

SECURITIES AND EXCHANGE COMMISSION

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

[Release No. 33-7234, 34-36346, IC-21400; File No. S7-31-95]

RIN 3235-AG67

Use of Electronic Media for Delivery Purposes

AGENCY: Securities and Exchange Commission.

ACTION: Proposed rules.

SUMMARY: The Securities and Exchange Commission ("Commission") today is proposing technical amendments to its rules that are premised on the distribution of paper documents. These proposals are intended to clarify certain rules in light of the interpretations set forth in a companion interpretive release [Release No. 33-7233] outlining the Commission's view on the use of electronic media in the dissemination of information under the federal securities laws.

DATES: Comments should be received on or before November 27, 1995.

ADDRESSES: Comments should be submitted in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 5th Street NW., Washington, D.C., 20549. Comment letters should refer to File No. S7-31-95. All comments received will be available for public inspection and copying at the Commission's Public Reference Room, 450 Fifth Street NW., Washington, D.C. 20549.

FOR FURTHER INFORMATION CONTACT: Joseph P. Babits or James R. Budge, (202) 942-2910, Division of Corporation Finance; and, with regard to questions concerning investment companies and investment advisers, Kathleen K. Clarke, (202) 942-0721, Division of Investment Management, U.S. Securities and Exchange Commission, 450 Fifth Street NW., Washington, D.C. 20549.

SUPPLEMENTARY INFORMATION: In order to clarify certain rules in light of the interpretations relating to electronic distribution of information under the federal securities laws, as published concurrently in an interpretive release (Release No. 33-7233) (the "Interpretive Release"), the Commission is proposing minor technical amendments to the following rules and forms: Rule 253 of Regulation A;¹ Rule 420 of Regulation C;² Rules 481 and 482 of Regulation C;³

Rule 605 of Regulation E;⁴ Rule 304 of Regulation S-T;⁵ Forms F-7,⁶ F-8,⁷ F-9;⁸ F-10⁹ and F-80;¹⁰ Rule 12b-12;¹¹ Rule 13e-3;¹² Rule 13e-4;¹³ Schedule 13E-4F;¹⁴ Rule 14a-3;¹⁵ Rule 14a-5;¹⁶ Rule 14a-7;¹⁷ Rule 14c-4;¹⁸ Rule 14c-7;¹⁹ Rule 14d-5;²⁰ Schedule 14D-1F;²¹ Schedule 14D-9F;²² Rule 8b-12;²³ Rule 30d-1;²⁴ and Rule 30d-2.²⁵

I. Proposed Amendments

In its Interpretive Release, published concurrently, the Commission states its views with respect to the use of electronic media to disseminate information in compliance with the federal securities laws. The rules that are the subject of today's proposals relate to various aspects of how a document is to be sent, given or otherwise distributed to investors or others, and were originally adopted on the assumption that delivery was to be accomplished by means of a paper document. The Commission believes it is appropriate to modify these rules in light of the views expressed in the Interpretive Release to make it clear that the rules do not limit an issuer's (or other person's) delivery options to paper dissemination only, and that compliance with the rules governing legibility or specific methods of delivery may be effected by alternative means reasonably calculated to satisfy the requirements if electronic dissemination is chosen.

These proposals demonstrate that the Commission recognizes the diversity of media available to issuers and others who distribute securities-related materials, as well as the fact that strict compliance with requirements applicable to printed material may not be possible in all electronic media. The purpose of the proposed rule changes is to maintain the intent of the original

requirements while allowing flexibility in the choice of distribution medium.

A. General Formatting Requirements

Wherever the Commission's rules prescribe the physical appearance of a paper disclosure document, such as type size and font requirements, the Commission is proposing to add statements to the rules to provide that if the document is being delivered in an electronic version, the issuer may comply with the requirements by presenting the information in a format readily communicated to investors. Where rules require legends to be printed in red ink or bold-face type, or using a different font size, the rules would include a statement that issuers may satisfy such requirements by presenting the legends in any manner reasonably calculated to draw attention to them. Comment is solicited as to whether more specific standards relating to legibility of electronic documents should be required, or whether the more flexible approach proposed today is preferable. If more specific standards are desirable, commenters should indicate which standards should apply.

