available only to registrants satisfying the eligibility criteria in Item 305(a) of Regulation S-B.

Instruction to Item 22

Abbreviated financial statements meeting the requirements of Item 305 of Regulation S-B may be furnished with respect to businesses acquired or to be acquired, except that the information need only be provided for the periods specified by Item 310(c) of Regulation S-B. This option is available only if the business acquired or to be acquired satisfies the eligibility criteria in Item 305(a)(1) of Regulation S-B.

Part II—Information Not Required in Prospectus

Item 29. Financial Statements

If abbreviated financial statements are furnished pursuant to Item 22(b), furnish the full financial statements required by Item 310 of Regulation S-B and the independent accountant's report thereon.

11. By amending Form S-1 (referenced in § 239.11) by revising Item 11(e), adding an Instruction to Item 11(e), removing the words "and Financial Statement Schedules" from the caption to Item 16, removing

paragraph (b) of Item 16, and adding Item 18 to read as follows:

Note—The text of Form S-1 does not, and this amendment will not, appear in the Code of Federal Regulations.

Form S-1

Registration Statement Under the Securities Act of 1933

* * * * *

Item 11. Information with Respect to the Registrant

* * * * *

(e) Full financial statements meeting the requirements of Regulation S-X (17 CFR Part 210) (Schedules required under Regulation S-X shall be filed pursuant to Item 18 "Financial Statements and Schedules," of this Form) as well as any financial information required by Rule 3-05 and Article 11 of Regulation S-X; or abbreviated financial statements meeting the requirements of Item 305 of Regulation S-K shall be filed, as well as any financial information required by Rule 3-05 and Article 11 of Regulation S-X. The option to furnish abbreviated financial statements is available only to registrants satisfying the eligibility criteria in Item 305(a) of Regulation S-K (§ 229.305(a) of this chapter).

Instruction to Item 11(e)

Abbreviated financial statements meeting the requirements of Item 305 of Regulation S-K may be furnished with respect to businesses acquired or to be acquired, except that the information need only be provided for the periods specified by Rule 3-05 of Regulation S-X (§ 210.3-05 of this chapter). This option is available only if the business acquired or to be acquired satisfies the eligibility criteria in Item 305(a)(1) of Regulation S-K.

* * * * *

Part II—Information Not Required in Prospectus

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Item 18. Financial Statements and Schedules

(a) If abbreviated financial statements are furnished pursuant to Item 11(e) of this Form, furnish the full financial statements required by Regulation S-X and the independent accountant's report thereon.

(b) Regardless of whether full or abbreviated financial statements are furnished pursuant to Item 11(e) of this Form, furnish the financial statement schedules required by Regulation S-X. These schedules shall be lettered or numbered in the manner described for exhibits in Item 601 of Regulation S-K (§ 229.601 of this chapter).

* * * * *

12. By amending Form S-2 (referenced in § 239.12) by revising the last sentence in General Instruction II.C, adding paragraph (iv) to Item 11(a)(2), adding a sentence at the end of Item 11(a)(3), adding paragraphs (A), (B), and (C) to Item 11(b)(2), adding instructions to Item 11(a)(2), (a)(3), and Item 11(b)(2), and adding Item 18 to read as follows:

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

Form S-2

Registration Statement under the Securities Act of 1933

* * * * *

General Instructions

* * * * *

II. Application of General Rules and Regulations

* * * * *

C. * * * If, however, the small business issuer satisfies the eligibility criteria in Item 305(a) of Regulation S-B (§ 228.305(a) of this chapter), the small business issuer may provide the abbreviated financial statements required by Item 305 of Regulation S-B rather than the financial information in Item 310 of Regulation S-B (§ 228.310 of this chapter).

* * * * *

Item 11. Information with Respect to the Registrant

(a) * * *

(2) * * *

(iv) If the registrant satisfies the eligibility criteria in Item 305(a) of Regulation S-K, abbreviated interim financial statements of the registrant meeting the requirements of Item 305(b)(5) of Regulation S-K may be furnished pursuant to paragraphs (a)(2)(i) or (a)(2)(iii) of this Item.

(3) * * * Abbreviated financial statements meeting the requirements of Item 305 of Regulation S-K may be furnished with respect to businesses acquired or to be acquired, except that the information need only be provided for the periods specified by Rule 3-05 of Regulation S-X (§ 210.3-05 of this chapter). This option is available only if the business acquired or to be acquired satisfies the eligibility criteria in Item 305(a)(1) of Regulation S-K.

* * * * *

(b) * * *

(2) Include either: financial * * *

(A) If the registrant satisfies the eligibility criteria in Item 305(a) of Regulation S-K, abbreviated interim financial statements meeting the requirements of Item 305(b)(5) of Regulation S-K may be furnished pursuant to paragraph (b)(2)(i) of this Item.

(B) Abbreviated financial statements meeting the requirements of Item 305 of Regulation S-K may be furnished with respect to businesses acquired or to be acquired, except that the information need only be provided for the periods specified by Rule 3-05 of Regulation S-X. This option is available only if the business acquired or to be acquired satisfies the eligibility criteria in Item 305(a)(1) of Regulation S-K.

(C) If the registrant satisfies the eligibility criteria in Item 305(a) of Regulation S-K, abbreviated financial statements meeting the requirements of Item 305 of Regulation S-K may be furnished pursuant to paragraph (b)(2) of this Item with respect to restated financial statements of the registrant required by this Item.

* * * * *

Instruction to Item 11(a)(2), (a)(3) and (b)(2)

Abbreviated financial statements meeting the requirements of Item 305 of Regulation S-K may be furnished with respect to businesses acquired or to be acquired, except that the information need only be provided for the periods specified by Rule 3-05 of Regulation S-X. This option is available only if the business acquired or to be acquired satisfies the eligibility criteria in Item 305(a)(1) of Regulation S-K.

* * * * *

PART II—INFORMATION NOT REQUIRED IN PROSPECTUS

* * * * *

Item 18. Financial Statements and Schedules

If abbreviated financial statements are furnished pursuant to Item 11(a)(3) or (b)(2)(B) with respect to businesses acquired or to be acquired, furnish the full financial statements required by Regulation S-X and the independent accountant's report thereon. If abbreviated financial statements are furnished pursuant to Item 11(b)(2)(C) with respect to restated financial statements of the registrant, furnish the full financial statements required by Regulation S-X and the independent accountant's report thereon.

* * * * *

13. By amending Form S-3 (referenced in § 239.13) by revising the last sentence of General Instruction II.C, adding Item 11(c) and Item 18 to read as follows:

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

Form S-3

Registration Statement Under the Securities Act of 1933

* * * * *

General Instructions

* * * * *

II. Application of General Rules and Regulations

* * * * *

C. * * * If, however, the small business issuer satisfies the eligibility criteria in Item 305(a) of Regulation S-B (§ 228.305(a) of this chapter), the small business issuer may provide the abbreviated financial statements required by Item 305 of Regulation S-B rather than the financial information in Item 310 of Regulation S-B (§ 228.310 of this chapter).

* * * * *

Item 11. Material Changes

* * * * *

(c) If the registrant satisfies the eligibility criteria in Item 305(a) of Regulation S-K:

(1) Abbreviated financial statements meeting the requirements of Item 305 of Regulation S-K may be furnished pursuant to Item 11(b)(i) with respect to businesses acquired or to be acquired, except that the information need only be provided for the periods specified by Rule 3-05 of Regulation S-X. This option is available only if the business acquired or to be acquired satisfies

the eligibility criteria in Item 305(a)(1) of Regulation S-K.

(2) Abbreviated financial statements meeting the requirements of Item 305 of Regulation S-K may be furnished pursuant to Items 11(b)(ii), 11(b)(iii) and 11(b)(iv) with respect to restated financial statements of the registrant.

* * * * *

PART II—INFORMATION NOT REQUIRED IN PROSPECTUS

* * * * *

Item 18. Financial Statements and Schedules

If abbreviated financial statements are furnished pursuant to Item 11(c)(1) with respect to businesses acquired or to be acquired, furnish the full financial statements required by Regulation S-X and the independent accountant's report thereon. If abbreviated financial statements are furnished pursuant to Item 11(c)(2) with respect to restated financial statements of the registrant, furnish the full financial statements required by Regulation S-X and the independent accountant's report thereon.

* * * * *

14. By amending Form S-6 (referenced in § 239.16) by designating the undesignated paragraph following paragraph (c)(2) of Instruction 1 of Instructions as to the Prospectus as paragraph (c)(3) and adding paragraph (c)(4) and by adding paragraph 6 to the Instructions as to Exhibits to read as follows:

Note—The text of Form S-6 does not, and this amendment will not, appear in the Code of Federal Regulations.

Form S-6

For Registration Under the Securities Act of 1933 of Securities of Unit Investment Trusts Registered on Form N-8B-2

* * * * *

Instructions as to the Prospectus

Instruction 1. Information to be Contained in Prospectus

* * * * *

(c) * * *

(4) Abbreviated financial statements meeting the requirements of Item 305 of Regulation S-K (§ 229.305 of this chapter) may be included in the prospectus in lieu of the financial statements required by paragraphs (c)(1) and (2) above. The option to include abbreviated financial statements is available only to registrants satisfying the eligibility criteria in Item 305(a) of Regulation S-K.

* * * * *

Instructions as to Exhibits

* * * * *

6. If abbreviated financial statements are furnished pursuant to Instruction 1(c)(4) of the Instructions as to the Prospectus, furnish the full financial statements required by Instructions 1(c)(1) and (2) of the Instructions as to the Prospectus and the independent accountant's report thereon.

15. By amending Form S-8 (referenced in § 239.16b) by adding an Instruction to Item 3(a) to read as follows:

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

Form S-8

Registration Statement Under the Securities Act of 1933

* * * * *

PART II—INFORMATION REQUIRED IN THE REGISTRATION STATEMENT

Item 3. Incorporation of Documents by Reference

* * * * *

(a) * * *

Instruction to Item 3(a). If the registrant's latest prospectus filed pursuant to Rule 424(b) under the Act contains abbreviated financial statements, the registrant shall not incorporate such prospectus by reference into the Form S-8. In lieu thereof, the registrant shall incorporate its latest effective registration statement filed under the Act that contains audited full financial statements for the registrant's latest fiscal year for which such statements have been filed.

* * * * *

16. By amending Form S-11 (referenced in § 239.18) by revising Item 27 and adding paragraph (c) to Item 35 to read as follows:

Note—The text of Form S-11 does not, and this amendment 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

* * * * *

Item 27. Financial Statements and Information

Include in the prospectus either full financial statements meeting the requirements of Regulation S-X (17 CFR 210) or abbreviated financial statements meeting the requirements of Item 305 of Regulation S-K (§ 229.305 of this chapter). The option to furnish abbreviated financial statements is available only to registrants satisfying the eligibility criteria in Item 305(a) of Regulation S-K. In addition, include the supplementary financial information required by Item 302 of Regulation S-K (§ 229.302 of this chapter) and the information concerning changes in and disagreements with accountants on accounting and financial disclosure required by Item 304 of Regulation S-K (§ 229.304 of this chapter). Although all schedules required by Regulation S-X are to be included in the registration statement, all such schedules other than those prepared in accordance with Rules 12-12, 12-28 and 12-29 of the Regulation may be omitted from the prospectus.

* * * * *

INFORMATION NOT REQUIRED IN PROSPECTUS

* * * * *

Item 35. Financial statements and Exhibits

* * * * *

(c) If abbreviated financial statements are furnished pursuant to Item 27 of this Form, file the full financial statements meeting the requirements of Regulation S-X and the independent accountant's report thereon.

* * * * *

17. By amending Form S-4 (referenced in § 239.25) by revising the last sentence of General Instruction D.3; adding Item 10(b)(5), paragraph (iv) to Item 12(a)(2), a sentence at the end of Item 12(a)(3); revising Item 14(e), adding a sentence at the end of Items 15, 16(a), 17(a) and 17(b)(8); removing the words "and Financial Statement Schedules" from the caption to Item 21; removing Item 21(b), and redesignating Item 21(c) as Item 21(b); and adding Item 23 to read as follows:

Note—The text of Form S-4 does not, and this amendment will not, appear in the Code of Federal Regulations.

