SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 228, 229, 230 and 239

[Release Nos. 33–7380; 34–38164; IC–22464; File No. S7–3–97; International Series No. 1044]

RIN 3235–AG88

Plain English Disclosure

AGENCY: Securities and Exchange Commission.

ACTION: Proposed rules.

SUMMARY: One of the fundamental protections provided to investors by our federal securities laws is full and fair disclosure, but investors must be able to understand these disclosures to benefit from them. Prospectuses often use a complex, legalistic language that is foreign to all but financial or legal experts. To address these problems, our rule proposals would: Require companies to use plain English principles in writing the front and back cover pages, summary and risk factor sections of prospectuses; revise current requirements for highly technical information in the front of prospectuses; and revise the rule on the preparation of prospectuses to provide companies with more specific guidance on the clarity required in the entire document.

DATES: Public comments are due March 24, 1997.

ADDRESSES: Please send three copies of the comment letter to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–6009. Comments can be sent electronically to the following e-mail address: rule-comments@sec.gov. The comment letter should refer to File No. S7–3–97; if e-mail is used please include the file number in the subject line. Anyone can inspect and copy the comment letters in the SEC's Public Reference Room, 450 Fifth Street, N.W. Washington, D.C. 20549. We will post comment letters submitted electronically on our Internet site (http://www.sec.gov).

FOR FURTHER INFORMATION CONTACT: Ann D. Wallace, Senior Counsel to the Director, Division of Corporation Finance, at (202) 942–2980, or Kathleen K. Clarke, Special Counsel, Division of Investment Management, at (202) 942–0724, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549.

SUPPLEMENTARY INFORMATION: To implement the first step in our plain English initiatives, we are publishing for comment amendments to Rules 421[1] and 461[2] of Regulation C[3] and Items 101,[4] 301,[5] 501,[6] 502,[7] 503,[8] and 508[9] of Regulation S–K.[10] We also are proposing minor amendments to Forms S–2,[11] S–3,[12] S–4,[13] S–20,[14] F–3,[15] and Form F–4,[16] as part of this plain English initiative.

The Office of Investor Education and Assistance is issuing simultaneously a draft of the text of *A Plain English Handbook: How to Create Clear SEC Disclosure Documents.* The handbook covers proven techniques and tips on how to create plain English documents. You may request a copy of the draft handbook by calling 1–800–SEC–0330; or you may access the document on our Internet site (http://www.sec.gov).

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I. Executive Summary

Full and fair disclosure is one of the cornerstones of investor protection under the federal securities laws. Documents that communicate clearly and effectively play a crucial role in achieving the basic protections provided by disclosure. For many years, it has been recognized that the language and style of disclosure documents could be improved. Most recently, the Task Force on Disclosure Simplification[17] criticized prospectuses for their dense writing, legal boilerplate, and repetitive disclosures. These problems are magnified by the complex transactions and novel securities that dominate today's securities market.

As part of our ongoing commitment to give investors more understandable disclosure documents, we are proposing a rule for public comment that requires the use of plain English writing principles when drafting the front of prospectuses—the cover page, summary, and risk factor sections of these documents. The proposed rule would require public companies and mutual funds to write this information in everyday language that investors can understand on the first reading.

The efforts to date of the public companies participating in our plain English pilot programs support our belief that disclosure documents can be made more readable without sacrificing substantive business and financial information. Our proposed plain English rule, Rule 421(d), would specify six minimum plain English writing principles that public companies should use in drafting the front of prospectuses: Active voice, short sentences, everyday

[1] 17 CFR 230.421.
[2] 17 CFR 230.461.
[3] 17 CFR 230.400 *et seq.*
[4] 17 CFR 229.101.
[5] 17 CFR 229.301.
[6] 17 CFR 229.501.
[7] 17 CFR 229.502.
[8] 17 CFR 229.503.
[9] 17 CFR 229.508.
[10] 17 CFR 229.10 *et seq.* We are proposing similar revisions to Regulation S–B governing disclosure by small business issuers. 17 CFR 228.10 *et seq.*
[11] 17 CFR 239.12.
[12] 17 CFR 239.13.
[13] 17 CFR 239.25.
[14] 17 CFR 239.20.
[15] 17 CFR 239.33.
[16] 17 CFR 239.34.

[17] S.E.C. Report of the Task Force on Disclosure Simplification (1996), Section II, Presentation of Information. The staff task force, with Philip K. Howard providing valuable advice, recommended ways to streamline, simplify and modernize our rules and forms on capital formation without compromising investor protection.

language, tabular presentation of complex material, no legal jargon, and no multiple negatives. This proposal would not reduce or eliminate any of the substantive disclosures public companies must give investors. The prospectus would continue to contain detailed business and financial information, which would be available to investors and others in the marketplace who use this information.

Recognizing that many of our rules have contributed to the legalistic language and tone of these documents, we also are proposing to eliminate highly formatted and overly technical information required on the cover page. The proposed rules move to the body of the document technical information that may be important to the offering process, but is not critical for the cover page. In addition, we are proposing other revisions to Rule 421, the rule on the preparation of prospectuses, to give companies guidance on how to improve the readability of the rest of the prospectus.

Because our plain English proposals will change customary drafting practices, we are continuing our plain English pilot programs to help companies draft clearer disclosure documents. The documents filed by pilot participants will provide other companies with examples of plain English documents. Also, the Office of Investor Education and Assistance today is issuing a draft of the text of *A Plain English Handbook: How To Create Clear SEC Disclosure Documents* to explain the plain English principles of our proposed rule and other techniques for producing clearer documents. The staff welcomes your views on the draft handbook and how it can be improved. Once the staff receives your comments, the handbook will be finalized and available to the public at no cost.

We have used a number of the plain English writing techniques in this release. For example, we have kept sentences and paragraphs short and avoided defined terms, cross-references, and other legalistic or formal writing conventions. We also have used the personal pronoun ''we'' when referring to the SEC and ''you'' when referring to public companies and mutual funds that would need to comply with our plain English proposals.

We encourage everyone involved in the public offering process—public companies, lawyers, accountants, underwriters and investment bankers—to give us their comments on the proposed rules and other ways we can improve the language in disclosure documents. Most importantly, we would like investors, financial analysts, brokers, and other users of these disclosure documents to give us their views on our plain English proposals and ways to improve the readability of these documents.

II. Background

A. Prospectus Disclosure Problems

Giving investors full and fair disclosure is one of the cornerstones of investor protection under the federal securities laws. The legislative history of the Securities Act of 1933[18] states that the purpose of disclosure ''is to secure for potential buyers the means of understanding the intricacies of the transaction into which they are invited.'' [19] The prospectus—the traditional offering document—must describe the company's business, management, and financial condition to enable investors to make informed investment decisions.

Investors often complain that prospectuses use arcane, complex, and incomprehensible language.[20] As a result, many investors may skim, rather than read, prospectuses.[21] A recent study on the investment concerns of senior citizens concluded:

> The notion that there is ''full disclosure'' to Americans about their investments is, by and large, a myth * * * [m]ost written disclosures are too long and too complicated to be of any practical use to someone other than a securities lawyer or expert investor.[22]

The Task Force's report criticized prospectuses for their dense writing, legal boilerplate, and repetitive descriptions of the company's business. Noting that trivial points sometimes receive as much attention as material ones, the report found that dense disclosure can often bury the points that are most significant to making an informed investment decision. The report expressed concern that prospectuses are filled with legal jargon and over-inclusive disclosures.

These problems are not new. More than forty-five years ago, Professor Louis Loss identified prospectus readability as one of the basic problems with the registration process.[23] In 1969, the Wheat Report found that prospectuses included unnecessary information, and were often so long or complex that the average investor could not readily understand them.[24]

Over the years, the SEC has attempted to address these problems. The SEC's concern about prospectuses for employee benefit plans prompted a 1966 release encouraging issuers to avoid complex legal and other technical language in the plan prospectus. Most plan prospectuses either repeated the full text of the legal document adopting the plan or summarized the legal document using the same legal language. In the release, the SEC recognized that the chief goal of registration is to provide investors with disclosures that they can readily understand, concluding that ''* * * failure to use language that is clear and understandable by the investor may operate to defeat the purpose of the prospectus.'' [25]

When the SEC adopted the integrated disclosure system in 1982, it encouraged issuers to deliver their more readable glossy annual reports to shareholders, rather than the legalistic annual report on Form 10–K. The SEC believed that the more readable annual reports would ''promote the goal of concise, effective communication in the Securities Act context.''[26]

Also in 1982, the SEC codified, in Rule 421 of Regulation C, the requirement for clear, concise and understandable presentation of information in prospectuses.[27] This rule calls for descriptive captions or headings, and reasonably short paragraphs or sections. The rule also permits summaries of the information required in the prospectus, except for financial or tabular information.