B. Graphic, Image and Audio Information

In addition to the written word, material information may be effectively conveyed through graphic presentations, such as charts, graphs and photographs, and through audio soundtracks. Some distribution media may be able to accommodate these means of communication, while others may not.²⁶ As noted in Section II of the Interpretive Release, all versions of a disseminated document, whether paper or electronic, should convey substantially equivalent information to investors. The Commission proposes to incorporate this concept by amending its rules, where appropriate, to provide that if material graphic, image and audio information is included in one version of a disclosure document, but not in other versions, the issuer must include in the other versions a fair and accurate

²⁶ While graphic, image and audio material may be included by the issuer in an electronically disseminated document, this information may not, in some cases, be reproduced by the persons receiving the electronic version, either because of the technical constraints of the person's equipment or because of an election not to receive these types of communications. Issuers should be mindful of this possibility when using electronic media. If material information is to be furnished by means of graphics, images or audio soundtracks, issuers may need to make investors using electronic media aware of this.

⁴ 17 CFR 230.605.

⁵ 17 CFR 232.304.

⁶ 17 CFR 239.37.

⁷ 17 CFR 239.38.

⁸ 17 CFR 239.39.

⁹ 17 CFR 239.40.

¹⁰ 17 CFR 239.41.

¹¹ 17 CFR 240.12b-12.

¹² 17 CFR 240.13d-3.

¹³ 17 CFR 240.13e-4.

¹⁴ 17 CFR 240.13e-102.

¹⁵ 17 CFR 240.14a-3.

¹⁶ 17 CFR 240.14a-5.

¹⁷ 17 CFR 240.14a-7.

¹⁸ 17 CFR 240.14c-4.

¹⁹ 17 CFR 240.14c-7.

²⁰ 17 CFR 240.14d-5.

²¹ 17 CFR 240.14d-102.

²² 17 CFR 240.14d-103.

²³ 17 CFR 270.8b-12.

²⁴ 17 CFR 270.30d-1.

²⁵ 17 CFR 270.30d-2.

¹ 17 CFR 230.253.

² 17 CFR 230.420.

³ 17 CFR 230.481 and 230.482.

description or transcript of the omitted information.

With respect to filings made on the EDGAR system, issuers may distribute to investors an electronic version of a disclosure document that includes video, audio, and graphic presentations in one package, while the version filed with the Commission on EDGAR could not accommodate this information. Rule 304 of Regulation S-T currently requires fair and accurate descriptions of omitted materials and provides that those portions of the disseminated version would be deemed filed with the Commission. Rule 304, however, is worded in terms of graphic and image material included in "the paper version" of an EDGAR filing. In order to reflect the possibility of the delivery of an electronic version that differs from the EDGAR filing, the Commission proposes to amend Rule 304 to provide that wherever the "document delivered to investors or others" includes graphic, image or audio information that cannot be reproduced in an electronic filing on EDGAR, the EDGAR filing should include a fair and accurate narrative description, tabular presentation or transcript of the omitted material. Of course, immaterial differences would not need to be described. The rule would retain the provisions that all such omitted material is deemed filed as part of the electronic filing and that copies of the document as distributed should be retained by the issuer for a period of five years. Commenters are requested to address whether there are alternatives to the proposed approach that could better minimize the impact of issuers using different versions of the same disclosure document.

C. Rules Where Mailing is Identified as a Delivery Method

Several of the Commission's rules provide that information may be distributed to investors by mail. Some indicate that reasonably prompt alternative delivery methods may be used,²⁷ while others speak only in terms of mailing. These rules should be read consistently to allow the use of alternative methods of distribution that are reasonably prompt. The Commission proposes to amend the rules where necessary to reflect that view.²⁸

²⁷ See e.g., Rule 14d-4(a)(2)(ii) [17 CFR 240.14d-4(a)(2)(ii)].

²⁸ Where the costs of distribution are to be calculated under the rules, the proposals would provide that methods analogous to those applicable to mailing should be used where alternative delivery methods are chosen.

D. Structure of Electronic Filing Rules

This release proposes amendments to individual rules rather than creating a new regulation dedicated to electronic delivery that would work in tandem with the individual rules. This has been done to better integrate and highlight the electronic delivery accommodations in pre-existing rules and to minimize confusion. However, a separate regulation approach (Regulation S-T) has been implemented in connection with electronic filing requirements, which are much more comprehensive and complex than those contemplated here because of EDGAR programming and processing considerations. The Commission solicits comment as to whether, rather than amending the existing rules throughout as proposed, Regulation S-T should be amended to address not only EDGAR filings, but also all electronic issues. In that case, the proposed amendments would be grouped together and would supersede the paper-based formatting requirements where electronic delivery was used.