Form S-4

Registration Statement Under the Securities Act of 1933

* * * * *

General Instructions

* * * * *

D. Application of General Rules and Regulations

* * * * *

3. * * * Small business issuers shall provide or incorporate by reference the information called for by Item 310 of Regulation S-B (§ 228.310 of this chapter), or, if the small business issuer satisfies the eligibility criteria in Item 305(a) of Regulation S-B (§ 228.305(a) of this chapter), the abbreviated information in Item 305 of Regulation S-B.

* * * * *

Item 10. Information with Respect to S-3 Registrants

* * * * *

(b) * * *

(5) If the registrant satisfies the eligibility criteria in Item 305(a) of Regulation S-K:

(i) Abbreviated financial statements meeting the requirements of Item 305 of Regulation S-K may be furnished pursuant to paragraph (b)(1) of this Item with respect to businesses acquired or to be acquired, except that the information need only be provided for the periods specified by Rule 3-05 of Regulation S-X (§ 210.3-05 of this chapter). This option is available only if the business acquired or to be acquired satisfies the eligibility criteria in Item 305(a)(1) of Regulation S-K.

(ii) Abbreviated financial statements meeting the requirements of Item 305 of Regulation S-K may be furnished pursuant to paragraphs (b)(2), (b)(3) and (b)(4) of this Item

with respect to restated financial statements of the registrant.

* * * * *

Item 12. Information With Respect to S-2 or S-3 Registrants

* * * * *

- (a) * * *
- (2) * * *

(iv) If the registrant satisfies the eligibility criteria in Item 305(a) of Regulation S-K, abbreviated interim financial statements of the registrant meeting the requirements of Item 305(b)(5) of Regulation S-K may be furnished pursuant to paragraphs (a)(2)(i) or (a)(2)(iii) of this Item.

(3) * * * Abbreviated financial statements meeting the requirements of Item 305 of Regulation S-K may be furnished with respect to the businesses acquired or to be acquired, except that the information need only be provided for the periods specified by Rule 3-05 of Regulation S-X. This option is available only if the business acquired or to be acquired satisfies the eligibility criteria in Item 305(a)(1) of Regulation S-K.

* * * * *

- (b) * * *
- (2) * * *

(vi) If the registrant satisfies the eligibility criteria in Item 305(a) of Regulation S-K, abbreviated interim financial statements of the registrant meeting the requirements of Item 305(b)(5) of Regulation S-K may be furnished pursuant to paragraph (b)(2)(i) of this Item.

(vii) Abbreviated financial statements meeting the requirements of Item 305 of Regulation S-K may be furnished pursuant to paragraph (b)(2)(ii) of this Item with respect to businesses acquired or to be acquired, except that the information need only be provided for the periods specified by Rule 3-05 of Regulation S-X. This option is available only if the business acquired or to be acquired satisfies the eligibility criteria in Item 305(a)(1) of Regulation S-K.

(viii) If the registrant satisfies the eligibility criteria in Item 305(a) of Regulation S-K, abbreviated financial statements meeting the requirements of Item 305 of Regulation S-K may be furnished pursuant to paragraphs (b)(2)(iii), (iv) and (v) of this Item with respect to restated financial statements of the registrant required by this Item.

* * * * *

Item 14. Information with Respect to Registrants Other than S-2 or S-3 Registrants

* * * * *

(e) Financial statements required by either paragraph (e)(1) or (e)(2) of this Item:

(1) Financial statements of the registrant meeting the requirements of Regulation S-X (17 CFR Part 210) (Schedules required under Regulation S-X shall be filed pursuant to Item 23 "Financial Statements and Schedules," of this Form) as well as any financial information required by Rule 3-05 and Article 11 of Regulation S-X; or

(2) If the registrant satisfies the eligibility criteria in Item 305(a) of Regulation S-K, abbreviated financial statements of the registrant meeting the requirements of Item 305 of Regulation S-K, as well as any financial information required by Rule 3-05 and Article 11 of Regulation S-X.

(3) Abbreviated financial statements meeting the requirements of Item 305 of Regulation S-K may be furnished pursuant to paragraphs (1) and (2) of this Item with respect to businesses acquired or to be acquired, except that the information need only be provided for the periods specified by Rule 3-05 of Regulation S-X. This option is available only if the business acquired or to be acquired satisfies the eligibility criteria in Item 305(a)(1) of Regulation S-K.

* * * * *

Item 15. Information with Respect to S-3 Companies

* * * Abbreviated financial statements meeting the requirements of Item 305 of Regulation S-K may be furnished for the company being acquired pursuant to Items 10 and 11 of this Form if the company being acquired satisfies the eligibility criteria in Item 305(a)(1) of Regulation S-K and the registrant satisfies the eligibility criteria in Item 305(a) of Regulation S-K.

Item 16. Information with Respect to S-2 or S-3 Companies

(a) * * * Abbreviated financial statements meeting the requirements of Item 305 of Regulation S-K may be furnished for the company being acquired pursuant to Items 12 and 13 of this Form if the company being acquired satisfies the eligibility criteria in Item 305(a)(1) of Regulation S-K and the registrant satisfies the eligibility criteria in Item 305(a) of Regulation S-K.

* * * * *

Item 17. Information With Respect to Companies Other Than S-2 or S-3 Companies

* * * * *

(a) * * * Abbreviated financial statements meeting the requirements of Item 305 of Regulation S-K may be furnished for the company being acquired pursuant to Item 14 of this Form if the company being acquired satisfies the eligibility criteria in Item 305(a)(1) of Regulation S-K and the registrant satisfies the eligibility criteria in Item 305(a) of Regulation S-K.

(b) * * *

(8) * * * If the registrant satisfies the eligibility criteria in Item 305(a) of Regulation S-K, abbreviated interim financial statements of the company being acquired meeting the requirements of Item 305(b)(5) of Regulation S-K may be furnished pursuant to this paragraph.

* * * * *

PART II—INFORMATION NOT REQUIRED IN PROSPECTUS

* * * * *

Item 23. Financial Statements

(a) S-3 Registrants. If abbreviated financial statements are furnished pursuant to Item 10(b)(5)(i) with respect to the businesses acquired or to be acquired, furnish the full financial statements required by Regulation S-X and the independent accountant's report thereon. If abbreviated financial statements are furnished pursuant to Item 10(b)(5)(ii) with respect to the restated financial statements of the registrant, furnish the full financial statements required by Regulation

S-X and the independent accountant's report thereon.

(b) S-2 or S-3 Registrants. If abbreviated financial statements are furnished pursuant to Item 12(a)(3) or 12(b)(2)(vii) with respect to the businesses acquired or to be acquired, furnish the full financial statements required by Regulation S-X and the independent accountant's report thereon. If abbreviated financial statements are furnished pursuant to Item 12(b)(2)(viii) with respect to the restated financial statements of the registrant, furnish the full financial statements required by Regulation S-X and the independent accountant's report thereon.

(c) Registrants Other Than S-2 or S-3 Registrants. If abbreviated financial statements are furnished pursuant to Item 14(e)(2) with respect to the financial statements of the registrant, furnish the full financial statements required by Regulation S-X and the independent accountant's report thereon. If abbreviated financial statements are furnished pursuant to Item 14(e)(3) with respect to the businesses acquired or to be acquired, furnish the full financial statements required by Regulation S-X and the independent accountant's report thereon.

(d) S-3 Companies. If abbreviated financial statements of the company being acquired are furnished pursuant to Item 15, furnish the full financial statements required by Regulation S-X and the independent accountant's report thereon.

(e) S-2 or S-3 Companies. If abbreviated financial statements of the company being acquired are furnished pursuant to Item 16, furnish the full financial statements required by Regulation S-X and the independent accountant's report thereon.

(f) Companies Other Than S-2 or S-3 Companies. If abbreviated financial statements of the company being acquired are furnished pursuant to Item 17(a), furnish the full financial statements required by Regulation S-X and the independent accountant's report thereon. If abbreviated financial statements are furnished pursuant to Item 17(a) with respect to the other businesses acquired or to be acquired, furnish the full financial statements required by Regulation S-X and the independent accountant's report thereon. If abbreviated financial statements are furnished pursuant to Item 17(b)(7) with respect to the company being acquired, furnish the full financial statements required by Regulation S-X and the independent accountant's report thereon.

(g) Furnish the financial statement schedules required by Regulation S-X (17 CFR Part 210) and Item 14(e), Item 17(a), or Item 17(b)(9) of this Form. These schedules should be lettered or numbered in the manner described for exhibits in paragraph (a) of Item 21.

* * * * *

18. By amending Form F-1 (referenced in § 239.31) by revising Items 11(b) and (c), removing the words "and Financial Statement Schedules" from the caption to Item 16, removing paragraph (b) of Item 16, and adding Item 18 to read as follows:

Note—The text of Form F-1 does not, and this amendment will not, appear in the Code of Federal Regulations.

Form F-1

Registration Statement Under the Securities Act of 1933

* * * * *

Item 11. Information with respect to the Registrant

Furnish the following information with respect to the Registrant:

* * * * *

(b) Information required by either paragraph (b)(1) or (b)(2) of this Item:

(1) Information required by Item 18 of Form 20-F (Schedules required under Regulation S-X shall be filed pursuant to Item 18 "Financial Statements and Schedules," of this Form) as well as any information required by Rule 3-05 and Article 11 of Regulation S-X (§ 210 of this chapter), except as provided by paragraph (c) of this Item; or

(2) If the registrant satisfies the eligibility criteria in Item 305(a) of Regulation S-K (§ 229.305(a) of this chapter), abbreviated financial statements of the registrant meeting the requirements of Item 305 of Regulation S-K, as well as any information required by Rule 3-05 and Article 11 of Regulation S-X.

(3) Abbreviated financial statements meeting the requirements of Item 305 of Regulation S-K may be furnished with respect to businesses acquired or to be acquired, except that the information need only be provided for the periods specified by Rule 3-05 of Regulation S-X. This option is available only if the business acquired or to be acquired satisfies the eligibility criteria in Item 305(a)(1) of Regulation S-K.

(c) Information required by either paragraph (1) or (2) of this Item:

(1) Information required by Item 17 of Form 20-F may be furnished in lieu of the information specified by Item 18 thereof if the only securities to be issued pursuant to this registration statement are non-convertible securities that are "investment grade securities," as defined below, or the only securities to be issued hereunder are to be offered: (1) upon the exercise of outstanding rights granted by the issuer of the securities to be offered, if such rights are granted on a pro rata basis to all existing security holders of the class of securities to which the rights attach and there is no standby underwriting in the United States or similar arrangement; or (2) pursuant to a dividend or interest reinvestment plan; or (3) upon the conversion of outstanding transferable warrants issued by the issuer of the securities to be offered, or by an affiliate of such issuer; or

(2) If the registrant satisfies the eligibility criteria in Item 305(a) of Regulation S-K, abbreviated financial statements of the registrant meeting the requirements of Item 305 of Regulation S-K, as well as any information required by Rule 3-05 and Article 11 of Regulation S-X.

(3) Abbreviated financial statements meeting the requirements of Item 305 of Regulation S-K may be furnished with respect to businesses acquired or to be

acquired, except that the information need only be provided for the periods specified by Rule 3-05 of Regulation S-X. This option is available only if the business acquired or to be acquired satisfies the eligibility criteria in Item 305(a)(1) of Regulation S-K.

* * * * *

Item 18. Financial Statements and Schedules

(a) If abbreviated financial statements are furnished pursuant to Items 11 (b)(2) or (3) of this Form, furnish the full financial statements required by Item 18 of Form 20-F and the independent accountant's report thereon.

(b) If abbreviated financial statements are furnished pursuant to Items 11 (c)(2) or (3) of this Form, furnish the full financial statements required by Item 17 of Form 20-F and the independent accountant's report thereon.