Several of the existing disclosure items already require companies to use plain English tools—a table or chart—to improve clarity and increase the likelihood that investors can grasp the information. For example, disclosure of managements' compensation must be in

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[18] 15 U.S.C. 77a *et seq.*

[19] H.R. Rep. No. 85, 73rd Cong., 1st Sess. 8 (1933).

[20] See, e.g., Letter from American Association of Retired Persons, the Consumer Federation of America, and the National Council of Individual Investors on the Private Securities Litigation Reform Act of 1995 regarding the Act's provision requiring a study on protections for senior citizens and qualified retirement plans (May 1, 1996).

[21] See, Richard C. Wydick, *Plain English for Lawyers,* 3 (1994).

[22] See, AARP/CFA/NASAA Background Report: The Five Biggest Problems ''Legitimate'' Investing Poses For Older Investors (March 1995).

[23] *Disclosure to Investors: A Reappraisal of Administrative Policies under the '33 and '34 Acts* 77–78 (1969) (Wheat Report) (citing Loss, *Securities Regulation* 148—66 (1st. ed. 1951).

[24] Wheat Report at 77. *See also Report of the Advisory Committee on Corporate Disclosure to the Securities and Exchange Commission. Appendix to the Report of the Advisory Committee on Corporate Disclosure,* 6, 21–22 (November 3, 1977).

[25] Securities Act Release No. 4844 (August 5, 1966) [31 FR 10667].

[26] Securities Act Release No. 6383 (March 3, 1982) [45 FR 11380].

[27] In 1982, the SEC rescinded the guidelines for the preparation of prospectuses in Securities Act Release No. 4936 (December 9, 1968) [33 FR 18617] except for the guide requiring clear, concise prospectus information, which was moved to Rule 421 of Regulation C.

tables.[28] Proxy statements must use a table showing the identity, background, and security holdings of nominees for the board of directors,[29] and the security ownership of management and significant owners of an issuer's equity securities.[30] Another provision encourages the use of tables, schedules, charts, and graphic illustrations to make financial information more understandable.[31]

In 1991, the U.S. Congress and others expressed serious concern about the complexity and length of limited partnership prospectuses, and particularly the documents used to roll up limited partnerships. In congressional hearings on the need for legislation to reform the roll-up process, former SEC chairman Richard Breeden addressed the problem of unreadable disclosure: ''I have taken a look at some of the documents filed with us in these roll-up transactions and I would like to meet the person who can understand all of the disclosures in some of these documents.'' [32]

To address these concerns, the SEC issued an interpretive release to advise issuers on the requirements for clear, concise, and understandable disclosure in limited partnership offerings.[33] Even with the interpretive release, our review staff in the Division of Corporation Finance continues to see documents that do not clearly explain the terms of these complex offerings.

Beginning in 1994, we renewed our efforts to promote more readable disclosure documents, which led us to explore alternatives. With the support and participation of various industry groups and public companies, we instituted pilot projects to encourage the use of plain English and to gain practical experience on how to fashion rule changes that would improve the disclosure to investors. We recognize that everyone involved in the process—issuers, accountants, lawyers, underwriters, investment bankers, and the SEC—has a role in creating more readable documents.

B. SEC Plain English Initiatives

We are committed to providing investors with better and more understandable disclosure documents. Our ultimate goal is to have all disclosure documents written in plain English, and we have undertaken several initiatives to improve the readability of these documents. With the cooperation of the Investment Company Institute and several large mutual fund groups, we recently organized a pilot program to permit mutual funds to use ''profiles'' with their prospectuses. [34] The ''profile'' provides a standard format summary of eleven specific items of information so that investors can compare funds more easily. We are developing a proposed rule for public comment that would build on this experience.

In the spring of 1996, our Division of Corporation Finance began a plain English pilot program that encourages companies to draft their prospectuses and other disclosure documents more clearly. The Division, together with our Office of Investor Education and Assistance, offers advice on how to organize these documents, as well as examples of how to rewrite the legalese in plain English. To companies that undertake plain English disclosure, the Division offers expedited review of their documents. [35] The reception to our plain English pilot program has been positive, and the pilot participants' documents are serving as examples of clearer disclosure. [36]

C. Arguments for Plain English

The plain English movement started in the early 1970s with the simplification of insurance contracts, and gained momentum when more than half the states enacted statutes requiring plain English insurance contracts. A number of state bar associations, starting with Michigan, established plain English committees. Federal agencies, such as the Federal Communications Commission, the Small Business Administration, and the Department of the Interior, redrafted some or all of their regulations, as well as legal documents such as subpoenas, in plain English. The movement is also active in Canada, England, and Australia.

Plain English has been implemented successfully in many areas. For example, after Citibank started using a plain English promissory note, the number of collection lawsuits dropped considerably because borrowers had a better understanding of their obligations.[37] One law review article on using plain English in contracts under the Uniform Commercial Code, concluded that ''. . . [p]reparing documents in plain English will decrease the number of good faith disputes over the meaning of the words of the agreement.'' [38] Past experience with plain English suggests that its adoption in the securities area will increase investors' understanding of the business and financial condition of companies and lessen misunderstandings that lead to costly legal disputes. Clearer disclosure also should assist market professionals in making recommendations to clients and assist the courts in determining whether a company has made proper disclosure.

D. Criticisms of Plain English

When initially considering the change from a formal, legalistic writing style to plain English, the following reservations often are raised: (1) Legal language is more precise and is necessary to make complex material clear and accurate; and (2) federal securities law liability provisions particularly the strict liability provisions of section 11 of the Securities Act [39] requires legal language. Neither case law nor the experience of

[28] Item 402(b) of Regulation S–K, 17 CFR 229.402.

[29] Item 7, Schedule 14A of Regulation 14A and Item 1, Schedule 14C of Regulation 14C Securities Exchange Act, 17 CFR 240.14a–101, 240.14c–101.

[30] Item 403 of Regulation S–K, 17 CFR 229.403.

[31] Note to Item 11 of Rule 14a–3 of Regulation 14A, Securities Exchange Act, 17 CFR 240.14a–3.

[32] H.R. Rep. No. 102–254, 102d Cong., 1st Sess. (1991).

[33] Securities Act Release No. 6900 (June 17, 1991) [56 FR 28979].

[34] Letter from Jack W. Murphy, Associate Director and Chief Counsel, Division of Investment Management, SEC, to Paul Schott Stevens, General Counsel, ICI (July 31, 1995). The Division has permitted the pilot program, with some modifications, to continue for another year. See, letter from Heidi Stam, Associate Director, Division of Investment Management, SEC, to Craig S. Tyle, Vice President and Senior Counsel, ICI (July 29, 1996).

[35] The first companies to participate in this pilot project, Bell Atlantic and NYNEX, drafted a plain English cover page and summary for their joint merger proxy statement (File No. 333–11573). The lawyers involved reported that writing in plain English did not increase their costs. *See* B. Fromson, *At Last, A Proxy in Plain English*, Washington Post (Sept. 22, 1996), at H4.

[36] For example, Baltimore Gas and Electric Company (File No. 333–19263) has filed a plain English prospectus for their medium term note offering; ITT Corporation (File No. 333–7221) filed a universal shelf offering with the front of the document in plain English and plain English techniques applied to the entire document; Unisource Worldwide, Inc. (File No. 1–14482) filed a Form 10 registration statement under the Exchange Act with the front of the document written in plain English; General Mills, Inc./Ralcorp, Inc. (File No. 333–18849) filed a merger proxy statement with the front of the document written in plain English; SCANA (File No. 333–18149) filed a registration statement covering their dividend reinvestment plan written in plain English; Antec Corporation/TSX Corporation (File No. 333–19129) filed a merger proxy statement with the front of the document written in plain English; and Keyspan Energy Corp. (File No. 333–18025) filed a merger proxy statement with the front of the document written in plain English.

[37] *How Plain English Works for Business, Twelve Case Studies*, U.S. Department of Commerce, Office of Consumer Affairs (March 1984).

[38] Steven O. Weise, *''Plain English'' Will Set the UCC Free*, 28 Loy. L.A.L. Rev. 376 (1994). The article notes that ''[p]arties to contracts can reduce [inaccurate interpretations] by presenting courts and juries with documents that permit only one reasonable interpretation. . . .'' See also Mark Duckworth and Christopher Balmford, *Convincing Business That Clarity Pays*, Michigan B. J. 1314 (Dec. 1994).

[39] 15 U.S.C. 77k.

plain English practitioners appear to support these arguments.