II. Solicitation of Comments

Any interested persons wishing to submit written comments relating to the rule proposals, as explained above, are invited to do so by submitting them in triplicate to Jonathan G. Katz, Secretary, U.S. Securities and Exchange Commission, 450 Fifth Street NW., Washington, D.C., 20549. The Commission further requests comment on any competitive burdens that might result from the adoption of the proposals. Comments on this inquiry will be considered by the Commission in complying with its responsibilities under Section 23(a) of the Exchange Act.²⁹ Commenters should refer to File No. S7-31-95 for comments on the proposals set forth in this release.

III. Cost-Benefit Analysis

While the Commission expects the increased use of electronic media to benefit securities markets and investors by making disclosure available faster and more cheaply, it does not anticipate that the proposed amendments will, in and of themselves, result in substantial economic costs or benefits. The rule proposals are not intended to change what is permissible under the federal securities laws; rather, they are intended to make it clear how current regulatory requirements may be satisfied using methods made possible by technological developments. However, commenters are encouraged to identify any costs or benefits associated with the rule

²⁹ 15 U.S.C. 78w(a).

proposals that the Commission may have overlooked.

In particular, please identify any costs or benefits associated with the rule proposals relating to (1) bold-face type, font size, and red ink requirements, (2) graphic, image and audio information, and (3) alternatives to mailing as a distribution method. Will these proposals result in additional costs and benefits (or will the proposed amendments have no significant effect, as anticipated)? Please describe, and quantify, where possible, any such significant effects that you foresee. Will these proposals affect the current compliance burden?

Commenters should bear in mind that the use of electronic media for delivery purposes is optional, and persons responsible for furnishing disclosure may assess for themselves whether the benefits of using electronic distribution methods would outweigh the costs in a specific circumstance.

In addition, the Commission seeks comment on the following issues in order to better assess the costs and benefits of taking additional actions affecting the dissemination of information under the federal securities laws. Please describe, and quantify where possible, the costs and benefits associated with any proposals that you would recommend.

(1) Should any of the rule changes proposed in this release be crafted in a manner that would reduce compliance burdens? If so, how could that be done?

(2) What actions, beyond what is proposed in this release, should the Commission take to maximize the benefits of document delivery to shareholders, issuers, and others, while eliminating any unnecessary costs?

(3) What kinds of documents should the Commission be able to receive, process, and make publicly available through EDGAR system that are not currently eligible for that system?

(4) Should the Commission allow the filing of documents in electronic media other than EDGAR? If so, please make specific recommendations.

IV. Regulatory Flexibility Act Certification

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

V. Statutory Bases

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

List of Subjects

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

Reporting and recordkeeping requirements, Securities, and Investment companies.

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 230—GENERAL RULES AND REGULATIONS, SECURITIES ACT OF 1933

1. The general authority citation for Part 230 is revised to read as follows:

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

* * * * *

2. By amending § 230.253 by designating the text of paragraph (b) after the heading as paragraph (b)(1) and by adding paragraph (b)(2), to read as follows:

§ 230.253 Offering circular.

* * * * *

(b) Presentation of information.

(1) * * *

(2) Where an offering circular is distributed through an electronic medium, issuers may satisfy legibility requirements applicable to printed documents by presenting all required information in a format readily communicated to investors. If material graphic, image and audio information is included in one version of an offering circular, but not in other versions, the issuer must include in the other versions a fair and accurate description or transcript of the omitted information.

* * * * *

3. By amending § 230.420 by designating the text as paragraph (a) and by adding paragraph (b), to read as follows:

§ 230.420 Legibility of prospectus.

(a) * * *

(b) Where a prospectus is distributed through an electronic medium, issuers may satisfy legibility requirements applicable to printed documents, such as paper size, type size and font, bold-face type, italics and red ink, by presenting all required information in a format readily communicated to investors, and where indicated, in a manner reasonably calculated to draw investor attention to specific information. If material graphic, image and audio information is included in one version of a prospectus, but not in other versions, the issuer must include in the other versions a fair and accurate description or transcript of the omitted information.

4. By amending § 230.481 to add paragraph (h) to read as follows:

§ 230.481 Information required in prospectus.

* * * * *

(h) Where a prospectus is distributed through an electronic medium, issuers may satisfy legibility requirements applicable to printed documents, such as paper size, type size and font, bold-face type, italics and red ink, by presenting all required information in a format readily communicated to investors, and where indicated, in a manner reasonably calculated to draw investor attention to specific information. If material graphic, image and audio information is included in one version of a prospectus, but not in other versions, the issuer must include in the other versions a fair and accurate description or transcript of the omitted information.