* * * * *

19. By amending Form F-2 (referenced in § 239.32) by amending General Instructions I.D and I.G by adding a sentence at the end of each Instruction, adding paragraphs (b)(1)(A)-(C) to Item 11, adding a sentence at the end of paragraph (b)(2) of Item 11, revising Item 12, revising Instruction 4 to Item 12, and adding Item 18 to read as follows:

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

Form F-2

Registration Statement Under the Securities Act of 1933

* * * * *

General Instructions

I. Eligibility Requirements for Use of Form F-2

* * * * *

D. * * * This instruction does not apply to any abbreviated financial statements included in the prospectus pursuant to Item 11(b) or 12(b) of this Form.

* * * * *

G. * * * If the subsidiary satisfies the eligibility criteria in Item 305(a) of Regulation S-K (§ 229.305(a) of this chapter), abbreviated financial statements meeting the requirements of Item 305 of Regulation S-K may be furnished as specified in Form S-2.

* * * * *

Item 11. Material Changes

(b) * * *

(1) * * *

(A) Abbreviated financial statements meeting the requirements of Item 305 of Regulation S-K may be furnished with respect to the businesses acquired or to be acquired, except that the information need only be provided for the periods specified by Rule 3-05 of Regulation S-X. This option is available only if the business acquired or to be acquired satisfies the eligibility criteria in Item 305(a)(1) of Regulation S-K.

(B) If the registrant satisfies the eligibility criteria in Item 305(a) of Regulation S-K, abbreviated financial statements meeting the

requirements of Item 305 of Regulation S-K may be furnished pursuant to paragraphs (b)(1)(ii), (iii) or (iv) above with respect to restated financial statements of the registrant required by these paragraphs.

(2) * * *

If the registrant satisfies the eligibility criteria in Item 305(a) of Regulation S-K, abbreviated interim financial statements meeting the requirements of Item 305 of Regulation S-K may be furnished pursuant to paragraph (b)(2)(i) above.

Item 12. Information with Respect to the Registrant

The registrant shall incorporate by reference the latest Form 20-F, Form 40-F or Form 10-K filed pursuant to the Exchange Act that contains certified financial statements for the registrant's latest fiscal year for which a Form 20-F, Form 40-F or Form 10-K was required to have been filed and any report on Form 10-Q or Form 8-K filed since the end of the fiscal year covered by such annual report. The registrant may incorporate by reference any other Form 10-Q or Form 8-K, and any Form 6-K containing information meeting the requirements of this Form. The registrant shall deliver with the prospectus the information required by paragraph (a) or (b) of this Item, except that only registrants satisfying the eligibility criteria in Item 305(a) of Regulation S-K may choose to deliver the information in paragraph (b).

(a) The latest Form 20-F, Form 40-F or Form 10-K and any report on Form 10-Q or Form 8-K required to be incorporated by reference into this Form, along with any other Form 10-Q, Form 8-K or Form 6-K incorporated by reference into this Form at the registrant's option.

(b) The information required by Part I of Form 20-F and abbreviated financial statements of the registrant meeting the requirements of Item 305 of Regulation S-K, as well as any information required by Rule 3-05 and Article 11 of Regulation S-X. Abbreviated financial statements meeting the requirements of Item 305 of Regulation S-K may be furnished with respect to businesses acquired or to be acquired, except that the information need only be provided for the periods specified by Rule 3-05 of Regulation S-X. This option is available only if the business acquired or to be acquired satisfies the eligibility criteria in Item 305(a)(1) of Regulation S-K. The registrant also shall deliver any Form 10-Q, Form 8-K or Form 6-K incorporated by reference into this Form at the registrant's option.

Instructions

* * * * *

4. If the registrant elects to comply with paragraph (a) of this Item, the Form 20-F, Form 40-F or Form 10-K shall be delivered with the preliminary prospectus but need not be redelivered with the final prospectus to a recipient that had previously received the Form 20-F, Form 40-F or Form 10-K with the preliminary prospectus.

* * * * *

Item 18. Financial Statements and Schedules

If abbreviated financial statements are furnished pursuant to Item 11(b)(1)(A) or

Item 12(b) with respect to businesses acquired or to be acquired, furnish the full financial statements required by Regulation S-X and the independent accountant's report thereon. If abbreviated financial statements are furnished pursuant to Item 11(b)(1)(B) with respect to restated financial statements of the registrant, furnish the full financial statements required by Regulation S-X and the independent accountant's report thereon.

20. By amending Form F-3 (referenced in § 239.33) by adding a sentence to the end of the note to General Instruction I.A.5, by adding a sentence to the end of General Instruction I.B.1, I.B.2, I.B.3 and I.B.4, adding Item 11(c), and Item 18 to read as follows:

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

Form F-3

Registration Statement Under the Securities Act of 1933

* * * * *

General Instructions

I. Eligibility Requirements for Use of Form F-3

* * * * *

- A. *Registrant Requirements* * * *
- 5. *Majority-owned subsidiaries* * * *

Note: * * * If such subsidiary satisfies the eligibility criteria in Item 305(a) of Regulation S-K (§ 229.305(a) of this chapter), abbreviated financial statements meeting the requirements of Item 305 of Regulation S-K may be furnished as specified in Form S-3.

B. *Transaction Requirements*

1. * * * If the registrant satisfies the eligibility criteria in Item 305(a) of Regulation S-K, abbreviated financial statements meeting the requirements of Item 305 of Regulation S-K may be furnished pursuant to this Instruction.

* * * * *

2. * * * If the registrant satisfies the eligibility criteria in Item 305(a) of Regulation S-K, abbreviated financial statements meeting the requirements of Item 305 of Regulation S-K may be furnished pursuant to this Instruction.

3. * * * If the registrant satisfies the eligibility criteria in Item 305(a) of Regulation S-K, abbreviated financial statements meeting the requirements of Item 305 of Regulation S-K may be furnished pursuant to this Instruction.

4. * * * If the registrant satisfies the eligibility criteria in Item 305(a) of Regulation S-K, abbreviated financial statements meeting the requirements of Item 305 of Regulation S-K may be furnished pursuant to this Instruction.

* * * * *

Item 11. Material Changes

(b)(1) * * *

(A) Abbreviated financial statements meeting the requirements of Item 305 of Regulation S-K may be furnished with respect to the businesses acquired or to be

acquired, except that the information need only be provided for the periods specified by Rule 3-05 of Regulation S-X. This option is available only if the business acquired or to be acquired satisfies the eligibility criteria in Item 305(a)(1) of Regulation S-K.

(B) If the registrant satisfies the eligibility criteria in Item 305(a) of Regulation S-K, abbreviated financial statements meeting the requirements of Item 305 of Regulation S-K may be furnished pursuant to paragraphs (b)(ii), (iii) or (iv) above with respect to restated financial statements of the registrant required by these paragraphs.

(2) * * * If the registrant satisfies the eligibility criteria in Item 305(a) of Regulation S-K, abbreviated interim financial statements meeting the requirements of Item 305 of Regulation S-K may be furnished pursuant to paragraph (i) above.

* * * * *

Item 18. Financial Statements and Schedules

If abbreviated financial statements are furnished pursuant to paragraph (i) of Item 11(b) with respect to businesses acquired or to be acquired, furnish the full financial statements required by Regulation S-X and the independent accountant's report thereon. If abbreviated financial statements are furnished pursuant to paragraph (ii), (iii) or (iv) of Item 11(b) with respect to restated financial statements of the registrant, furnish the full financial statements required by Regulation S-X and the independent accountant's report thereon.

* * * * *

21. By amending Form F-4 (referenced in § 239.34) by adding Item 10(c)(5), paragraph (iv) to Item 12(a)(2), a sentence at the end of Item 12(a)(3), a sentence at the end of Item 12(a)(5), redesignating paragraph (h) of Item 14 as paragraph (h)(1) of Item 14, adding paragraph (h)(2) to Item 14, redesignating current Item 15 as paragraph (a) to Item 15, adding paragraph (b) to Item 15, redesignating current Item 16 as paragraph (a) to Item 16, adding paragraph (b) to Item 16, adding paragraph (c) to Item 17, removing the words "and Financial Statement Schedules" from the caption to Item 21, removing paragraph (b) from Item 21, redesignating paragraph (c) of Item 21 as paragraph (b) of Item 21, and adding Item 23 to read as follows:

Note—The text of Form F-4 does not, and this amendment will not, appear in the Code of Federal Regulations.

Form F-4

Registration Statement Under the Securities Act of 1933

* * * * *

Item 10. Information With Respect to F-3 Companies * * *

(c) * * *

(5) If the registrant satisfies the eligibility criteria in Item 305(a) of Regulation S-K:

(i) Abbreviated financial statements meeting the requirements of Item 305 of

Regulation S-K may be furnished pursuant to paragraph (c)(1) of this Item with respect to businesses acquired or to be acquired, except that the information need only be provided for the periods specified by Rule 3-05 of Regulation S-X. This option is available only if the business acquired or to be acquired satisfies the eligibility criteria in Item 305(a)(1) of Regulation S-K.

(ii) Abbreviated financial statements meeting the requirements of Item 305 of Regulation S-K may be furnished pursuant to paragraphs (c)(2), (3) and (4) of this Item with respect to restated financial statements of the registrant.

* * * * *

Item 12. Information With Respect to F-2 or F-3 Registrants

* * * * *

(a) * * *

(2) * * *

(iv) If the registrant satisfies the eligibility criteria in Item 305(a) of Regulation S-K, abbreviated interim financial statements of the registrant meeting the requirements of Item 305(b)(5) of Regulation S-K may be furnished pursuant to paragraph (a)(2)(i) of this Item.

(3) * * * Abbreviated financial statements meeting the requirements of Item 305 of Regulation S-K may be furnished with respect to the businesses acquired or to be acquired, except that the information need only be provided for the periods specified by Rule 3-05 of Regulation S-X. This option is available only if the business acquired or to be acquired satisfies the eligibility criteria in Item 305(a)(1) of Regulation S-K.

* * * * *

(b) * * *

(2) * * *

(vi) If the registrant satisfies the eligibility criteria in Item 305(a) of Regulation S-K, abbreviated interim financial statements of the registrant meeting the requirements of Item 305 of Regulation S-K may be furnished pursuant to paragraph (i) above.

(vii) If the registrant satisfies the eligibility criteria in Item 305(a) of Regulation S-K, abbreviated financial statements meeting the requirements of Item 305 of Regulation S-K may be furnished pursuant to paragraph (b)(2)(ii) of this Item with respect to businesses acquired or to be acquired, except that the information need only be provided for the periods specified by Rule 3-05 of Regulation S-X. This option is available only if the business acquired or to be acquired satisfies the eligibility criteria in Item 305(a)(1) of Regulation S-K.

(viii) If the registrant satisfies the eligibility criteria in Item 305(a) of Regulation S-K, abbreviated financial statements meeting the requirements of Item 305 of Regulation S-K may be furnished pursuant to paragraphs (b)(2)(iii), (iv) and (v) of this Item with respect to restated financial statements of the registrant required by this Item.

(3) * * *

(ix) If the registrant satisfies the eligibility criteria in Item 305(a) of Regulation S-K, abbreviated financial statements of the registrant meeting the requirements of Item 305 of Regulation S-K may be furnished pursuant to paragraph (3)(vii) of this Item. If

the registrant satisfies the eligibility criteria in Item 305(a) of Regulation S-K, abbreviated financial statements meeting the requirements of Item 305 of Regulation S-K may be furnished pursuant to paragraph (3)(vii) of this Item with respect to businesses acquired or to be acquired, except that the information need only be provided for the periods specified by Rule 3-05 of Regulation S-X. This option is available only if the business acquired or to be acquired satisfies the eligibility criteria in Item 305(a)(1) of Regulation S-K.