1. Plain English Is Imprecise and Unsuited for Complex Material

In using plain English, you are *not* forced to choose between clarity and precision. The disclosure obviously must be correct, but plain English often is more precise than the obscure and complex writing style that is prevalent in prospectuses. While legal terms like ''hereafter,'' ''hereinafter,'' and ''herein'' may give a legal flavor to writing, they do not add precision.[40] Needlessly wordy documents can actually increase ambiguity and usually hide important facts. Ambiguities and omissions that go unnoticed in long and turgid documents become more obvious when these documents are written in plain English, and are more likely to be detected and corrected by those who review these documents for accuracy.[41]

Unfortunately, some equate the term ''plain'' with ''simplistic.'' They fear their writing will be reduced to a simple style and restricted to a limited vocabulary ill-suited to conveying complex information. But plain English does not mean ''dumbing down'' complex information. It means writing it well so that it is not needlessly difficult to understand.

Some in the legal profession have used plain English techniques to clarify a number of complex legal procedures and statutes. The Judicial Conference Advisory Committee on the Federal Rules of Appellate Procedure has proposed revising these rules using elements of plain English.[42] While these rules are currently being circulated for public comment, initial reaction to the rewrites appears to be positive. Such efforts are not limited to the United States. In Australia, a task force is rewriting Australia's Corporation Law under a mandate to simplify it.[43] Earlier, the Law Reform Commission of Victoria, Australia, redrafted Victoria's Takeover Code in plain English.[44]

2. Plain English Will Increase Liability

Stemming largely from the misconceptions addressed above, some practitioners expressed concern that the use of plain English will expose companies to greater liability under section 11. Liability should not increase. First, the rule proposals do not reduce the substantive information that must be given to an investor; plain English does not mean leaving out anything important or material. Second, we know of no case that has held anyone liable under Section 11 for clearly disclosing material information to investors.[45] In all likelihood, liability should decrease with the use of plain English because it results in less confusing and ambiguous disclosure.

III. Elements of Plain English

Plain English simply means writing well.[46] Plain English, or plain language, has been described as follows:

There is no one absolute form of plain language. It does not consist only of one-syllable words and one-clause sentences. It is not simplified or reduced English. It is the opposite not of elaborate language but of obscure language, for it seeks to have the message understood on the first reading. The plainness of a passage is defined in terms of the audience for that passage. It is clear, straightforward language for that audience.[47]

In summary, plain English requires you to:

- Know your audience;
- Know what material information needs to be disclosed;
- Use clear writing techniques to communicate the information; and
- Design and structure your document so it is easy and inviting to read.

A. Know Your Audience

Since the purpose of using plain English is to communicate substantive information clearly to investors and the marketplace, you must first identify the investor groups to whom you are writing.[48] The educational background and financial sophistication of your current or prospective investors should dictate the language you use.

If your company has a mix of sophisticated institutional investors and less experienced institutional and individual investors, you should write at a level that the less experienced investors would understand. While the language may change, the information will not. To serve an audience of various levels of sophistication such as securities analysts and others in the marketplace, some issuers present information in a format that makes it easy for investors to locate the basic information while providing additional detailed information for anyone who is interested.[49] Where an offering is directed at only the most sophisticated institutional investors, clear writing still is necessary for your audience to understand the disclosure and to serve the needs of the securities markets.

B. Know What Information Needs To Be Disclosed

You can only communicate clearly when you understand the substance precisely and accurately.[50] A failure common to disclosure documents is the tendency to indiscriminately combine material and immaterial information in dense and long sentences, in effect dumping large amounts of information on the reader. Disclosure documents typically fail to prioritize information and organize it logically so the reader can process it intelligently and quickly. All too often, details are disclosed before investors even know why they are receiving or reading a document. Plain English requires you to make judgments as to the importance of this information and the order in which you present it to investors.

A standard prospectus cover page—the cover page for an initial public offering, a merger, or a shelf offering—usually has dense print running to each of the four corners of the page. The sentences typically run 60 to 100 words long, with superfluous information and defined terms that interrupt the readers' attention. The name of the company, terms of the security, and underwriters' compensation are repeated two or three times. We believe that the cover page of the prospectus should invite the investor to read the document and should highlight key information about the offering. This information includes

[40] David Mellinkoff, *The Language of the Law* 312–16 (1963). See also David Mellinkoff, ''The Myth of Precision and the Law Dictionary,'' 31 *UCLA L. Rev.* 31 423 (1983).

[41] See Joseph Kimble, ''Answering the Critics of Plain Language,'' 5 *Scribes J. of Legal Writing* 51 (1994–1995).

[42] Committee on Rules of Practice and Procedure of the Judicial Conference of the United States, *Preliminary Draft of Proposed Revision of the Federal Rules of Appellate Procedure Using Guidelines for Drafting and Editing Court Rules and Preliminary Draft of Proposed Amendments to Appellate Rules 27, 28 and 32,* (April 1996). See also Bryan A. Garner, *Guidelines For Drafting And Editing Court Rules* (Administrative Office of the United States Courts 1996).

[43] See Note 41 above at 59.

[44] *Id* at 56–57.

[45] The staff's review of the few reported cases finding section 11 liability indicates that no case required the use of specific legal language or turned on the use of legal language.

[46] George Hathaway, *An Overview of the Plain English Movement for Lawyers . . . Ten Years Later,* Michigan B. J. 26, (Jan. 1994).

[47] Robert D. Eagleson, *What Lawyers Need To Know About Plain Language,* Michigan B. J. 44 (1994).

[48] See, Janice C. Redish, *How To Write Regulations And Other Legal Documents In Clear English,* 8 (Sept. 1991) (available at American Institutes for Research Document Design Center, Washington, D.C. 20007).

[49] See Caterpillar Inc., Third Quarter 1996 Financial Results (a two part document with statistical highlight and condensed financial information and a detailed analysis including financial statements for those who want additional detailed information).

[50] Bryan A. Garner, *The Elements of Legal Style* 4 (1991).

such items as the name of the company, the type of security, price and amount offered, and whom an investor should contact to purchase the security. The original cover pages and the plain English rewrites of the cover page of pilot participants documents in Appendix A give you examples of how to address this issue.

When a prospectus summary is included in the document, it frequently runs 10 to 30 pages. These so-called summaries often provide a long description of the company's business and its business strategy. Where the prospectus provides a description of the security, it is often copied from the indenture or other legal document that is filed as an exhibit to the registration statement.

The summary should not, and is not required to, contain all of the detailed information in the prospectus. As current Rule 421 states and as explained in the interpretive release on limited partnerships, the summary should provide investors with a clear, concise, and coherent ''snapshot'' description of the most significant aspects of the offering. The summary should be balanced, giving investors both the pluses and the minuses of investing in your company or participating in the proposed transaction.

C. Use Clear Writing Techniques To Communicate Information

Although it is impossible to give a precise formula for clear writing, using the following plain English principles will help you produce clearer and more readable disclosure documents. Our proposed rule would require you, at a minimum, to comply substantially with each of these plain English principles in drafting the front and back cover pages and the summary and risk factors sections of the prospectus:

- Active voice;
- Short sentences;
- Definite, concrete, everyday language;
- Tabular presentation and ''bullet lists'' for complex material whenever possible;
- No legal jargon or highly technical business terms; and
- No multiple negatives.

Success in clear writing is, of course, ultimately a question of how well all the elements are put together, and requires a good faith effort to achieve clarity. The draft plain English handbook offers numerous examples of how to use these and other plain English tools to write more clearly. We provide examples of these requirements only to illustrate the plain English principle. You should make sure that your disclosure reflects the facts of your particular situation.

1. Active Voice

The active voice generally is easier to understand than the passive because the reader can clearly identify the person or the thing performing the action. The passive voice delays readers' comprehension, and in some cases, allows the writer to delete who is performing the action altogether, further hindering comprehension. When the sentence is long and complicated, the passive voice forces the reader to go back and start at the beginning. The passive voice usually results in needlessly longer sentences. Consider the following examples:

Before	After
No person has been authorized to give any information or make any representation other than those contained or incorporated by reference in this joint proxy statement/prospectus, and, if given or made, such information or representation must not be relied upon as having been authorized.	You should rely only on the information contained in this document or incorporated by reference. We have not authorized anyone to provide you with information that is different.
The proxies solicited hereby for the Heartland Meeting may be revoked, subject to the procedures described herein, at any time up to and including the date of the Heartland Meeting.	You may revoke your proxy at any time up to and including the day of the meeting by following the directions on page 18.

Notice that in the proxy example, the passive legalese is ambiguous because it never states who can revoke a proxy. Also, when you use a vague cross-reference, you hinder your readers' ability to locate the information. The rewrite is clearer because it uses everyday language and provides the page number where investors can find out how to revoke their proxies.