5. By amending § 230.482 by removing the note following paragraph (a)(7) and adding a note to paragraph (a)(6), to read as follows:

§ 230.482 Advertising by an investment company as satisfying requirements of section 10.

(a) * * *

(6) * * *

Note to paragraph (a)(6). All advertisements made pursuant to this rule are subject to Rule 420 (17 CFR 230.420).

* * * * *

6. By amending § 230.605 by designating the text of paragraph (c) as paragraph (c)(1) and by adding paragraph (c)(2) to read as follows:

§ 230.605 Filing and use of the offering circular.

* * * * *

(c)(1) * * *

(2) Where an offering circular is distributed through an electronic

medium, issuers may satisfy legibility requirements applicable to printed documents by presenting all required information in a format readily communicated to investors. If material graphic, image and audio information is included in one version of an offering circular, but not in other versions, the issuer must include in the other versions a fair and accurate description or transcript of the omitted information.

* * * * *

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

7. The authority citation for Part 232 continues to read as follows:

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

8. By amending § 232.304 by revising the section heading, paragraphs (a), (b)(1), and (c) to read as follows:

§ 232.304 Graphic, image and audio material.

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

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

(2) * * *

(c) An electronic filer shall retain for a period of five years a copy of each document containing graphic, image or audio material where such material is not included in an electronic filing. The five-year period shall commence as of the filing date, or the date that appears on the document, whichever is later. Upon request, an electronic filer shall furnish to the Commission or its staff a

copy of any or all of the documents contained in the file.

* * * * *

PART 239—FORMS PRESCRIBED UNDER THE SECURITIES ACT OF 1933

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

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

* * * * *

10. By amending Form F-7 (referenced in § 239.37) by adding a note to Part I, Item 2, 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

* * * * *

Part I—Information Required To Be Sent to Shareholders

* * * * *

Item 2. Information Legends

* * * * *

Note to Item 2. If the home-jurisdiction document(s) are delivered through an electronic medium, the issuer may satisfy the legibility requirements for the required legends relating to type size and font by presenting the legends in any manner reasonably calculated to draw investor attention to it.

* * * * *

11. By amending Form F-8 (referenced in § 239.38) by adding a note to Part I, Item 2, 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

* * * * *

Part I—Information Required To Be Delivered to Offerees or Purchasers

* * * * *

Item 2. Informational Legends

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Note to Item 2. If the home-jurisdiction document(s) are delivered through an electronic medium, the issuer may satisfy the legibility requirements for the required legends relating to type size and font by presenting the legends in any manner reasonably calculated to draw investor attention to it.

* * * * *

12. By amending Form F-9 (referenced in § 239.39) by adding a note to Part I, Item 2, 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

* * * * *

Part I—Information Required To Be Delivered to Offerees or Purchasers

* * * * *

Item 2. Informational Legends

* * * * *

Note to Item 2. If the home-jurisdiction document(s) are delivered through an electronic medium, the issuer may satisfy the legibility requirements for the required legends relating to type size and font by presenting the legends in any manner reasonably calculated to draw investor attention to it.

* * * * *

13. By amending Form F-10 (referenced in § 239.40) by adding a note to Part I, Item 3, 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

* * * * *

Part I—Information Required To Be Delivered to Offerees or Purchasers

* * * * *

Item 3. Informational Legends

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Note to Item 3. If the home-jurisdiction document(s) are delivered through an electronic medium, the issuer may satisfy the legibility requirements for the required legends relating to type size and font by presenting the legends in any manner reasonably calculated to draw investor attention to it.

* * * * *

14. By amending Form F-80 (referenced in § 239.41) by adding a note to Part I, Item 2, 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

* * * * *

Part I—Information Required To Be Delivered to Offerees or Purchasers

* * * * *

Item 2. Informational Legends

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Note to Item 2. If the home-jurisdiction document(s) are delivered through an electronic medium, the issuer may satisfy the legibility requirements for the required legends relating to type size and font by

presenting the legends in any manner reasonably calculated to draw investor attention to it.

* * * * *

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

15. 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.

* * * * *

16. The authority citation following § 240.14d-5 is removed.

17. By amending § 240.12b-12 by adding paragraph (e) to read as follows:

§ 240.12b-12 Requirements as to paper, printing and language.