* * * * *

Item 14. Information With Respect to Foreign Registrants Other Than F-2 or F-3 Registrants

(h) Financial statements required by either paragraph (1) or (2) of this Item:

(1) * * *

(2) If the registrant satisfies the eligibility criteria in Item 305(a) of Regulation S-K, abbreviated financial statements of the registrant meeting the requirements of Item 305 of Regulation S-K may be furnished with respect to paragraph (h)(1) of this Item. Abbreviated financial statements meeting the requirements of Item 305 of Regulation S-K also may be furnished with respect to businesses acquired or to be acquired if such businesses satisfy the eligibility criteria in Item 305(a)(1) of Regulation S-K and the registrant satisfies the eligibility criteria in Item 305(a) of Regulation S-K, except that the information need only be provided for the periods specified by Rule 3-05 of Regulation S-X.

* * * * *

Item 15. Information With Respect to F-3 Companies

(a) * * *

(b) Abbreviated financial statements meeting the requirements of Item 305 of Regulation S-K of the company being acquired may be furnished pursuant to Items 10 and 11 of this Form if the company being acquired satisfies the eligibility criteria in Item 305(a)(1) of Regulation S-K and the registrant satisfies the eligibility criteria in Item 305(a) of Regulation S-K.

* * * * *

Item 16. Information With Respect to F-2 or F-3 Companies

(a) * * *

(b) Abbreviated financial statements meeting the requirements of Item 305 of Regulation S-K may be furnished for the company being acquired pursuant to Items 12 and 13 of this Form if the company being acquired satisfies the eligibility criteria in Item 305(a)(1) of Regulation S-K and the registrant satisfies the eligibility criteria in Item 305(a) of Regulation S-K.

* * * * *

Item 17. Information With Respect to Foreign Companies Other Than F-2 or F-3 Companies

* * * * *

(c) Abbreviated financial statements meeting the requirements of Item 305 of Regulation S-K may be furnished for the company being acquired pursuant to

paragraph (a) of this Item if the company being acquired satisfies the eligibility criteria in Item 305(a)(1) of Regulation S-K and the registrant satisfies the eligibility criteria in Item 305(a) of Regulation S-K.

* * * * *

Item 23. Financial Statements and Schedules

If abbreviated financial statements are furnished pursuant to paragraph (b)(3)(ix) of Item 12, paragraph (h)(2) of Item 14, paragraph (b) of Item 15, paragraph (b) of Item 16, or paragraph (c) of Item 17 of this Item, furnish full financial statements meeting the requirements of Item 17 or 18 of Form 20-F, whichever is applicable. If abbreviated financial statements are furnished pursuant to paragraph (c)(5)(i) of Item 10, paragraph (a)(3) of Item 12, or paragraph (b)(2)(vii) of Item 12 of this Item, furnish full financial statements meeting the requirements of Regulation S-X with respect to businesses acquired or to be acquired. If abbreviated financial statements are furnished pursuant to paragraph (c)(5)(ii) of Item 10 or paragraph (b)(2)(viii) of Item 12 above, furnish restated full financial statements of the registrant meeting the requirements of Regulation S-X. If abbreviated financial statements are furnished pursuant to paragraph (a)(2)(iv) or paragraph (b)(2)(vi) of Item 12 above, furnish interim financial statements meeting the requirements of Regulation S-X.

22. By amending Form F-7 (referenced in § 239.37) by adding a paragraph to the end of Item 1 to read as follows:

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

Form F-7

Registration Statement Under the Securities Act of 1933

* * * * *

Item 1. Home Jurisdiction Documents

* * * * *

Notwithstanding the foregoing, the prospectus may contain, in lieu of any financial statements required in any Canadian jurisdiction, if the bidder satisfies the eligibility criteria in Item 305(a) of Regulation S-B (§ 228.305(a) of this chapter) or Item 305(a) of Regulation S-K (§ 229.305(a) of this chapter), abbreviated financial statements meeting the requirements of Item 305 of such regulation.

* * * * *

23. By amending Form F-8 (referenced in § 239.38) by adding a paragraph to the end of Item 1 to read as follows:

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

Form F-8

Registration Statement Under the Securities Act of 1933

* * * * *

Item 1. Home Jurisdiction Documents

* * * * *

Notwithstanding the foregoing, the prospectus may contain, in lieu of any financial statements required in any Canadian jurisdiction, if the bidder satisfies the eligibility criteria in Item 305(a) of Regulation S-B (§ 228.305(a) of this chapter) or Item 305(a) of Regulation S-K (§ 229.305(a) of this chapter), abbreviated financial statements meeting the requirements of Item 305 of such regulation.

* * * * *

24. By amending Form F-9 (referenced in § 239.39) by adding a paragraph to the end of Item 1 to read as follows:

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

Form F-9

Registration Statement Under the Securities Act of 1933

* * * * *

Item 1. Home Jurisdiction Documents

* * * * *

Notwithstanding the foregoing, the prospectus may contain, in lieu of any financial statements required in any Canadian jurisdiction, if the bidder satisfies the eligibility criteria in Item 305(a) of Regulation S-B (§ 228.305(a) of this chapter) or Item 305(a) of Regulation S-K (§ 229.305(a) of this chapter), abbreviated financial statements meeting the requirements of Item 305 of such regulation.

* * * * *

25. By amending Form F-10 (referenced in § 239.40) by adding a paragraph to the end of Item 1 to read as follows:

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

Form F-10

Registration Statement Under the Securities Act of 1933

* * * * *

Item 1. Home Jurisdiction Documents

* * * * *

Notwithstanding the foregoing, the prospectus may contain, in lieu of any financial statements required in any Canadian jurisdiction, if the bidder satisfies the eligibility criteria in Item 305(a) of Regulation S-B (§ 228.305(a) of this chapter) or Item 305(a) of Regulation S-K (§ 229.305(a) of this chapter), abbreviated financial statements meeting the requirements of Item 305 of such regulation.

* * * * *

26. By amending Form F-80 (referenced in § 239.41) by adding a paragraph to the end of Item 1 to read as follows:

Note—The text of Form F-80 does not, and this amendment will not, appear in the Code of Federal Regulations.

Form F-80

Registration Statement Under the Securities Act of 1933

* * * * *

Item 1. Home Jurisdiction Documents

* * * * *

Notwithstanding the foregoing, the prospectus may contain, in lieu of any financial statements required in any Canadian jurisdiction, if the bidder satisfies the eligibility criteria in Item 305(a) of Regulation S-B (§ 228.305(a) of this chapter) or Item 305(a) of Regulation S-K (§ 229.305(a) of this chapter), abbreviated financial statements meeting the requirements of Item 305 of such regulation.

* * * * *

27. By amending Form 1-A (referenced in § 239.90) by revising Part F/S, by adding a sentence to the end of section (2), paragraph (f) to section (3) and paragraph (11) to Item 2 of Part III to read as follows:

Note—The text of Form 1-A does not, and this amendment will not, appear in the Code of Federal Regulations.

Form 1-A

Regulation A Offering Statement Under the Securities Act of 1933

* * * * *

PART F/S

* * * * *

(2) Statements of income, cash flows, and other stockholders equity—* * * If the issuer satisfies the eligibility criteria in Item 305(a) of Regulation S-B, the issuer may furnish abbreviated financial statements in accordance with Item 305 of Regulation S-B, except that the information shall be furnished for the periods specified in paragraphs (1) and (2) above, in lieu of full financial statements.

* * * * *

(3) Financial Statements of Businesses Acquired or to be Acquired.

* * * * *

(f) If the issuer satisfies the eligibility criteria in Item 305(a) of Regulation S-B, the issuer may furnish abbreviated financial statements of the business acquired or to be acquired in accordance with Item 305 of Regulation S-B, except that the information shall be furnished for the periods specified under paragraph (c) above, in lieu of full financial statements. This option is available only if the business acquired or to be acquired satisfies the eligibility criteria in Item 305(a)(1) of Regulation S-B.

* * * * *

PART III—EXHIBITS

* * * * *

Item 2. Description of Exhibits

* * * * *

(11) *Financial statements*—If abbreviated financial statements are furnished pursuant to Part F/S of this Form, furnish the full financial statements. If the full financial

statements furnished pursuant to this paragraph are audited, furnish the independent accountant's report on the full financial statements.

* * * * *

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

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

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

* * * * *

29. By amending § 240.13e-3 by adding paragraph (e)(4) to read as follows:

§ 240.13e-3 Going private transactions by certain issuers or their affiliates.

* * * * *

(e) *Disclosure of certain information.*

* * * * *

(4) In lieu of the information required by paragraph (e)(1) of this section regarding information contained in Item 14 of Schedule 13E-3 (§ 240.13e-3), or a fair and adequate summary thereof, the information set forth in this paragraph (e)(4) may be disclosed.

(i) If the issuer or affiliate satisfies the eligibility criteria in Item 305(a) of Regulation S-B (§ 228.305(a) of this chapter) or Item 305(a) of Regulation S-K (§ 229.305(a) of this chapter), abbreviated financial statements meeting the requirements of Item 305 of such regulation may be furnished.

(ii) *Abbreviated Financial Statements.* For purposes of this section:

(A) The term *full financial statements* shall mean financial statements filed with the Commission pursuant to Item 14 of Schedule 13E-3.

(B) The term *abbreviated financial statements* shall mean financial statements that meet the requirements of Item 305 of Regulation S-B or Item 305 of Regulation S-K.

(iii) A disclosure document containing abbreviated financial statements shall not be deemed materially misleading or omitting material facts from the disclosure document within the meaning of the federal securities laws based on the omission from the disclosure document of those financial statement footnotes permitted by Item 305 of Regulation S-B (§ 228.305 of this chapter) or Item 305 of Regulation S-K (§ 229.305 of this chapter) deemed a part of the disclosure document, provided the issuer or affiliate has complied with Item 305 of

Regulation S-B or Item 305 of Regulation S-K.

(iv) The full financial statements that are omitted from a disclosure document pursuant to this paragraph (e)(4) shall be deemed to be part of the disclosure document.

30. By amending § 240.13e-4 by adding paragraphs (d)(1)(v) and (i) to read as follows:

§ 240.13e-4 Tender offers by issuers.

* * * * *

(d) *Disclosure of certain information.*

(1) * * *

(v) In lieu of the information required by paragraph (d)(1)(iv) of this section regarding information contained in Item 7 of Schedule 13E-4 (§ 240.13e-4), or a fair and adequate summary thereof, if the issuer or affiliate satisfies the eligibility criteria in Item 305(a) of Regulation S-B (§ 228.305(a) of this chapter) or Item 305(a) of Regulation S-K (§ 229.305(a) of this chapter), abbreviated financial statements meeting the requirements of Item 305 of such regulation may be furnished.

* * * * *

(i) *Abbreviated Financial Statements.*

(1) For purposes of this section 13e-4:

(i) The term *full financial statements* shall mean financial statements filed with the Commission pursuant to Item 7 of Schedule 13E-4 or Item 1(a) of Schedule 13E-4F.

(ii) The term *abbreviated financial statements* shall mean financial statements that meet the requirements of Item 305 of Regulation S-B or Item 305 of Regulation S-K.

(2) A disclosure document containing abbreviated financial statements shall not be deemed materially misleading or omitting material facts from the disclosure document within the meaning of the federal securities laws based on the omission from the disclosure document of those financial statement footnotes permitted by Item 305 of Regulation S-B (§ 228.305 of this chapter) or Item 305 of Regulation S-K (§ 229.305 of this chapter) deemed a part of the disclosure document, provided the issuer or affiliate has complied with Item 305 of Regulation S-B or Item 305 of Regulation S-K.

(3) The full financial statements that are omitted from a disclosure document pursuant to paragraph (d)(1)(v) of this section or Item 1 of Schedule 13E-4F shall be deemed to be part of the disclosure document.

31. By amending § 240.13e-102 by redesignating paragraph (a) of Item 1 as paragraph (a)(1), adding a sentence at the beginning of paragraph (a)(1) and adding paragraph (a)(2) to read as follows:

§ 240.13e-102 Schedule 13E-4F. Tender offer statement pursuant to section 13(e)(1) of the Securities Exchange Act of 1934 and § 240.13e-4 thereunder.