2. Short Sentences

The plain English requirement for short sentences addresses one of the most critical language problems in disclosure documents. It is fairly common for sentences in prospectuses or other disclosure documents to be 60 to 100 words or more, with clauses and parenthetical phrases that increase their complexity. Needlessly complex sentences, which often mix substantive information with definitions and numerous qualifications, can overwhelm the reader. You should strive to have shorter sentences, typically 25 to 30 words. We believe that the rewrites in the following examples are shorter, clearer and less vague:

Before	After
Machine Industries and Great Tools, Inc., are each subject to the information requirements of the Securities Exchange Act of 1934, as amended (the ''Exchange Act''), and in accordance therewith file reports, proxy statements, and other information with the Securities and Exchange Commission (the ''Commission'').	We must comply with the Securities Exchange Act of 1934. Accordingly, we file annual, quarterly and current reports, proxy statements, and other information with the Securities and Exchange Commission.

Before	After
The Drake Capital Corporation (the ''Company'') may offer from time to time its Global Medium-Term Notes, Series A, Due from 9 months to 60 Years From Date of Issue, which are issuable in one or more series (the ''Notes''), in the United States in an aggregate principal amount of up to U.S. $6,428,598,500, or the equivalent thereof in other currencies, including composite currencies such as the European Currency Unit (the ECU) (provided that, with respect to Original Issue Discount Notes (as defined under Description of Notes—Original Issue Discount Notes), the initial offering price of such Notes shall be used in calculating the aggregate principal amount of Notes offered hereunder).	The Drake Capital Corporation may offer from time to time up to $6,428,598,500 of Global Medium-Term Notes, Series A, that will mature from 9 months to 60 years from the date issued. We will offer our notes, in one or more series, in U.S., foreign, and composite currencies, like the European Currency Unit. If we offer original discount notes, we will use their initial offering prices to calculate when we reach $6,428,598,500.

3. Definite, Concrete, Everyday Language

Language that is vague or abstract begs for further explanation. It is not enough merely to translate information into clearer language. As the following example shows, you must reassess the disclosure to determine whether more information is needed to make it understandable. *You should note that the rewrite reflects an analysis of all of the information in the prospectus.*

Before	After
History of Net Losses. The Company has recorded a net loss under generally accepted accounting principles for each fiscal year since its inception in May 1990, as well as for the nine months ended June 30, 1995. However, these results include the effect of certain significant, non-cash accounting charges related to the accounting for the Company's acquisitions and related transactions.	History of Net Losses. We have recorded a net loss under generally accepted accounting principles for each year since we started in 1990, and for the nine months ended June 30, 1995. Our losses were caused, in part, by the annual write-off of a portion of the goodwill resulting from the ten acquisitions we made during this period.

In the rewrite, the reasons for the history of net losses replaces the general, vague language on the ''significant, non-cash accounting charges'' causing the loss.

4. Tabular Presentations

A tabular presentation organizes complex material in a manner that greatly facilitates investor comprehension. For example, an ''if-then'' table highlights for investors the events of defaults and their remedy under the indenture. An illustration follows:

Before
The following will be ''Events of Default'' under the Indenture: (i) failure to pay any interest on any Note when it becomes due and payable, and such failure shall continue for a period of 30 days; (ii) failure to pay the principal of (or premium, if any) on any Note at its Maturity (upon acceleration, optional or mandatory redemption, required repurchases or otherwise); (iii) there shall have been the entry by a court of competent jurisdiction of (a) a decree or order for relief in respect of the Company, in an involuntary case or proceeding under any applicable Bankruptcy Law or (b) a decree or order adjudging the Company bankrupt or insolvent, or seeking reorganization, arrangement, adjustment or composition of or in respect of the Company, under any applicable federal or state law, or appointing a custodian, receiver, liquidator, assignee, trustee, sequestrator (or other similar official) of the Company, or of any substantial part of their respective properties, or ordering the winding up or liquidation of their affairs, and any such decree or order for relief shall continue to be in effect, or any such other decree or order shall be unstayed and in effect, for a period of 60 consecutive days, the Trustee or the holders of not less than 25% in aggregate principal amount of the Notes then outstanding may, and the Trustee at the request of such Holders shall, declare all unpaid principal of (and premium, if any, on) and accrued interest on all the Notes to be due and payable immediately, by a notice in writing to the Company (and to the Trustee if given by the Holders of the Notes); If an Event of Default specified in clause (iii) occurs, then all the Notes shall *ipso facto* become and be immediately due and payable, in an amount equal to the principal amount of the Notes, together with accrued and unpaid interest, if any, to the date the Notes become due and payable, without any declaration or other act on the part of the Trustee or any holder.

After	
Event of default (If)	Remedy (Then)
• Interest payment 30 days late	• Trustee or holders of at least 25% of these notes outstanding may notify the company in writing that the principal, premium, if any, and accrued interest are immediately due and payable; or Upon written request of the holders of at least 25% of these notes outstanding, the Trustee shall notify the company in writing that the principal, premium, if any, and accrued and unpaid interest are immediately due and payable.
• Failure to pay principal or premium at maturity, acceleration, redemption, or repurchase.	• Same as above.
• Court ordered bankruptcy, insolvency, reorganization, liquidation, or similar action continuing for 60 consecutive days.	• Neither the Trustee nor holders are required to act. The principal, accrued and unpaid interest will be immediately payable.

Before	After
The Indenture provides that no Holder of any Senior Debt Securities of any series may institute any proceeding, judicial or otherwise, with respect to the Indenture or the Senior Debt Securities of such series, or for the appointment of a receiver or trustee, or for any other remedy under the Indenture, unless: (i) such Holder has previously given to the Trustee written notice of a continuing Event of Default with respect to the Senior Debt Securities of such series; (ii) the Holders of at least 25% in aggregate principal amount of outstanding Senior Debt Securities of all such series affected shall have made written request to the Trustee to institute proceedings in respect of such Event of Default in its own name as Trustee under the Indenture; (iii) such Holder or Holders have offered to the Trustee indemnity reasonably satisfactory to the Trustee against any cost, liabilities or expenses to be incurred in compliance with such request; (iv) the Trustee for 60 days after its receipt of such notice, request and offer of indemnity has failed to institute any such proceeding; and (v) during such 60-day period, the Holders of a majority in aggregate principal amount of the outstanding Senior Debt Securities of all such affected series have not given the Trustee a direction that is inconsistent with such written request.	Before you may take legal or any other formal action relating to the indenture or this series of securities, the following must take place: • You must give the trustee written notice of a continuing event of default; • The holders of at least 25% of the principal amount of all affected senior debt securities outstanding of this series must make a written request of the trustee to take action because of the default; • The holders must have offered indemnification, reasonably satisfactory to the trustee, against the cost, liabilities and expenses for taking such action; • The trustee must not have taken action for 60 days after receipt of notice, request for action, and the indemnification offer; and • During this 60 day period, the holders of a majority of the principal amount of all affected senior debt securities outstanding of this series have not asked the trustee to take any action inconsistent with the request.

5. No Legal Jargon or Highly Technical Business Terms

One of the persistent criticisms of the prospectus writing style is the use of legal jargon and legalese. Here are two examples from debt offerings replete with legalese:

Before	After
The new debt will rank *pari passu* with other senior debt of the company.. The following description encompasses all the material terms and provisions of the Notes offered hereby and supplements, and to the extent inconsistent therewith replaces, the description of the general terms and provisions of the Debt Securities (as defined in the accompanying Prospectus) set forth under the heading ''Description of Debt Securities'' in the Prospectus, to which description reference is hereby made.	The new debt will rank equally with the other senior debt of the company. We disclose information about our notes in two separate documents that progressively provide more detail on the note's specific terms: the prospectus, and this pricing supplement. Since the specific terms of notes are made at the time of pricing, rely on information in the pricing supplement over different information in the prospectus.

When you use defined terms and excessive cross-references, practices common to legal drafting, you force the reader to learn a new vocabulary—your vocabulary. These writing conventions may be a short hand for the writer but they inhibit the reader's ability to understand the information.

6. No Multiple Negatives

Negative sentences and multiple negatives within a sentence hinder comprehension as the reader deciphers the meaning of the negatives. Ask yourself which sentences are clearer.

Before	After
No clause can become valid unless approved by both parties. ..... Except when an applicant has submitted a request for withdrawal without the appropriate tax identification number, the request will be honored within one business day..	A clause becomes valid only if both parties approve it. We will send your money within one business day if you include your tax identification number in your withdrawal request.

D. Design And Organize Your Document So It Is Easy and Inviting To Read

We believe the dense copy used in the typical prospectus coupled with its legal tone, discourages investors from reading the document. By importing into your disclosure documents the design concepts you already use in your annual reports to shareholders, you can make disclosure documents visually inviting and easier to read.

Experts believe, generally, that the eye can only comfortably scan 50–70 characters in a line without losing its place.[51] It is thus difficult to read dense blocks of text that run across an entire page. A number of the plain English pilot participants solved the problem by using two columns. White space also relieves the eye and encourages the investor to read the document. The use of all capital letters, right-hand margins that are justified, and tissue-like paper can make the job of reading a document extremely hard.