* * * * *

(e) Where a statement or report is distributed to investors through an electronic medium, issuers may satisfy legibility requirements applicable to printed documents, such as paper size and type size and font, by presenting all required information in a format readily communicated to investors. If material graphic, image and audio information is included in one version of a statement or report, but not in other versions, the issuer must include in the other versions a fair and accurate description or transcript of the omitted information.

18. By amending § 240.13e-3 by designating the instructions to paragraph (e)(3) (immediately following paragraph (e)(3)(ii)(B)) as "*Instructions to paragraph (e)(3)*" and by adding instruction 3 thereto, to read as follows:

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

* * * * *

(e)(3) * * * * *
Instructions to paragraph (e)(3).

1. * * * *

2. * * * *

3. If the information delivered to security holders is distributed through an electronic medium and the legend required by paragraph (e)(3)(ii) is included, issuers may satisfy the legibility requirement relating to type size and font by presenting the legend in any manner reasonably calculated to draw security holder attention to it.

* * * * *

19. By amending § 240.13e-4 by revising paragraph (e)(1)(ii)(A), to read as follows:

§ 240.13e-4 Tender offers by issuers.

* * * * *

- (e) * * *
- (1) * * *
- (ii) * * *

(A) By mailing or otherwise furnishing promptly the statement required by paragraph (d)(1) of this section to each security holder whose name appears on the most recent shareholder list of the issuer;

* * * * *

20. By amending Schedule 13E-4F (§ 240.13e-102) by adding a note to Item 2 of Part I, 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.

* * * * *

PART I—INFORMATION REQUIRED TO BE SENT TO SHAREHOLDERS

* * * * *

Item 2. * * *

Note to Item 2. If the home jurisdiction document(s) are delivered through an electronic medium, the issuer may satisfy the legibility requirements for the required legends relating to type size and fonts by presenting the legend in any manner reasonably calculated to draw security holder attention to it.

* * * * *

21. By amending § 240.14a-3 by designating the text of paragraph (b)(2) as (b)(2)(i) and by adding paragraph (b)(2)(ii), to read as follows:

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

* * * * *

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

(ii) Where the annual report to security holders is delivered through an electronic medium, issuers may satisfy legibility requirements applicable to printed documents, such as type size and font, by presenting all required information in a format readily communicated to investors. If material graphic, image and audio information is included in one version of an annual report to security holders, but not in other versions, the issuer must include in the other versions a fair and accurate description or transcript of the omitted information.

* * * * *

22. By amending § 240.14a-5 by designating the text of paragraph (d) as paragraph (d)(1) and by adding paragraph (d)(2), to read as follows:

§ 240.14a-5 Presentation of information in proxy statement.

* * * * *

- (d)(1) * * *

(2) Where a proxy statement is delivered through an electronic

medium, issuers may satisfy legibility requirements applicable to printed documents, such as type size and font, by presenting all required information in a format readily communicated to investors. If material graphic, image and audio information is included in one version of a proxy statement, but not in other versions, the issuer must include in the other versions a fair and accurate description or transcript of the omitted information.

* * * * *

23. By amending § 240.14a-7 by adding a note at the end of the section, to read as follows:

§ 240.14a-7 Obligations of registrants to provide a list of, or mail soliciting material to, security holders.

* * * * *

Note to § 240.14a-7. Reasonably prompt methods of distribution to security holders may be used instead of mailing. If an alternative distribution method is chosen, the costs of that method should be considered where necessary rather than the costs of mailing.

24. By amending § 240.14c-4 by adding paragraph (d), to read as follows:

§ 240.14c-4 Presentation of information in information statement.

* * * * *

(d) Where an information statement is delivered through an electronic medium, issuers may satisfy legibility requirements applicable to printed documents, such as type size and font, by presenting all required information in a format readily communicated to investors. If material graphic, image and audio information is included in one version of an information statement, but not in other versions, the issuer must include in the other versions a fair and accurate description or transcript of the omitted information.

25. By amending § 240.14c-7 by revising paragraph (c), to read as follows:

§ 240.14c-7 Providing copies of material for certain beneficial owners.

* * * * *

(c) A registrant, at its option, may send by mail or other equally prompt means, its annual report to security holders to the beneficial owners whose identifying information is provided by record holders and respondent banks, pursuant to § 240.14b-1(b)(3) and § 240.14b-2(b)(4) (ii) and (iii), provided that such registrant notifies the record holders and respondent banks at the time it makes the inquiry required by paragraph (a) of this section that the registrant will send the annual report to

security holders to the beneficial owners so identified.