* * * * *

Item 1. Home Jurisdiction Documents

(a) (1) Furnish the information required by paragraph (a)(1) of this item to the Commission. Either the information required by paragraph (a)(1) or that required by paragraph (a)(2) of this Item shall be furnished to shareholders. If information is delivered to shareholders pursuant to paragraph (a)(2) of this Item, such information shall be furnished to the Commission. * * *

(2) Furnish the information required by paragraph (a)(1) of this Item, *provided* that in lieu of financial statements included in such information, if the issuer satisfies the eligibility criteria in Item 305(a) of Regulation S-B (§ 228.305(a) of this chapter) or Item 305(a) of Regulation S-K (§ 229.305(a) of this chapter), abbreviated financial statements meeting the requirements of Item 305 of such regulation may be furnished.

* * * * *

32. By amending § 240.14a-3 by revising the third sentence in the "Note to Small Business Issuers"; by revising paragraph (b)(1); following the paragraph (b)(1), redesignating Notes 1 and 2 as Notes 2 and 3, and adding Note 1 to read as follows:

§ 240.14a-3 Information to be furnished to security holders.

* * * * *

(b) * * *

Note to Small Business Issuers. * * * A small business issuer shall provide the information in Item 310(a) of Regulation S-B, or, provided that the small business issuer satisfies the eligibility criteria in Item 305(a) of Regulation S-B, the abbreviated financial statements required by Item 305 of Regulation S-B, in lieu of the financial information required by § 240.14a-3(b)(1). * * *

(1) The report shall include, for the registrant and its subsidiaries consolidated, either:

(i) Audited balance sheets as of the end of the two most recent fiscal years and audited statements of income and cash flows for each of the three most recent fiscal years prepared in accordance with Regulation S-X (Part 210 of this chapter), except that the provisions of Article 3 (other than § 210.3-03(e), 210.3-04 and 210.3-20) and Article 11 shall not apply; or

(ii) If the registrant satisfies the eligibility criteria in Item 305(a) of Regulation S-K, abbreviated financial statements for the registrant and its subsidiaries consolidated prepared in accordance with Item 305 of Regulation S-K for the same periods specified in § 240.14a-3(b)(1)(i). If abbreviated financial statements are included in the

annual report to security holders, the registrant shall append the full financial statements required by Regulation S-X and the independent accountant's report thereon to the copies of the report mailed to the Commission pursuant to paragraph (c) of this section. If, however, the registrant has filed with the Commission an annual report on Form 10-K for the same fiscal year on or before the date that the annual report required by this section is delivered to security holders, the registrant does not have to append full financial statements to the copies of the report mailed to the Commission, and the registrant may furnish the Form 10-K financial statements to requesting persons in satisfaction of the delivery requirement set forth in Item 305(e) of Regulation S-K.

Note 1. Any financial statement schedules or exhibits or separate financial statements that may otherwise be required in filings with the Commission may be omitted. If the financial statements of the registrant and its subsidiaries consolidated in the annual report filed or to be filed with the Commission are not required to be audited, the financial statements required by this paragraph (b) may be unaudited.

* * * * *

33. By adding § 240.14a-16 to read as follows:

§ 240.14a-16 Abbreviated financial statements.

(a) For purposes of this section:

(1) The term *full financial statements* shall mean financial statements filed with the Commission meeting the requirements of Regulation S-X (Part 210 of this chapter), or, for small business issuers, Item 310 of Regulation S-B (§ 228.310 of this chapter).

(2) The term *abbreviated financial statements* shall mean financial statements that include the information specified in Item 305(b) of Regulation S-B (§ 228.305(b) of this chapter) or Item 305(b) of Regulation S-K (§ 229.305(b) of this chapter).

(b) A report furnished pursuant to § 240.14a-3(b) containing abbreviated financial statements shall not be deemed materially misleading or omitting material facts from the report within the meaning of the federal securities laws based on the omission from the report of those financial statement footnotes permitted by Item 305 of Regulation S-B (§ 228.305 of this chapter) or Item 305 of Regulation S-K (§ 229.305 of this chapter) deemed a part of the report, provided the issuer has complied with Item 305 of Regulation S-B or Item 305 of Regulation S-K.

(c) A proxy statement containing abbreviated financial statements

pursuant to Item 13 or 14 of Schedule 14A (§ 240.14a-101 of this chapter) shall not be deemed materially misleading or omitting material facts from the proxy statement within the meaning of the federal securities laws based on the omission from the proxy statement of those financial statement footnotes permitted by Item 305 of Regulation S-B (§ 228.305 of this chapter) or Item 305 of Regulation S-K (§ 229.305 of this chapter) deemed a part of the proxy statement, provided the issuer has complied with Item 305 of Regulation S-B or Item 305 of Regulation S-K.

(d) The full financial statements that are omitted from a report or proxy statement shall be deemed to be part of the report or proxy statement.

34. By amending Schedule 14A (§ 240.14a-101) by revising the last sentence in Note F, by revising paragraph (2) of Note G, by revising paragraph (3)(f) of Note G, by adding paragraph (a)(6) and Instruction 6 to Item 13 and by adding paragraphs (b)(1)(ii)(E), (b)(2)(i)(A)(5), (b)(2)(i)(B)(2)(vi), (b)(3)(i)(I) and (b)(3)(ii)(F) and Instruction 8 to Item 14 to read as follows:

§ 240.14a-101 Schedule 14A. Information required in proxy statement.

* * * * *

Notes.

* * * * *

F. Note to Small Business Issuers—* * * Small business issuers shall provide the financial information in Item 310 of Regulation S-B or, if the small business issuer satisfies the eligibility criteria in Item 305(a) of Regulation S-B, the abbreviated financial statements required by Item 305 of Regulation S-B, in lieu of the financial statements required in Schedule 14A.

G. Special Note for Small Business Issuers.

* * * * *

(2) Registrants and acquirers which relied upon Alternative 1 in their most recent Form 10-KSB may provide the following information (Question numbers are in reference to Model A of Form 1-A): (a) Questions 37 and 38 instead of Item 6(d); (b) Question 43 instead of Item 7(a); (c) Questions 29-36 and 39 instead of Item 7(b); (d) Questions 40-42 instead of Item 8; (e) Questions 40-42 instead of Item 10; (f) the information required in Part F/S of Form 10-SB, or, if the small business issuer satisfies the eligibility criteria in Item 305(a) of Regulation S-B, the abbreviated financial statements required by Item 305 of Regulation S-B, instead of the financial statement requirements of Items 13 or 14 (abbreviated financial statements may be furnished for a business acquired or to be acquired if the small business issuer satisfies the eligibility criteria in Item 305(a) of Regulation S-B and the business acquired or to be acquired satisfies the eligibility criteria in Item 305(a)(1) of Regulation S-B); (g)

Questions 4, 11 and 47-50 instead of Item 13(a)(1)(3); (h) Question 3 instead of Item 14(b)(3)(i)(A) and (B); and (i) Questions 4, 11 and 47-50 instead of Item 14(b)(3)(i)(H).

* * * * *

(3) * * *

(f) the information required in Part F/S of Form 10-SB, or, if the small business issuer satisfies the eligibility criteria in Item 305(a) of Regulation S-B, the abbreviated financial statements required by Item 305 of Regulation S-B, instead of the financial statement requirements of Items 13 or 14 of Schedule 14A (abbreviated financial statements may be furnished for a business acquired or to be acquired if the small business issuer satisfies the eligibility criteria in Item 305(a) of Regulation S-B and the business acquired or to be acquired satisfies the eligibility criteria in Item 305(a)(1) of Regulation S-B);

Item 13. Financial and Other Information.

* * *

(a) Information required. * * *

* * * * *

(6) If the registrant satisfies the eligibility criteria in Item 305(a) of Regulation S-K, abbreviated financial statements of the registrant meeting the requirements of Item 305 of Regulation S-K may be furnished pursuant to paragraph (a)(1) of this Item. If the registrant satisfies the eligibility criteria in Item 305(a) of Regulation S-K, abbreviated financial statements meeting the requirements of Item 305 of Regulation S-K may be furnished pursuant to paragraph (a)(1) above with respect to businesses acquired or to be acquired, except that the information need only be provided for the periods specified by Rule 3-05 of Regulation S-X. This option is available only if the business acquired or to be acquired satisfies the eligibility criteria in Item 305(a)(1) of Regulation S-K.

* * * * *

Instructions to Item 13. * * *

6. If abbreviated financial statements are included pursuant to paragraph (a)(6) of this Item, the registrant shall append the full financial statements required by Regulation S-X and the independent accountant's report thereon to the copies of the proxy statement filed with the Commission pursuant to Rule 14a-6 (17 CFR 240.14a-6). If, however, the registrant previously has filed with the Commission full financial statements and the independent accountant's report thereon for the same period in an annual report on Form 10-K and any quarterly reports on Form 10-Q necessary to provide interim financial disclosure, the registrant does not have to append full financial statements to the copies of the proxy statement filed with the Commission, and the registrant may furnish the Form 10-K and 10-Q financial statements and the independent accountant's report thereon to requesting persons in satisfaction of the delivery requirement set forth in Item 305(e) of Regulation S-K.

Item 14. Mergers, consolidations, acquisitions and similar matters

* * * * *

(b) * * *

(1) * * *

(ii) * * *

(E) If the registrant satisfies the eligibility criteria in Item 305(a) of Regulation S-K, abbreviated financial statements meeting the requirements of Item 305 of Regulation S-K may be furnished pursuant to paragraph (b)(1)(ii)(A) of this Item with respect to businesses acquired or to be acquired, except that the information need only be provided for the periods specified by Rule 3-05 of Regulation S-X. This option is available only if the business acquired or to be acquired satisfies the eligibility criteria in Item 305(a)(1) of Regulation S-K. If the registrant satisfies the eligibility criteria in Item 305(a) of Regulation S-K, abbreviated financial statements of the registrant meeting the requirements of Item 305 of Regulation S-K may be furnished pursuant to paragraphs (b)(1)(ii)(B), (C) or (D) of this Item.

* * * * *

(2) Information with respect to S-2 or S-3 registrants.

* * * * *

(i) * * *

(A) * * *

(5) If the registrant satisfies the eligibility criteria in Item 305(a) of Regulation S-K, abbreviated financial statements meeting the requirements of Item 305 of Regulation S-K may be furnished pursuant to paragraph (b)(2)(i)(A)(3) of this Item with respect to businesses acquired or to be acquired, except that the information need only be provided for the periods specified by Rule 3-05 of Regulation S-X. This option is available only if the business acquired or to be acquired satisfies the eligibility criteria in Item 305(a)(1) of Regulation S-K.

(B) * * *

(2) * * *

(vi) If the registrant satisfies the eligibility criteria in Item 305(a) of Regulation S-K, abbreviated financial statements meeting the requirements of Item 305 of Regulation S-K may be furnished pursuant to paragraph (b)(2)(i)(B)(2)(f) of this Item with respect to interim financial information of the registrant, paragraph (b)(2)(i)(B)(2)(ii) of this Item with respect to businesses acquired or to be acquired, except that the information need only be provided for the periods specified by Rule 3-05 of Regulation S-X, paragraphs (b)(2)(i)(B)(2)(iii) and (iv) of this Item with respect to restated financial statements of the registrant, and paragraph (b)(2)(i)(B)(2)(v) of this Item with respect to financial information required because of a material disposition of assets outside of the normal course of business. The option to furnish abbreviated financial statements with respect to businesses acquired or to be acquired is available only if the business acquired or to be acquired satisfies the eligibility criteria in Item 305(a)(1) of Regulation S-K.

* * * * *

(3) Information with respect to registrants other than S-2 or S-3 registrants. * * *

(i) * * *

(J) If the registrant satisfies the eligibility criteria in Item 305(a) of Regulation S-K, abbreviated financial statements of the registrant meeting the requirements of Item 305 of Regulation S-K may be furnished pursuant to paragraph (b)(3)(i)(E) of this Item.