If your prospectus includes a table of contents with descriptive captions, subcaptions, and page numbers, an investor will be able to locate information easily in the prospectus. Captions and descriptive headings throughout the document also cue the reader as to the subject matter.

Depending on the type of offering and the audience, a question-and-answer format can greatly increase the readability of your document. We have

[51] Duncan A. MacDonald, *Drafting Documents in Plain Language*, Practicing Law Institute, 229 (1979).

encouraged the use of the question-and-answer format for employee stock purchase plans.[52] Several of the plain English pilot participants used a question and answer format to answer common questions raised by investors.

Although not part of our proposed rules, another effective tool for producing plain English documents is to use personal pronouns. Personal pronouns immediately engage your readers' attention. A familiar writing style where ''we'' or ''I'' refers to management or the company, and ''you'' refers to the investor, involves your reader and increases comprehension. If you avoid distant and abstract language like ''the company'' and ''a shareholder,'' your writing becomes clearer and more appealing because you are communicating directly with your reader.

Take, for example, a recent offering made by Berkshire Hathaway.[53] The cover page of the prospectus contains the following personal communication: ''Warren Buffet, as Berkshire's Chairman, and Charles Munger, as Berkshire's Vice Chairman, want you to know the following (and urge you to ignore anyone telling you that these statements are 'boilerplate' or unimportant).''

This introduction is followed by clear warnings regarding the company's asset growth, share price, and the market for the securities offered. A similar personal approach, with the frequent use of the pronoun ''we'' to refer to the company, Warren Buffet, or Charles Munger, is used in Berkshire Hathaway's 1995 annual report to shareholders.

Several of the pilot participants used personal pronouns throughout their documents. Others employed a modified approach in which personal pronouns were used when referring to the company but a more formal designation like ''holder'' or ''noteholder'' was used when referring to the investor.[54]

IV. Plain English Rule Proposals

The Task Force on Disclosure Simplification recommended developing a plain English introduction to the prospectus and, to enhance the prospectus's readability, eliminating boilerplate ''legalese,'' requiring a summary of key information, and enhancing the disclosure to include significant financial ratios and other information. The Task Force also recommended that the Commission issue a plain English interpretive release. Our proposals include most of the Task Force's specific recommendations for improving the readability of documents. This release serves as our interpretative advice on plain English. We have decided to defer action on the Task Force's recommendation to provide investors with disclosure on significant financial ratios. Further study is needed to determine the best format for providing important financial indicators to investors and the ratios that should be provided.

A. Proposed Plain English Rule 421(d)

While all prospectuses must be clear and understandable, our proposals would also require the front of the prospectus to meet the plain English requirements in proposed Rule 421(d). In addition, we are proposing to codify our interpretive advice, first given for limited partnership offerings, to give you more guidance on how to meet the requirements for clear, concise and understandable disclosure in prospectuses.

If adopted as proposed, Rule 421(d) would require you, when drafting the cover page, summary, and risk factors sections, to use the plain English principles, discussed above in the section, Elements of Plain English. You should design these sections of the document to make them inviting and easy to read. This design could take many forms, including the use of pictures, logos, charts, graphs, or other features, so long as the design is not misleading and the required information is clear. The examples from pilot participants' documents, included in Appendix A, and the staff's draft handbook give you guidance in this area. We will include on our Internet site examples of other plain English documents to help you draft more readable disclosure documents.

Our proposals for plain English cover pages, prospectus summary, and risk factors sections should improve greatly the readability of the entire document. We encourage you to use plain English techniques to draft the entire prospectus. We also encourage you to use these techniques for drafting your other disclosure documents.

We request your comments on all aspects of the proposed rule. Your comments should provide any factual support for your position. Please comment on whether you believe the proposed plain English requirements will achieve clearer disclosure and improve readability. We also request your comments as to whether compliance with the proposed rule changes will cause registrants to highlight key information for investors and eliminate redundant or uninformative information.

B. Clear, Concise and Understandable Prospectuses—Rule 421(b)

We are proposing the following expansion of Rule 421(b) to give you guidance on the minimum requirements to meet the current provision for clear, concise, and understandable disclosure in the prospectus and to identify drafting problems to avoid. These standards and common prospectus drafting problems were identified in our interpretive release on limited partnership offerings. In drafting the disclosure in the prospectus you should apply the following techniques:

- Information must be presented in clear, concise paragraphs and sentences. If possible, information should be presented in short explanatory sentences and ''bullet'' lists;
- Captions and subheading titles must describe specifically the information included in the section;
- Terms that are not clear from the context generally should be defined in a glossary or other section of the document. Glossaries are recommended where they facilitate understanding of the disclosure. Frequent reliance on glossaries or defined terms as the primary means of explaining information in the body of the prospectus should be avoided; and
- Legal and highly technical business terminology should be avoided.

Our proposals also include a Note to Rule 421(b) that lists drafting conventions that you should avoid in presenting prospectus information. The proposed Note to Rule 421(b) identifies the following problems in drafting prospectus disclosure:

- Legalistic, overly complex presentations that make the substance of the disclosure difficult to understand;
- Vague ''boilerplate'' explanations that are imprecise and readily subject to differing interpretations;
- Complex information copied directly from legal documents without any clear and concise explanation of the provision(s); and
- Disclosure repeated in different sections of the document that increases the size of the document, does not enhance the quality of the information, and does not enlighten the reader.

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[52] Securities Act Release No. 4844 (August 5, 1966) (31 FR 10667).

[53] Berkshire Hathaway Inc., Form S–3, filed April 2, 1996, effective May 8, 1996, File No. 333–2141.

[54] Bell Atlantic Corporation used personal pronouns for both the company and the shareholder in their merger proxy statement. ITT Corporation and Baltimore Gas and Electric Corporation used the modified approach. See Appendix A. Bell Atlantic also used personal pronouns in the management's discussion and analysis section of the Form 10–Q for the quarter ended September 30, 1996 (File No. 1–8606).

Some have suggested that the undue length of many prospectus also makes them difficult to read. You are encouraged to use the current provision of Rule 421 which allows you to condense or summarize information in the prospectus, information other than the financial statements.

C. Proposed Revisions to Regulation S–K

1. Front of Registration Statement and Outside Front Cover Page of Prospectus

We propose to revise the requirements for the outside front cover page of the prospectus to eliminate the stylized format and require legal warnings in plain English. We believe that the legal language specified by the requirements is not informative to investors. More importantly, we believe the dense format of the cover page discourages investors from reading the important business and financial disclosures in the prospectus.

Substantially the same changes are being proposed to the requirements for small business issuers, except Regulation A offerings. In 1992, we adopted major revisions to the Regulation A offering process for companies not subject to our reporting requirements. Because few Regulation A offerings were made last year, we are not proposing changes to the disclosure requirements for these offerings. We request your comments, however, on whether the legal legends required in these offerings should be changed to conform to our proposals to draft these legends in plain English.[55] The table below shows the current requirements of Regulation S–K and our proposed changes.[56]

REGULATION S–K—ITEM 501

Current	Proposed
• Information in highly formatted design	• Information formatted in clear, inviting design.
• Company name	• Same.
• Title and amount of securities offered	• Same.
• By whom securities offered	• Same.
• Formatted distribution table showing price, underwriting commission, and proceeds of offering.	• Bullet list or other design that highlights the price, underwriting commission, and proceeds of offering.
• Instruction on showing bona fide estimate of range of maximum offering price.	• Retain.
• Instruction on showing how price determined	• Retain.
• Formatted best efforts distribution table	• Bullet list or other design that highlights the information.
• Specific language and print type for legal warnings	• Clear language with no type specified.
• No requirement	• Name of underwriters and type of underwriting arrangements.
• Cross-references to disclosure in prospectus	• Delete.
• Specific cross-reference to risk factors	• Delete.
• Underwriters' over-allotment option	• Move to underwriting section.
• Expenses of offering	• Move to underwriting section.
• Commissions paid by others and other non-cash consideration	• Move to underwriting section.
• Finders fees	• Move to underwriting section.

Our proposals would require you to format the outside front cover page in a design that invites an investor to read the information. The proposals would allow you to use pictures, graphs, charts, and other designs that accurately depict your company, its business, products, or financial condition, so long as the information is not misleading. The proposals would eliminate the current requirements for cover page cross-references, including the cross-reference to risk factors. A cross-reference may unnecessarily clutter the cover page and duplicate the information in the table of contents. We believe that our proposed requirement for risk factors in plain English will improve the disclosure to investors, making the cross-reference unnecessary. We propose to retain the cross-reference to risk factors on the cover page for small business issuers since often these companies present greater risks because of their limited operations and financial condition.