* * * * *

26. By amending § 240.14d-5 by adding a note at the end of the section, to read as follows:

§ 240.14d-5 Dissemination of certain tender offers by the use of stockholder lists and security position listings.

* * * * *

Note to § 240.14d-5. Reasonably prompt methods of distribution to security holders may be used instead of mailing. If alternative distribution methods are chosen, the costs of the distribution should be calculated using methods analogous to those required in connection with mailing.

27. By amending Schedule 14D-1F (§ 240.14d-102) by adding a note to Item 2 of Part I, 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.

* * * * *

Part I—Information Required To Be Sent to Shareholders

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Item 2. Informational Legends

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Note to Item 2. If the home-jurisdiction document(s) are delivered through an electronic medium, the issuer may satisfy the legibility requirements for the required legends relating to type size and font by presenting the legend in any manner reasonably calculated to draw security holder attention to it.

* * * * *

28. By amending Schedule 14D-9F (§ 240.14d-103) by adding a note to Item 2 of Part I, 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.

* * * * *

Part I—Information Required To Be Sent to Shareholders

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Item 2. Informational Legends

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Note to Item 2. If the home jurisdiction document(s) are delivered through an electronic medium, the issuer may satisfy the legibility requirements for the required legends relating to type size and font by presenting the legend in any manner reasonably calculated to draw security holder attention to it.

* * * * *

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

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

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

* * * * *

30. The authority citations following § 270.8b-12 are removed.

31. By amending § 270.8b-12 by adding paragraph (f) to read as follows:

§ 270.8b-12 Requirements as to paper, printing and language.

* * * * *

(f) Where a registration statement or report is distributed through an electronic medium, issuers may satisfy legibility requirements applicable to printed documents, such as paper size, type size and font, bold-face type, italics and red ink, by presenting all required information in a format readily communicated to investors, and where indicated, in a manner reasonably calculated to draw investor attention to specific information. If material graphic, image and audio information is included in one version of a registration statement or report, but not in other versions, the issuer must include in the other versions a fair and accurate description or transcript of the omitted information.

32. By amending § 270.30d-1 by revising the word "mailed" in paragraph (c) to read "transmitted", revising the word "mailed" in the last sentence of paragraph (d)(2) to read "transmitted", and revising the word "mailed" in paragraph (e) to read "transmitted".

33. By amending § 270.30d-2 by removing from the first sentence the phrase "by mail, postage prepaid,"; and in the second sentence, by revising the word "mailed" to read "transmitted" and by revising the word "mailing" to read "transmitting".

Dated: October 6, 1995.

By the Commission.

Jonathan G. Katz,

Secretary.

Note: Appendix A to the Preamble will not appear in the Code of Federal Regulations.

Appendix A

Regulatory Flexibility Act Certification

I, Arthur Levitt, Chairman of the Securities and Exchange Commission, hereby certify, pursuant to 5 U.S.C. 605(b), that the proposed amendments to Rule 253 of Regulation A, Rules 420, 481 and 482 of Regulation C, Rule 605 of Regulation E, Rule 304 of Regulation S-T, Forms F-7, F-8, F-9, F-10 and F-80, Rule 12b-12, Rule 13e-3, Rule 13e-4, Schedule 13E-4F, Rule 14a-3, Rule 14a-5, Rule 14a-7, Rule 14c-4, Rule 14c-7, Rule 14d-5, Schedule 14D-1F, Schedule 14D-9F, Rule 8b-12, Rule 30d-1

and Rule 30d-2, as set forth in Securities Act Release Number 7234, would not, if adopted, impose additional disclosure or delivery requirements or otherwise alter current requirements, and therefore would not have a significant economic impact on a substantial number of small entities.

The Commission's interpretive release on electronic distribution of information (Securities Act Release No. 7233) clearly indicates that current rules permit the use of alternative electronic delivery methods to satisfy federal securities law disclosure requirements. The technical amendments proposed in Securities Act Release No. 7234 are intended to make it clear that one can comply with current rules even if the delivery method employed is electronic rather than paper based. No new disclosure or delivery obligations are proposed, nor are old methods of disclosure or delivery being terminated. Since no changes to substantive disclosure or delivery requirements are being proposed, the proposals will not have a significant economic impact on businesses, large or small.

It is anticipated that there will be economic benefits resulting from the electronic distribution of information. Those benefits, however, will be derived from advances in technology, and not from the minor technical amendments that are the subject of this proposal.

Dated: October 6, 1995.

Arthur Levitt,

Chairman.

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