If the registrant satisfies the eligibility criteria in Item 305(a) of Regulation S-K, abbreviated financial statements meeting the requirements of Item 305 of Regulation S-K may be furnished pursuant to paragraph (E) above with respect to businesses acquired or to be acquired, except that the information need only be provided for the periods specified by Rule 3-05 of Regulation S-X. This option is available only if the business acquired or to be acquired satisfies the eligibility criteria in Item 305(a)(1) of Regulation S-K.

(ii) * * *

(F) If the registrant satisfies the eligibility criteria in Item 305(a) of Regulation S-K, abbreviated financial statements of the registrant meeting the requirements of Item 305 of Regulation S-K may be furnished pursuant to paragraphs (b)(3)(ii) (A) and (B) of this Item.

* * * * *

Instructions to Item 14. * * *

8. If abbreviated financial statements are included pursuant to paragraphs (b)(1)(ii)(E), (b)(2)(i)(A)(5), (b)(2)(i)(B)(2)(vi), (B)(3)(i)(J), or (b)(3)(ii)(F) of this Item, the registrant shall append the full financial statements required by Regulation S-X and the independent accountant's report thereon to the copies of the proxy statement filed with the Commission pursuant to Rule 14a-6 [17 CFR 240.14a-6]. If, however, the registrant previously has filed with the Commission full financial statements and the independent accountant's report thereon for the same period in an annual report on Form 10-K and any quarterly reports on Form 10-Q necessary to provide interim financial disclosure, the registrant does not have to append full financial statements to the copies of the proxy statement filed with the Commission, and the registrant may furnish the Form 10-K and 10-Q financial statements and the independent accountant's report thereon to requesting persons in satisfaction of the delivery requirement set forth in Item 305(e) of Regulation S-K.

* * * * *

35. By amending § 240.14c-3 by adding two sentences at the end of paragraph (a)(1) and revising the third sentence in the "Note to Small Business Issuers" to read as follows:

§ 240.14c-3 Annual report to be furnished security holders.

(a) * * *

(1) * * * If abbreviated financial statements are included in the annual report to security holders, the registrant shall append the full financial statements required by Regulation S-X and the independent accountant's report thereon to the copies of the report mailed to the Commission pursuant to paragraph (c) of this rule. If, however, the registrant has filed with the Commission an annual report on Form 10-K on or before the date that the annual report required by this rule is delivered to security holders, the registrant does not have to append full

financial statements to the copies of the report mailed to the Commission, and the registrant may furnish the Form 10-K financial statements to requesting persons in satisfaction of the delivery requirement set forth in Item 305(e) of Regulation S-K.

(2) * * *

Note to Small Business Issuers. * * * A small business issuer shall provide the information in Item 310(a) of Regulation S-B, or, if the small business issuer satisfies the eligibility criteria in Item 305(a) of Regulation S-B, the abbreviated financial statements required by Item 305 of Regulation S-B, in lieu of the financial information required by Rule 14a-3(b)(1) (§ 240.14a-3(b)(1)).

* * * * *

36. By adding § 240.14c-8 to read as follows:

§ 240.14c-8 Abbreviated financial statements.

(a) For purposes of this rule:

(1) The term "full financial statements" shall mean financial statements filed with the Commission meeting the requirements of Regulation S-X (§ 210 of this chapter), or, for small business issuers, Item 310 of Regulation S-B (§ 228.310 of this chapter).

(2) The term "abbreviated financial statements" shall mean financial statements that include the information specified in Item 305(b) of Regulation S-B (§ 228.305(b) of this chapter) or Item 305(b) of Regulation S-K (§ 229.305(b) of this chapter).

(b) A report furnished pursuant to § 240.14c-3 containing abbreviated financial statements shall not be deemed materially misleading or omitting material facts from the report within the meaning of the federal securities laws based on the omission from the report of those financial statement footnotes permitted by Item 305 of Regulation S-B (§ 228.305 of this chapter) or Item 305 of Regulation S-K (§ 229.305 of this chapter) deemed a part of the report, provided the issuer has complied with Item 305 of Regulation S-B or Item 305 of Regulation S-K.

(c) An information statement containing abbreviated financial statements pursuant to Item 1 of Schedule 14C (§ 240.14c-101 of this chapter) shall not be deemed materially misleading or omitting material facts from the information statement within the meaning of the federal securities laws based on the omission from the information statement of those financial statement footnotes permitted by Item 305 of Regulation S-B (§ 228.305 of this chapter) or Item 305 of Regulation S-K (§ 229.305 of this chapter) deemed a part of the information statement, provided

the issuer has complied with Item 305 of Regulation S-B or Item 305 of Regulation S-K.

(d) The full financial statements that are omitted from a report or information statement shall be deemed to be part of the report or information statement.

37. By amending Schedule 14C (§ 240.14c-101) by revising the last sentence in the Note to read as follows:

* * * * *

Note: * * * Small business issuers shall provide the financial information in Item 310 of Regulation S-B or, if the small business issuer satisfies the eligibility criteria in Item 305(a) of Regulation S-B, the abbreviated financial statements required by Item 305 of Regulation S-B, in lieu of any financial statements required by Item 1 of § 240.14c-101.

* * * * *

38. By amending § 240.14d-1 by adding paragraph (b)(3) to read as follows:

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

* * * * *

(b) * * *

(3) *Abbreviated Financial Statements*

(i) For purposes of this rule:

(A) The term "full financial statements" shall mean financial statements filed with the Commission pursuant to Item 9 of Schedule 14D-1, Item 1(a) of Schedule 14D-1F or Item 1(a) of Schedule 14D-9F.

(B) The term "abbreviated financial statements" shall mean financial statements that meet the requirements of Item 305 of Regulation S-B or Item 305 of Regulation S-K.

(ii) A disclosure document containing abbreviated financial statements shall not be deemed materially misleading or omitting material facts from the disclosure document within the meaning of the federal securities laws based on the omission from the disclosure document of those financial statement footnotes permitted by Item 305 of Regulation S-B (§ 228.305 of this chapter) or Item 305 of Regulation S-K (§ 229.305 of this chapter) deemed a part of the disclosure document, provided the bidder or other filer has complied with Item 305 of Regulation S-B or Item 305 of Regulation S-K.

(iii) The full financial statements that are omitted from a disclosure document pursuant to paragraph (e)(1)(x) of Rule 14d-6, Item 1(a) of Schedule 14D-1F or Item 1(a) of Schedule 14D-9F shall be deemed to be part of the disclosure document.

39. By amending § 240.14d-6 by adding paragraph (e)(1)(x) to read as follows:

§ 240.14d-6 Disclosure requirements with respect to tender offers.

* * * * *

(e) *Information to be included*

(1) * * *

(x) In lieu of the information required by paragraph (e)(1)(viii) above regarding information contained in Item 9 of Schedule 14D-1, or a fair and adequate summary thereof, if the bidder satisfies the eligibility criteria in Item 305(a) of Regulation S-B (§ 228.305(a) of this chapter) or Item 305(a) of Regulation S-K (§ 229.305(a) of this chapter), abbreviated financial statements meeting the requirements of Item 305 of such regulation may be furnished.

40. By amending § 240.14d-102 by redesignating paragraph (a) of Item 1 as paragraph (a)(1), adding a new paragraph (a) introductory text and adding paragraph (a)(2) to read as follows:

§ 240.14d-102 Schedule 14D-1F. Tender offer statement pursuant to rule 14d-1(b) under the Securities Exchange Act of 1934.

* * * * *

Item 1. Home Jurisdiction Documents

(a) Furnish the information required by paragraph (a)(1) of this item to the Commission. Either the information required by paragraph (a)(1) or that required by paragraph (a)(2) of this item shall be furnished to shareholders. If information is delivered to shareholders pursuant to paragraph (a)(2) of this item, such information shall be furnished to the Commission.

(1) * * *

(2) Furnish the information required by paragraph (a)(1) above, *provided* that in lieu of financial statements included in such information, if the bidder satisfies the eligibility criteria in Item 305(a) of Regulation S-B (§ 228.305(a) of this chapter) or Item 305(a) of Regulation S-K (§ 229.305(a) of this chapter), abbreviated financial statements meeting the requirements of Item 305 of such regulation may be furnished.

41. By amending § 240.14d-103 by redesignating paragraph (a) of Item 1 as paragraph (a)(1), adding a new paragraph (a) introductory text and adding paragraph (a)(2) to read as follows:

§ 240.14d-103 Schedule 14D-9F. Solicitation/recommendation statement pursuant to section 14(d)(4) of the Securities Exchange Act of 1934 and rules 14d-1(b) and 14e-2(c) thereunder.

* * * * *

Item 1. Home Jurisdiction Documents.

(a) Furnish the information required by paragraph (a)(1) of this item to the Commission. Either the information required by paragraph (a)(1) or that required by paragraph (a)(2) of this item shall be furnished to shareholders. If information is delivered to shareholders pursuant to

paragraph (a)(2) of this item, such information shall be furnished to the Commission.

(1) * * *

(2) Furnish the information required by paragraph (a)(1) above, *provided* that in lieu of financial statements included in such information, if the bidder satisfies the eligibility criteria in Item 305(a) of Regulation S-B (§ 228.305(a) of this chapter) or Item 305(a) of Regulation S-K (§ 229.305(a) of this chapter), abbreviated financial statements meeting the requirements of Item 305 of such regulation may be furnished.

* * * * *

PART 249—FORMS, SECURITIES EXCHANGE ACT OF 1934

* * * * *

42. The authority for Part 249 continues to read, in part, as follows:

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

43. By amending Form 10-K (referenced in § 249.310) by deleting the second sentence in Item 8, and adding a sentence at the end of Note 1 to General Instruction G to read as follows:

Note—The text of Form 10-K does not, and this amendment will not, appear in the Code of Federal Regulations.

Form 10-K

Annual Report Pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934

* * * * *

General Instructions

* * * * *

G. Information to be Incorporated by Reference.

* * * * *

Note 1. * * * In addition, if abbreviated financial statements are included in the registrant's annual report that is incorporated by reference, then full financial statements meeting the requirements of Regulation S-X shall be filed under Item 8.

44. By amending Form 10-KSB (referenced in § 249.310b) by adding paragraph 2(c) to the General Instructions to read as follows:

Note—The text of Form 10-KSB does not, and this amendment will not, appear in the Code of Federal Regulations.

Form 10-KSB

* * * * *

General Instructions

* * * * *

E. Information to be Incorporated by Reference.

* * * * *

2. * * *

* * * * *

(c) If abbreviated financial statements are included in the registrant's annual report that is incorporated by reference, then full financial statements meeting the

requirements of Regulation S-B shall be filed under Item 7.

By the Commission.

Dated: June 27, 1995.

Margaret H. McFarland,
Deputy Secretary.

BILLING CODE 8010-01-P

Note: The following appendices will not appear in the Code of Federal Regulations.

Appendix A—Summary of Common Footnote Disclosures That Would Be Omitted From Abbreviated Financial Statements

The proposed rules for abbreviated financial statements would omit footnote disclosure included in the full financial statements, except with respect to a limited number of specified matters. Those specified matters are discussed in the proposing release. The following is a summary of the major types of disclosures that would typically be omitted from abbreviated financial statements of commercial and industrial companies. It may be useful in evaluating the general extent to which the volume of footnote disclosures would be reduced. The listing is not intended to include every specific disclosure that would be omitted, nor is it intended to define what disclosures would be omitted under the proposed rules. The listing does not specifically address additional footnote disclosures that may be required in full financial statements of registrants in specialized industries. However, such disclosures would be omitted from the notes to the abbreviated financial statements unless their inclusion is required in response to a matter specified for disclosure under the proposed rules. Certain information regarding the financial statement captions listed below is required to be shown on the face of the full financial statements, and that information also is required on the face of the abbreviated financial statements.