Your comments are requested, however, as to whether the existing requirements should be retained, and if so, which ones. We also request that you indicate other information or design elements for the cover page that would provide clearer, more readable disclosure. We ask you to give us your comments on whether the proposed disclosure requirements are sufficiently flexible to permit you to meet the plain English requirements. Your comments are requested on whether the cross-reference to risk factors should be retained for all offerings or whether the plain English requirements make it unnecessary for any offering, including small business issuer offerings.

The legal warnings required by our regulations would be in plain English.[57] Because the current requirement for printing the legend in all capital letters makes the information difficult to read, no print type or size is proposed. We offer one example of a plain English legend, however, you are encouraged to draft your own plain English version, so long as the content is retained. One example of the current legend rewritten in plain English is as follows:

[55] Regulation A requires a bold-face, all-capital legend that the SEC does not approve or disapprove of the securities offered, 17 CFR 230.253, and a legend indicating the document is incomplete, 17 CFR 230.255. In addition, Form 1–A requires legal warnings in all-capital letters regarding the risk of the offering in the Model 1–A disclosure alternative.

[56] See Item 501 of Regulation S–K, 17 CFR 229.501 and Item 501 of Regulation S–B, 17 CFR 228.501. See Appendix B for a chart showing the changes to Regulation S–B.

[57] The staff is working with the North American Securities Administrators Association, Inc.'s Disclosure Reform Task Force to coordinate our efforts to assure clearer communications with investors. The Disclosure Reform Task Force is considering the effect of our plain English initiatives on the states' disclosure requirements, particularly the language used in state-required legends.

Before	After
THESE SECURITIES HAVE NOT BEEN APPROVED OR DISAPPROVED BY THE SECURITIES AND EXCHANGE COMMISSION NOR HAS THE COMMISSION PASSED UPON THE ACCURACY OR ADEQUACY OF THIS PROSPECTUS. ANY REPRESENTATION TO THE CONTRARY IS A CRIMINAL OFFENSE.	The Securities and Exchange Commission has not approved or disapproved these securities, or determined if this prospectus is truthful or complete. Any representation to the contrary is a criminal offense.

Our proposals would require the legend indicating an incomplete prospectus, commonly called the ''red herring'' legend, to be in any plain English format. One example of the current legend in plain English would read as follows:

Before	After
Information contained herein is subject to completion or amendment. A registration statement relating to these securities has been filed with the Securities and Exchange Commission. These securities may not be sold nor may offers to buy be accepted prior to the time the registration statement becomes effective. This prospectus shall not constitute an offer to sell or the solicitation of an offer to buy nor shall there be any sale of these securities in any State in which such offer, solicitation or sale would be unlawful prior to registration or qualification under the securities laws of any State.	The information in this prospectus is not complete and may be amended. We may not sell these securities until the registration statement filed with the SEC is effective. This prospectus is not an offer to sell nor is it seeking an offer to buy these securities in any state where the offer or sale is not permitted.

Although no requirement currently exists to disclose the name of the underwriter and the type of offering, this information is usually provided on the cover page. Our proposal would specifically provide for this information in plain English on the cover page.

We have not proposed any specific print size or font type for the plain English portion of the prospectus. Our proposals allow you the flexibility to use a print type and font size that enhances your document design so long as the information is easily readable. We request your comments as to whether we should require or prohibit any specific print type or font size and the reason for your position.

Your comments should address specifically the proposed revisions to the legends and suggest alternative plain English legends. Your comments should address whether the plain English legends adequately inform investors, and whether the proposed cover page information should be mandated, or whether other information should be permitted and, if so, what information. For example, should information on the cover page be limited to the name of the company and the securities offered, with the other information disclosed in the summary section of the document?

In addition, we request public comment on whether specific information should be required for the cover pages of merger proxy statements, registered exchange offers, or other offerings. Please provide examples of the types of information that should be required. We specifically request your comments on whether the limited partnership roll-up transactions should be subject to these plain English proposals or should different standards apply to these transactions and, if so, what standard should apply. For example, the current roll-up disclosure provisions [58] provide for a detailed discussion of risks of the offering, while the proposals made today would require risk factors to be brief. Also, risk factors are required on the cover page, summary section and risk factors section in limited partnership roll-up prospectuses.[59] Our proposals would require the risks to be described in plain English only in the risk factor section.

2. Inside Front and Outside Back Cover Pages of Prospectus

Currently, information of a highly technical nature is required on either the inside front or outside back cover page of the prospectus.[60] Except for the availability of Exchange Act reports,[61] the table of contents, and the legend concerning the dealer's prospectus delivery obligation, we propose to move this technical information to the body of the prospectus, as shown in the following table.

REGULATION S–K—ITEM 502

Current	Proposed
• Stabilization activities by underwriters	• Move to underwriting section.
• Underwriters' passive market making activities legend	• Delete because it duplicates information in underwriting section.
• Disclosure of dealer prospectus delivery obligation	• Move to back cover page.
• Availability of Exchange Act reports generally	• Move to back cover page or include with incorporation by reference disclosure in short form registration statements.
• Availability of Exchange Act reports incorporated by reference in short form registration statements.	• Move to registration statement forms permitting incorporation by reference.

[58] Item 904 of Regulation S–K, 17 CFR 229.904.

[59] See Items 902(b)(2) of Regulation S–K 17 CFR 229.902(b)(2); Item 903(b)(1) of Regulation S–K, 17 CFR 229.903(b)(1); and Item 904(a)(2) of Regulation of S–K, 17 CFR 229.904(a)(2).

[60] See Item 502 of Regulation S–K, 17 CFR 229.502 and Item 502 of Regulation S–B 17 CFR 228.502.

[61] Securities Exchange Act of 1934, 15 U.S.C. 78a *et seq.*

REGULATION S–K—ITEM 502—Continued

Current	Proposed
• Availability of annual reports to shareholders with GAAP audited financial statements for foreign issuers and others not subject to our proxy rules.	• Move to business description section.
• Enforceability of civil liability provisions of federal securities laws against foreign persons.	• Move to business description section.
• Table of contents	• Move to inside front cover page or immediately following the cover page.

Much of the currently required information is highly technical and drafted in legal language that often confuses rather than informs investors. We believe that placing this information in the front of the prospectus overshadows the essential business and financial information fundamental to an investment decision. Because the disclosure will be elsewhere in the prospectus, the information provided investors will be the same. Moving this information to the body of the prospectus will give you the freedom to design an inviting cover page which highlights key information for investors.

We believe the current information on the underwriter's stabilization activities, passive market making activities, and the dealer's obligations to deliver prospectuses is key information on the orderly distribution of the offering. But this information is not essential for the front of the document. We propose relocating the stabilization information to the underwriting section of the prospectus.[62] Information on passive market making activities currently is required both in the underwriting section of the prospectus and as a legal legend on either the inside front or outside back cover page. Duplication of this information on the cover page is unnecessary and we propose to delete it from the cover page but retain the information in the underwriting section.

We also propose to retain the requirement to disclose the dealer's prospectus delivery obligations on the back cover page of the prospectus. This will help dealers meet their obligations to deliver a prospectus in connection with the distribution of the securities. However, we request your views as to whether this information is necessary and, if so, whether we should require that this notice to dealers be disclosed elsewhere in the document, like the inside front cover page.

You have an obligation to send to security holders, upon request and at no charge, the Exchange Act reports incorporated by reference in short-form registration statements. We currently require you to disclose this obligation on the inside front cover page or elsewhere, as appropriate. We propose to relocate this information to the section of the short form registration statements detailing what information you must incorporate by reference.

We propose to move the disclosure regarding the availability of Exchange Act reports to the back cover page of the prospectus. Alternatively, it could be included as part of the disclosure incorporating Exchange Act reports by reference into short form registration statements. Moving the information to the back cover page would provide you the flexibility to design the front of the document in a clear manner. Requiring this information to be provided where the Exchange Act reports are incorporated by reference would eliminate duplication in short form registration statements.[63]

Because we now have an 800 number that gives information on how to obtain the reports filed with us and because copies of these reports are now available on the Internet, the proposed revisions would delete the requirement that our headquarters and regional office addresses be given. For this reason, we are also proposing to delete the requirement to disclose the availability of these reports at the exchange where the issuers' securities are listed. Of course, you must continue to send copies of your Exchange Act reports to the exchange where your securities are listed.[64] We request your comments on whether the information should be required elsewhere in the document, or whether the requirements should give companies greater flexibility to place the information where it is highlighted best for investors, given the design of the document. If your Exchange Act reports are on your Internet site, our rule proposals encourage you to give the web site address in your documents.

One example of a plain English rewrite of this disclosure follows:

Before	After
Our company is subject to the informational requirements of the Securities Exchange Act of 1934, as amended (the ''Exchange Act''), and, in accordance therewith, files reports and other information with the Securities and Exchange Commission (the ''Commission''). The reports and other information filed by our company with the Commission can be inspected and copied at the Commission's public reference room located at 450 Fifth Street, N.W., Room 1024, Washington, D.C. 20549, and at the public reference facilities in the Commission's regional offices located at: 7 World Trade Center, 13th Floor, New York, New York 10048; and at Northwest Atrium Center, 500 West Madison Street, Suite 1400, Chicago, Illinois 60661. Copies of such material can be obtained at prescribed rates by writing to the Securities and Exchange Commission, Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. 20549..	Our company files annual, quarterly and current reports, proxy statements and other information with the SEC. You may read and copy any reports, statements or other information we file at the SEC's public reference room in Washington, D.C. You can request copies of these documents, upon payment of a duplicating fee, by writing to the SEC. Please call the SEC at 1-800-SEC-0330 for further information on the operation of the public reference rooms. Our SEC filings are also available to the public on the SEC Internet site (http://www.sec.gov.).

[62] Item 508 of Regulation S–K, 17 CFR 229.508 and Item 508 of Regulation S–B, 17 CFR 228.508.

[63] Our proposals would amend Forms S–2, S–3, S–4, F–3 and F–4 to include the requirement to disclose the availability of documents incorporated by reference with the disclosure on incorporation by reference of Exchange Act reports.

[64] Rule 12b–11, 17 CFR 240.12b–11.

Our proposals would move to the body of the prospectus the information on the availability of audited financial statements, where the company is a foreign private issuer or is not subject to our proxy rules. As proposed, we would require the information to appear, under a descriptive heading, as part of the business description.[65] We believe that relocating this information in the business section of the prospectus would inform investors of the continued availability and type of financial information your company will provide.

Currently, you may provide information as to the enforceability of civil liabilities against foreign persons on the inside front cover page or in the front of the prospectus. We propose to move this information to the business description section of the prospectus.[66] The staff's experience is that this information is often provided as a generic risk factor. If enforceability of civil liabilities presents a material risk to an investor given the company and its operations, our proposal for plain English prioritized risk factors would require risk disclosure. Your comments should address whether, given our global markets, the information now is sufficiently routine to make this disclosure more appropriate in the business description and required as a risk factor only when it is a material risk relating to an investment in the company. If you believe the information should be disclosed in another section of the prospectus, please give us the reason(s) for your position.

As currently permitted, the table of contents often appears on the back cover page. We question whether a reader goes to the back of the document first to locate a guide to the document, so our proposals would require this information to be on the inside front cover or immediately behind the cover page. We request your comments on whether the information flow of the document should permit you the flexibility to place the table of contents where you believe it best serves as a guide to the document, and the reasons for your position.

3. Prospectus Summary, Risk Factors and Ratio of Earnings to Fixed Charges[67]

Currently, you are required to include a summary of the information contained in the prospectus where the length or complexity of the prospectus makes a summary appropriate. The existing requirements also specify that a risk factor section be provided, where appropriate, and that this section immediately follow either the summary section or the cover page. In addition, information is required as to the ratio of earnings to fixed charges.

a. Summary

Our proposals would require a prospectus summary in plain English. To address the problem where the summary is ten to twenty-five pages long, we have revised the current provision to require that the summary section be brief. The current requirement continues to be a general provision giving you the flexibility to draft a meaningful summary appropriate to the type of offering.

We request your comment as to whether the summary should be further limited to a specific number of pages. For example, should the summary be no more than three, four, or five pages? We also request your comments as to whether we should require specific information in this section, such as condensed financial information and a summary of management's discussion and analysis. Please indicate any specific information you believe should be in the summary.

A recent review by the staff of a number of the short form registration statements indicates that these offerings often include a summary or similar section describing the company's business and operations. This discussion contains a lengthy discussion of the company's business, risk factors, and summarized financial information. The information is not specifically required, but apparently is considered important to the selling effort. If you elect to include this information, the disclosure would be subject to the same plain English disclosure requirements as we propose for the front of the document. Please give us your comments on whether short registration forms should have a summary and, if so, which offerings, and the reasons for your position. We also request your comments as to whether a summary section should be required for all prospectuses, given the current complexity of these documents.

b. Risk Factors

Our proposals would require the risk factors to be in plain English and be listed in order of their importance. As is currently the case, the discussion would immediately follow the summary, if one is provided, or the cover page of the prospectus. Often the risk factor disclosure in a prospectus is boilerplate, listing risks that could apply to any offering or that are not likely to occur. Because boilerplate risks do not provide meaningful information to investors, we believe they should not be used and our proposals specifically prohibit them.

For example, if your company is making an initial public offering of common stock and the securities will be listed and traded on a national securities exchange, it is not helpful to investors to provide a statement that management can give no assurance that an active market will develop in the company's securities. If, given these facts, you believe that a market will develop for the securities, then the risk factor is not helpful to an investor. On the other hand, if, given these facts, you believe that a market reasonably may not develop, additional information would be necessary as to why a trading market may not develop.

We are concerned, however, that plain English alone will not address the problem of listing many risk factors that are so general that they are not meaningful and add to the length of the document making the document difficult to read. We request your comments on whether we should require disclosure of a specific number of risk factors, such as eight, or alternatively limit the risk factor discussion to no more than two pages.

Your comments specifically are requested as to whether there should be any limit on the number of prioritized risk factors or the number of pages, or whether the limit should be higher or lower than eight risk factors or the two pages. For instance, should there be no more than four risk factors discussed in this section, divided equally between company and offering risks, or should the number of permitted risk factors be increased to 10 or 12 with no allocation as to the nature of the risk? Should there be a page limit and should the limit be no more than two pages, three pages, four pages or higher?

c. Ratio of Earnings to Fixed Charges

When you issue debt or a class of preferred equity, you are required to disclose a ratio of earnings to fixed charges. Since this information usually is included in the prospectus with selected financial data, we propose to move the requirement to that section.[68] Where a prospectus summary is included, we propose that the ratio of earnings to fixed charges be shown as part of the summarized financial data, as is currently the practice.

[65] Item 101 of Regulation S-K and Regulation S-B.

[66] Item 101 of Regulation S-K and Regulation S-B.

[67] See Item 503 of Regulation S-K, 17 CFR 229.503 and Item 503 of Regulation S-B, 17 CFR 228.503.

[68] Item 301 of Regulation S–K, 17 CFR 229.301.

D. Proposed Rules for Investment Companies

Current disclosure standards direct investment companies to provide clear, concise, and understandable disclosure in prospectuses.[69] We are concerned, however, that fund prospectuses are overly complex and difficult to follow. We have commenced significant disclosure initiatives to improve the information provided to fund investors, including consideration of a summary disclosure document or ''profile'' for funds and updating prospectus disclosure requirements. We expect to announce proposals that would implement these initiatives in the near future.

The plain English disclosure proposals complement these disclosure initiatives. The proposed changes to Rule 421 would apply to funds.[70] The proposed revisions in Regulation S–K intended to improve the clarity of disclosure in prospectuses of corporate issuers would not apply to funds, although similar legal legends and other requirements are included in specific rules for investment companies.[71] We plan to consider conforming changes to the rules for fund prospectuses in connection with the disclosure initiatives for investment companies. We request your comments on whether the proposed changes to Rule 421 should be modified for fund prospectuses.

The phase-in of plain English requirements proposed for corporate issuers discussed below may need to be modified for investment companies since they are engaged in continuous offerings of securities. We also request comment on special requirements that may be necessary to allow for the orderly phase-in of the proposed plain English requirements for investment companies.

[69] See, e.g., General Instruction G of Form N–1A.

[70] While the disclosure in fund prospectuses must be clear, concise, and understandable, the proposed plain English principles in Rule 421(d) would apply to the front and back cover pages of the prospectus and summary, if any. The specific requirement for plain English risk factors disclosure referred to in proposed Rule 421(d) would not apply to funds since the same disclosure is not required in their prospectuses.

[71] See, e.g., proposed Item 501(b) (5) and (8) of Regulation S–K (SEC legend and subject to completion legend); similar legends are required for mutual funds by Rule 481(b) (1) and (2) of Regulation C, 17 CFR 230.481(b) (1) and (2). Many of the proposed revisions to Regulation S–K would, if applied to funds, affect relatively few offerings of fund securities, e.g., descriptions of underwritten offerings in proposed Item 501(b)(6).

V. Staff Review

A. Plain English Pilot Program

The Division of Corporation Finance has established a pilot program to work with public companies on drafting plain English documents filed under either the Securities Act or the Exchange Act. We also expedite the review of these filings. The staff's comments, in plain English, will be consistent with these plain English proposals. The staff has issued five interpretive letters under the plain English pilot program. The staff granted interpretive relief from compliance with the legend requirements in the front of the prospectus, the distribution table showing the price, underwriters' commissions and proceeds of the offering, and the disclosure regarding the availability of Exchange Act reports.[72] The staff also stated its view that identification of a company's web site and the statement ''[o]ur SEC filings are also available to the public from our web site'' will not, by itself, include or incorporate by reference any information into the registration statement that is included or hot linked to the issuer's regular web site that is not otherwise incorporated by reference into the registration statement.[73] Because the staff's interpretive position on these matters is now well established, other pilot participants may rely on these positions and do not need to submit a specific written request.