Omitted Disclosures by Major Financial Statement Caption

Cash

Restrictions, compensating balances

Inventories

Amounts by major classes, LIFO information, long term contract terms and conditions, billed and unbilled amounts

Investment securities

Types, maturities, realized and unrealized gains or losses, sales and transfers

Loan impairment information

Depreciable assets

Amounts by major classes, depreciation expense, depreciable lives

Intangible assets

Amounts by major classes, amount and reasons for significant additions, deletions and writeoffs, amortization periods

Investments accounted for under the equity method

Nature of investment, percentage ownership, market value, summarized financial information of investee

Amount of assets subject to lien

Lease information

Operating leases

Amounts expensed, commitments, future minimum lease payments, contingent rentals, terms and effects of sale-leaseback transactions

Capital leases

Assets subject to capital lease, interest portion of obligation, future minimum lease payments

Long-term obligations

Terms, maturities, sinking fund requirements, security interests, covenants, nature and terms of extinguishments, terms and effects of troubled debt restructurings, capitalized interest amounts, rates used to discount certain liabilities

On-balance sheet and off-balance sheet financial instruments

Financial instruments

Terms and characteristics of both on-balance sheet and off-balance sheet financial instruments, notional or contract amounts, concentrations of credit risk, amount of possible accounting loss on off balance sheet instruments

Hedging activities

Nature of activities and offsetting amounts, risks

Derivatives

Nature, terms and objectives, characteristics by category, notional or contract amounts

Fair value disclosures

Pension, post-employment, and post-retirement benefit plan information

Description of plan, details of the expense, plan assets, plan benefit obligations, net asset or liability recognized, assumptions regarding weighted-average assumed discount rate, rate of compensation increase used to measure the projected benefit, weighted-average expected long-term rate of return on plan assets, and health care cost trend rate, nature and gain or loss on curtailment of settlement of plan

Income taxes

Components of tax expense, components of deferred tax assets/liabilities and any valuation allowance, reconciliation of the effective income tax rate, carryforward information, nature and amounts of deferred taxes not recognized due to special exceptions to SFAS 109

Redeemable preferred stock

Details of preferences, redemption terms and amounts

Stockholders equity

Details of preferences, redemption terms, conversion features, voting rights, restrictions on net assets or payments of dividends, details of sales of stock by subsidiaries

Stock options and warrants

Amounts granted, exercised, terminated and exercisable, changes in terms or exercise prices

Employee stock ownership plans (ESOPs)

Details of plan, compensation expense during the period, number of share allocated and committed to be released, fair value of unearned ESOP shares and the existence of any obligation to

repurchase shares including the fair value of such shares

Commitments

Purchase, sale, delivery, guarantees etc.

Gain contingencies

Nonmonetary transactions

Transfers of receivable with recourse

Earnings per share

Supplementary earnings per share reflecting recent conversions or issuances of debt or equity securities

Cash flows

Interest and taxes paid, noncash transactions, sales, purchases, and maturities of investment securities

Research and development costs

Restructuring changes

Nature and basis for the charge, description of major restructuring actions, amounts expensed by category, description and number of employees to be terminated, nature and extent to which actual restructuring action differed from original plan

Segment, geographic and currency translation information

Business segment information

Revenues, operating profit or loss, identifiable assets, depreciation and capital expenditures

Revenue from major customers

Foreign operations

Revenues, operating profit or loss, identifiable assets

Currency translation

Balances, nature of foreign currency translated, exchange gains or losses included in net income

Foreign exchange contracts

Contract amounts and nature of foreign currency

Certain Risks and Uncertainties as defined by AICPA SOP 94-6

Disclosures specified by recently issued or proposed FASB standards that would be omitted from abbreviated financial statements

Accounting for the impairment of long-lived assets and for long-lived assets to be disposed of (SFAS 121)

A description of impaired assets and facts and circumstances leading to impairment

The amount of the impairment loss and how fair value was determined

The caption in the income statement in which the impairment loss is recognized

The business segment affected (if applicable)

Accounting for stock options

Any additional disclosures that may be required by the proposed FASB statement with respect to disclosure of stock option compensation.

Appendix B—Disclosure Guidelines From the 1983 Study

The following disclosure guidelines are reproduced from Summary Reporting of Financial Information, published in 1983 by the Financial Executives Research Foundation. The Guidelines were developed by the companies participating in the 1983 FERF study subsequent to the preparation of their prototype summary annual reports.

These guidelines are based on the accounting and disclosure standards in effect in 1983. They have not been updated for changes since then.

General Guidelines

SEC Rule. The guidelines presume that the summary report would not be materially misleading. This is implicit in SEC Rule 10(b)(5) and was among the instructions given to the nineteen companies that prepared mock summary reports.

Format. No specific guidelines are recommended for the format of summary reports. Companies should have flexibility to make the most meaningful presentation of their individual circumstances.

Narrative Financial Review. A summary report should include a narrative financial review. The authors believe that the summary reports that communicated most effectively were those that contained a narrative financial review in which management presented the company's financial results in layman's language. In addition, the financial review serves as a place to include all significant financial information, so as to avoid the duplication which occurs in many of today's annual reports. Also, the financial review provides a place where material now contained in the notes to the financial statements in technical terms can be explained in everyday language.

The reporting on various aspects of the results of operations, of financial position, and of changes in financial position in a narrative financial review should be on an exception basis. For example, companies that are not incurring any liquidity problems or that do not lack resources would not be required to include "boilerplate" language covering these matters.

There should be total flexibility as to format and location of a narrative financial review. For example, a company could present such a discussion in an expanded letter to shareholders, if it wishes.

Basic Financial Statements. A summary report should include a balance sheet and an income statement covering a minimum of two years. These could be condensed from those presented in the Form 10-K.

Funds flow information should be presented and should indicate the principal sources and uses of funds for a minimum of two years. This may be a condensed statement of changes in financial position, or any suitable alternative, such as a table or graph with a narrative explanation.

Notes. The style and placement of footnote-type disclosures, when required by the summary reporting guidelines, are optional. The traditional footnote format is acceptable but not required.

Guidelines for Specific Disclosures

Segment Data. A summary annual report should disclose industry and geographic segment data if necessary to give the reader an understanding of the company's business.

Industry segment data should include a description of the segments, sales by segment and some meaningful measure of segment earnings (e.g., operating income or net earnings).

Disclosure of identifiable assets, capital expenditures and depreciation expense by

industry segment may be necessary if they would indicate a relationship among industry segments that is different from that which a reader might presume from observing sales and income.

Encouraged disclosure. Companies are encouraged to provide additional information to aid readers in understanding the company's lines of business. Disclosures, such as rate of return on investment by segment, would be helpful in analyzing operations by segment.

Companies are encouraged to disclose major operations outside the United States, especially when such operations are in countries that are politically or economically unstable.

In addition, disclosing major customer information is encouraged.

Accounting Policies and Accounting Changes. A company's accounting policies should be disclosed if:

- The policies are unique to the industry.
- There are acceptable alternative accounting principles that could be used and the choice would result in significantly different reported financial results.

Factors to consider in determining whether or not to disclose an accounting policy include how much impact the policy may have on the financial statements and whether a reader would expect the policy to be disclosed.

In addition, any material accounting changes should be disclosed, along with the effects of the changes on financial position or operating results.

Contingencies and Uncertainties. Summary reports should disclose specific contingencies that could, on resolution, have a material effect on financial position or operation results.

Acquisition and Dispositions. Summary reports should disclose significant acquisitions and dispositions of businesses, so the reader can more easily compare year-to-year reported financial results.

Encouraged disclosure. A company is encouraged to disclose the business reasons for an acquisition or disposition if that information might aid the reader in understanding the event and its importance.

Long-term Debt. The total amount of long-term debt at the latest balance sheet date should be disclosed, including capitalized lease obligations. Scheduled maturities of this debt for each of the five years subsequent to the latest balance sheet date should be disclosed if it is anticipated that the maturities may cause or contribute to liquidity problems.

Restrictive loan covenants (e.g., dividend restrictions, working capital requirements, interest coverage ratios) should be disclosed if the company is in or near violation of a covenant at the balance sheet date, or the restrictions significantly impede the flow of funds from subsidiaries to the parent company or from the company to the shareholders.

Encouraged disclosure. Disclosure is also encouraged for larger than usual annual debt maturities, unusual financing and abnormal interest rates.

Financial information on Unconsolidated Subsidiaries and Equity Investees. The

entities should be identified and the percentages of ownership disclosed. In addition, aggregate totals of the following should be disclosed:

- Amount of the company's equity in earnings.
- Dividends received.
- Condensed balance sheet information.

Short-term Debt. The total amount of short-term debt and the amount of unused lines of credit at the latest balance sheet date should be disclosed.

Income Taxes. Companies should explain why the effective tax rate differs from the statutory tax rate, if there is a significant difference. Current guidance used by public companies would continue to apply in a summary report to determine materiality thresholds for disclosure. Such an explanation could be in the form of a reconciliation or be accomplished via narrative discussion.

The amount of any significant operating loss or investment tax credit carryforwards that the company expects to use should be disclosed.

Changing Prices Information. No minimum guidelines are proposed.

Encouraged disclosure. Companies are encouraged to include whatever quantitative inflation-adjusted data they consider appropriate and to provide a narrative discussion of the effects of inflation on reported financial results.

Quarterly Data. No minimum guidelines are proposed.

Market Price Data. No minimum guidelines are proposed.

Encouraged disclosure. Disclosure of the market price of the company's common stock is encouraged. This information could be on a monthly, quarterly or annual basis, indicating the highs, lows or averages for the period. The degree of detail would depend on the volatility of the stock's price.

Selected Five-year Data. Both income statement and balance sheet data for a period of least five years should be presented. At a minimum, this disclosure should include the items required by the SEC's selected financial data rule—revenues, income from continuing operations, income per share from continuing operations, total assets, long-term obligations and cash dividends declared per common share.

Encouraged disclosure. Companies are encouraged to disclose trend information, such as rate of return on investment, that would help the reader evaluate long-term performance and trends in financial position.

Pension and Employee Benefit Plans. No minimum guidelines are proposed, pending the forthcoming guidance from the FASB's current pension accounting project.

Detail of Inventory and Property. No minimum guidelines are proposed.

Leases. Five-year maturities of capitalized lease obligations should be disclosed if the maturities may be the cause of or contribute to liquidity problems. Such disclosure would typically be included with long-term debt maturity information.

Companies that have significant leases as a lessor should disclose information on their activities as a lessor, so the average reader can understand the business. Also,

significant commitments for noncancelable operating leases should be disclosed.

Encouraged disclosure. Disclosure of significant leasing transactions and other types of financing arrangements is encouraged.

Shareholders' Equity. Minimum disclosure includes:

- The number of common shares outstanding at the latest balance sheet date.
- The components of shareholders' equity in the balance sheet at a minimum, a breakdown of retained earnings, total preferred stock and the total of common stock accounts.
- Total dividends declared.
- Restrictions on the payment of dividends due to loan or other covenants in cases where future dividend payments may be in jeopardy because the company is in or near violation of these covenants.

Extraordinary Items. Extraordinary items merit ample explanation to help the average reader understand the significant items that affect the comparability of reported financial results. Both the nature of the items and effect on the financial statements should be disclosed.

Other Income and Expense Data. Significant components of other income and expense should be disclosed if they would assist the average reader in understanding the comparability of reported financial results.

Other Specific Expenses. No minimum guidelines are proposed for depreciation, research and development, interest and advertising expenses.

Encouraged disclosure. Companies are encouraged to disclose these expenses when they are significant.

Capitalized Interest. No minimum guidelines are proposed.

Capital Expenditures and Firm Purchase Commitments. Companies should disclose current year capital expenditures. No minimum guidelines are proposed for firm purchase commitments that are in the ordinary course of business.

Encouraged disclosure. Disclosure is encouraged of planned capital expenditures for the next year and beyond, if significant, as well as significant commitments and any plans for major new capital projects.

Related Party Disclosures. Disclosure should include related party transactions or relationships where it is necessary for the reader to understand their present or potential future effects on results of operations or financial position.

Prior Period Adjustments. Any adjustment of prior period financial statements should be disclosed, along with reasons, to inform the reader that comparative financial information is different from that previously issued.

Ratios (Other Than Earnings Per Share). No minimum guidelines are proposed.

Encouraged disclosure. Companies are encouraged to show ratios that would be meaningful indicators of the results of operations, funds flow and financial position.

Earnings Per Share. Earnings per share amounts should be disclosed. In addition, fully diluted earnings per share should be disclosed if it is significantly different from primary earnings per share.

Treasury Stock. Significant amounts of common stock held in the treasury should be

disclosed. It is presumed that significant acquisitions of treasury shares would be disclosed in the funds flow data.

Preferred stock. Significant types of preferred stock should be disclosed as separate line items in the balance sheet. Any scheduled maturities of preferred stock with mandatory redemption features should be disclosed if they may cause or contribute to liquidity problems.

Reports on Financial Statements

Report of Management. Companies are encouraged to include a management report. It could explain the basis on which the financial information is prepared and management's objectives in simplifying the presentation of financial information to shareholders and state that the Form 10-K is available upon request.

Report of Independent Accountants. A summary report should state, at a minimum, that the audited financial statements, including the independent accountants' report, are available in the Form 10-K. In addition, if the independent accountants' report is qualified for a matter other than consistency due to a change in accounting, such qualification should be mentioned in the summary report.

Illustration of Independent Auditors' Report Report on condensed Financial Statements of a Public Entity Included in a Summary Annual Report

Independent Auditors' Report

Blank Company

We have audited the consolidated balance sheets of Blank Company and subsidiaries as of December 31, 19x5 and 19x4 and the related consolidated statements of income, stockholders' equity, and cash flows for the years then ended. Such consolidated financial statements and our report thereon dated March 15, 19x6, expressing an unqualified opinion (which are not presented herein) are included in Appendix A to the proxy statement for the 19x6 annual meeting of stockholders. The accompanying condensed consolidated financial statements are the responsibility of the Company's management. Our responsibility is to express an opinion on such condensed consolidated financial statements in relation to the complete consolidated financial statements.

In our opinion, the information set forth in the accompanying condensed consolidated balance sheets as of December 31, 19x5 and 19x4 and the related condensed consolidated statements of income, stockholders' equity and cash flows for the years then ended is fairly stated in all material respects in relation to the basic consolidated financial statements from which it has been derived.

Appendix C—SEC Request for Investor Suggestions on How to Improve the Financial Information Provided in Annual Reports and Other Disclosure Documents Sent to Shareholders

The U.S. Securities and Exchange Commission ("the SEC"), the federal government agency that oversees disclosure of information about companies to investors, wants to hear from investors about how they

use the annual report to shareholders that the SEC requires most companies to send their shareholders every year. These annual reports are required to contain financial statements, including notes to the financial statements, as well as other information about the company.

The SEC is proposing changes to its rules that would affect annual reports and other disclosure documents, such as prospectuses, containing financial statements that the SEC requires to be sent to investors. Some people have suggested that the information now required is too long and complex, and could discourage investors from examining the financial information they receive. Streamlining this information could highlight what is most important to investors. In addition, companies and their shareholders might be able to save substantial printing, mailing and other costs if the information were streamlined.

The proposed changes to the SEC rules would allow companies to include "abbreviated financial statements" in their annual reports and other documents sent to investors. Abbreviated financial statements would be the same as the financial statements now required, except that most of the notes could be omitted. The complete financial statements, with all of the notes, would still be filed with the SEC, and companies would have to send this information to investors promptly if they requested it.

The SEC also is asking questions about other approaches to streamlining the information given to investors. For example, should it allow companies to give their shareholders a "summary annual report" that includes financial information that is more condensed than abbreviated financial statements? Should it totally rescind the requirement that companies send their shareholders an annual report, and leave it up to the companies to decide when and what to communicate to shareholders?

The SEC would like information about how investors use the financial information they receive, and whether the proposed rule changes would be helpful to them. Since many people now have computers, the SEC would like to hear whether investors prefer to receive information about companies in which they invest in electronic format or in paper.

In addition, the SEC is proposing changes to its rules that would streamline disclosures about executive and director compensation in companies' annual proxy statements. Some of the information now required could be put into the company's Form 10-K report instead of the proxy statement. The Form 10-K is required to be filed with the SEC and provided to shareholders by the company upon request. The proposed rules also would require some of the director compensation information to be put in tabular form.

Here is a series of questions. We urge you to respond, whether you answer one question or all, or just have general comments. Feel free to use this form or write a separate letter marked "File No. S7-13-95."

Please mail your comments to the SEC so they arrive no later than October 10, 1995. Directions for sending your comments to the

SEC are provided at the end of this document. The SEC will make your comments and other comments received by the SEC available to the public. In addition to receiving written comments, the SEC intends to hold focus groups composed of investors to assess investors' views as to the usefulness of sample abbreviated financial statements, as compared with full financial statements.

1. Do you read notes to the financial statements?

Yes ___ No ___

Do you find notes to the financial statements useful in making financial decisions?

Yes ___ No ___

Please add any comments you like about why the notes are or are not useful.

2. The SEC proposes to allow companies to send investors "abbreviated financial statements" that are the same as full financial statements except for limiting the number of notes. Notes would be limited to those covering the following matters:

- 1. Basis of presentation of the abbreviated financial statements.
- 2. Accounting policies.
- 3. Changes in accounting principle.
- 4. Restatements and reclassifications.
- 5. Changes in accounting estimate.
- 6. Business combinations.
- 7. Discontinued operations.
- 8. Circumstances identified in explanatory language added to the independent accountant's standard report.
- 9. Loss contingencies.
- 10. Events of default under credit agreements.
- 11. Related party transactions.
- 12. Bankruptcies and quasi-reorganizations.
- 13. Subsequent events.

All other financial statement notes would be available from the company on request and would be on file with the SEC. Are there some notes you would always want to see that are not set forth above?

Yes ___ No ___

If yes, please identify which notes you would want to see.

Are there notes listed above that you feel could be omitted?

Yes ___ No ___

If yes, please identify which notes could be omitted.

3. What information is the most useful in the annual report to shareholders—financial statements or other information?

Financial statements most useful ___

Other information most useful ___

If you think it is other information, please describe the type of other information that you find the most useful.

4. Would you like to receive shorter documents, with less financial information, if you could still get the more detailed information by asking the company for it?

Yes ___ No ___

Please explain:

5. Should the SEC continue to require that companies send shareholders annual reports?

Yes ___ No ___

If the SEC does continue to require annual reports, should it continue to tell companies what information should go into those reports, instead of leaving it up to the company?

Yes ___ No ___

Please explain:

6. Financial statements are also in many prospectuses. Do you examine the financial statements in prospectuses?

Yes ___ No ___

Would you be more likely to read the financial statements in a prospectus if they were shorter, with fewer notes?

Yes ___ No ___

Please explain:

7. Do you have easy access to a computer with a modem?

Yes ___ No ___

If yes, do you use the computer to get information about companies in which you are a shareholder or are considering investing?

Yes ___ No ___

Would you like to continue to get financial and other information from companies in paper even if you can get it electronically?

Yes ___ No ___

Please explain or comment. If you do use the computer to get information about

companies, describe what kind of information you get, and what database you get it from.

8. The SEC proposes to allow companies to provide some information about executive and director compensation in the Form 10-K rather than the annual proxy statement. The proposed rule changes still would require the following information to remain in the proxy statement:

1. Summary Compensation Table
2. Option Grants
3. Director Compensation
4. Compensation Committee Interlocks
5. Compensation Committee Report on Executive Compensation
6. Graph of the Company's Shareholder Returns

The SEC proposes to allow companies to move the following information to the Form 10-K:

7. Option Exercises and Value of Options Held
8. Long-Term Incentive Plan Awards
9. Pension Plans
10. Employment Contracts and Arrangements
11. Repricing of Options

Please state which of these items you find most useful, and give any explanation you wish to add:

Of the items proposed to be moved, are there any that you would like to continue to have in the proxy statement?

Yes ___ No ___

If yes, which ones? Add any comments you wish.

Of the items proposed to be retained in the proxy statement, are there any that you feel could be moved to the Form 10-K?

Yes ___ No ___

If yes, which ones? Add any comments you wish.

9. Would you like to receive shorter annual proxy statements, with less information about the details of executive compensation, if you could still get the more detailed information by asking the company for it?

Yes ___ No ___

Please explain:

How to Mail Your Ideas and Suggestions to the SEC:

- This form can be mailed to the SEC by folding it in half, with the return address showing. Please staple or tape this form closed. No postage is necessary.

- If you do not wish to use this form, you can write a letter directly to the SEC. Mark your letter "File No. S7-13-95," and send it to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549.

- Remember to send your ideas and suggestions in time to arrive by October 10, 1995.

Do You Want Further Information About What the SEC is Considering?

- If you would like a copy of the complete SEC releases that describe what the SEC is considering, write to Office of Consumer Affairs, Securities and Exchange Commission, Attn: Jonathan M. Gottsegen, Mail Stop 2-6, 450 Fifth Street, N.W., Washington, D.C. 20549. Please state whether you are asking for the release proposing "abbreviated financial statements" or the release proposing changes to information about executive and director compensation, or both.

Thank You For Responding.

Your Name _____
 Street Address _____
 City _____ State _____ Zip _____

[FR Doc. 95-16389 Filed 7-7-95; 8:45 am]

BILLING CODE 8010-01-M

17 CFR Parts 228, 229, 240 and 249

[Release Nos. 33-7184; 34-35894; File No. S7-14-95]

RIN 3235-AG50

Streamlining and Consolidation of Executive and Director Compensation Disclosure

AGENCY: Securities and Exchange Commission.

ACTION: Proposed Rule.

SUMMARY: The Securities and Exchange Commission ("Commission") today is proposing amendments that would permit registrants to provide in the Form 10-K some of the executive compensation disclosure that is currently required in the proxy statement furnished to shareholders. In addition, amendments to the format of disclosure regarding director compensation are being proposed in order to improve the presentation.

DATES: Comments on the proposed amendments should be received on or before September 8, 1995.

ADDRESSES: Comments should be submitted in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Comment letters should refer to File No. S7-14-95. All comments received will be available for public inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, N.W., Washington, D.C. 20549.

FOR FURTHER INFORMATION CONTACT:

Elizabeth M. Murphy or William B. Haseltine, Special Counsels, at (202) 942-2910, Division of Corporation Finance, Securities and Exchange Commission, 450 Fifth Street, N.W., Mail Stop 3-12, Washington, D.C. 20549.

SUPPLEMENTARY INFORMATION: The Commission is proposing amendments to Item 402 of Regulations S-B and S-K¹ and to Forms 10-K and 10-KSB² and Schedule 14A³ under the Securities Exchange Act of 1934 ("Exchange Act").⁴ The annual proxy and information statement⁵ would be streamlined by allowing some of the more detailed compensation disclosure required by Item 402 of Regulations S-B and S-K to be provided in the annual report on Form 10-K⁶ filed with the Commission rather than included in the proxy or information statement furnished to shareholders. The proposals also would affect director compensation disclosure, which would remain in the proxy statement, by consolidating certain elements of that disclosure into an easier-to-read tabular format that provides information for each director.⁷

I. Discussion of Proposals

A. Annual Proxy Statement Streamlining—Location of Compensation Disclosure

Under the proposal, registrants could reduce the detailed executive

¹ 17 CFR 228.402 and 229.402.

² 17 CFR 249.310 and 249.310b.

³ 17 CFR 240.14a-101.

⁴ 15 U.S.C. 78a et seq.

⁵ Throughout this release, references to proxy statements include information statements.

⁶ The discussion of Form 10-K in this release also includes Form 10-KSB.

⁷ In order to encourage individual investor comments and suggestions, a "plain English" solicitation of comment is included in another release issued today (33-7183), relating to proposals for abbreviated financial statements. This "plain English" solicitation of comment also solicits investor comment on the proposed changes to the executive compensation disclosure requirements; a copy may be obtained by calling 1-800-SEC-0330.