B. Denial of Request for Acceleration

Currently, we consider a number of factors in determining whether the statutory requirements for acceleration of registration statements for public offerings, including mutual fund offerings, have been met, and may refuse to accelerate the effective date in appropriate circumstances. Among the factors that we consider is the clarity of the disclosure. We may refuse to accelerate a registration statement:

> Where there has not been a bona fide effort to make the prospectus reasonably concise and readable, so as to facilitate an understanding of the information required or permitted to be contained in the prospectus.'' [74]

Our proposals amend this provision to reflect the proposed requirement for plain English. To effectively implement plain English we are committed to administering this rule in a manner that achieves its goal of readable documents. If your document, when filed, indicates a good faith effort to meet the requirement, our staff will work with you, in the review and comment process, to meet any plain English requirements adopted and your financing schedule. We request your views as to other actions that we should take to make the prospectus clearer to investors and implement the plain English requirements.

[72] Division of Corporation Finance letters to ITT Corporation (dated November 12, 1996 and January 6, 1997), Baltimore Gas and Electric Corporation (two letters dated January 6, 1997) and SCANA Corporation (dated January 6, 1997).

[73] Division of Corporation Finance letter to ITT Corporation (December 6, 1996) and BGE Corporation (dated January 6, 1997).

[74] Rule 461 of Regulation C.

C. Phase-In of Plain English Requirements

To make sure that our plain English proposals do not interfere with your need to access the capital markets on a timely basis, any plain English rule that is finally adopted would be phased in as follows:

- Registration statements pending on the effective date of the rule would not need to be revised to meet the plain English requirements;
- An updating amendment to a registration statement filed to meet section 10(a)(3) of the Securities Act [75] would be required to comply with the rule in effect at the time of filing;
- Any shelf registration statement affected by the plain English rule would be required to comply with the requirement at the time a new shelf registration statement is filed, but no later than December 31, 1998.
- All filings would be required to comply with the rule no later than December 31, 1998.

Please give us your comments on whether this schedule provides you the necessary flexibility to meet the proposed revisions, if adopted.

VI. Request for Comments

We request your comments on whether plain English should be mandated or only recommended, and whether there are other alternatives that will provide for a more reader-friendly and understandable disclosure document. Your comments are also requested on whether or not plain English should be required for the entire prospectus and not just the cover page, prospectus summary, and risk factors section. Please furnish the specific reasons for your position. We request your comment on whether additional plan English techniques should be required and, if so, which ones. If you have concerns that plain English will increase liability we request information on the substantive basis for your

[75] 15 U.S.C. 77j(a)(3).

concern and, if available, the factual data in support of your position.

We specifically request that investors provide comments on the proposals.

VII. Cost-Benefit Analysis

Our plain English proposals streamline existing requirements and require a clear writing style and format. We believe the proposals, if adopted, would result in little additional costs as issuers implement the organizational, language, and document structure changes necessary to comply with these proposals. Additional cost, if any, should be short-term and would be outweighed by the significant improvement in disclosure to investors. In addition, a number of the proposals simplify the cover page format, which should result in some printing and other cost savings in preparing prospectuses.

We request your comment on whether the proposed rules would be ''major rules'' for purposes of the Small Business Regulatory Enforcement Fairness Act of 1996. We have tentatively concluded that the proposed rules would not result in a major increase in costs or prices for consumers or individual industries or significant adverse effects on competition, employment, investment, productivity, innovation, or small business. We request comments on whether the proposed rules are likely to have a $100 million or greater annual effect on the economy. Your comments should provide empirical data to support your views.

As an aid in evaluating the cost and benefits of the proposals, we request your comments and those of others involved in the registration process on this cost/benefit analysis. Please provide empirical data in support of your position to assist us in determining the cost and benefits of the proposals. We specifically request individual investors to provide us their views on the cost and benefits of the proposals.

VIII. Summary of the Initial Regulatory Flexibility Analysis

We have prepared an initial regulatory flexibility analysis, IRFA, in accordance with 5 U.S.C. 603 concerning the proposed rules. As discussed more fully in the IRFA, the proposed rules would codify our interpretive advice, eliminate requirements that are no longer useful, and require plain English to be used to simplify the language used in the front of the documents. The rule amendments are proposed under sections 6, 7, 8, 10, and 19(A) of the Securities Act, and sections 3, 12, 13, 14, 14(d), 23(a), and 35A of the Exchange Act.

As the IRFA describes, we are aware of approximately 1100 Exchange Act reporting companies and approximately 800 active registered investment companies that currently satisfy the definition of ''small businesses'' under Rule 157 of the Securities Act. However, there is no reliable way to determine how many businesses may become subject to reporting obligations in the future or may otherwise be impacted by the rule proposals. The proposed rules do not affect the substance of disclosures registrants must make. The proposals do not impose any new recordkeeping requirements or require reporting of additional information. Thus, we believe that the proposals will not increase reporting, recordkeeping, or compliance burdens, and in some cases may slightly reduce those burdens for small businesses. Our view is also based on the experience of participants in the plain English pilot program. Pilot participants reported that the time required to understand the reporting requirements and prepare disclosures was the same, and in some cases a little less, than under existing rules. Although none of the program participants is a ''small business'' as defined by our rules, we believe the proposals will affect all registrants in the same way.

As discussed more fully in the IRFA, several possible significant alternatives to the proposals were considered. These included establishing different compliance or reporting requirements for small entities, or exempting them from all or part of the proposed requirements. We believe that such alternatives are not appropriate for the following reasons: (i) They would be inconsistent with our mandate to require prospectuses to fully and fairly disclose all material information to investors; (ii) they would negate the important benefits of the proposals; and (iii) they would not reduce small issuers' compliance costs. The IRFA also indicates that there are no current federal rules that duplicate, overlap, or conflict with the proposed rules.

We encourage written comments on any aspect of the IRFA. In particular, we seek comment on: (i) The number of small entities that would be affected by the proposed rules; and (ii) the determination that the proposed rules would not increase, and in some cases might slightly reduce, reporting, recordkeeping, and other compliance requirements for small entities. If you believe the proposals will significantly impact a substantial number of small entities please describe the nature of the impact and estimate the extent of the impact. For purposes of making determinations required by the Small Business Regulatory Enforcement Act of 1966, we are also requesting data regarding the potential impact of the proposed rules on the economy on an annual basis. Your comments will be considered in the preparation of the Final Regulatory Flexibility Analysis if the proposed amendments are adopted. A copy of the analysis may be obtained by contacting Ann D. Wallace, Division of Corporation Finance, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549.

IX. Paperwork Reduction Act

The proposed amendments would affect several regulations and forms [76] that contain ''collection of information requirements'' within the meaning of the Paperwork Reduction Act of 1995.[77] In order to obtain Office of Management and Budget approval, we previously submitted estimates to that Office of the time and cost burdens imposed on public companies by each regulation and form. Each of the regulations and forms currently is approved by that Office and displays a Paperwork Reduction Act control number.

We believe that the proposed amendments would not result in a substantive or material change to the collection of information requirements based on our experience with the plain English pilot programs. Pilot participants have indicated that they do not believe that drafting plain English documents has increased their time or cost burdens. In addition, the proposed rules do not affect the substance of the disclosure required. We anticipate that the proposals would not materially change the annual burden reporting and burden hours, because the proposals provide guidance on meeting existing disclosure obligations and simplify the format of the disclosure provided to investors.

We solicit comment on our determination that the proposals would not result in a substantive or material change to the collection of information requirement and burdens. If you believe the proposals will affect materially the annual burden, you are asked to provide

[76] We are proposing changes to Rules 421 and 461 of Regulation C, Items 101, 501, 502, 503 and 508 of Regulation S–K and Regulation S–B and Item 301 of Regulation S–K. We also are proposing minor amendments to registration Forms S–2, S–3, S–4, S–20, F–3 and F–4 under the Securities Act. Regulation S–K, Regulation S–B and Regulation C do not impose reporting burdens directly on public companies. For administrative convenience, each of these regulations is assigned one burden hour. The burden hours imposed by the disclosure regulations are reflected in the estimates for the forms that refer to the regulations.

[77] 44 U.S.C. 3501 *et seq.*

an estimate of the change in the burden and the basis for your position.

X. Statutory Authority

The rule amendments outlined above are proposed pursuant to Sections 6, 7, 8, 10 and 19(a) of the Securities Act and Sections 8, 30, 31 and 38 of the Investment Company Act of 1940.

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

Reporting and recordkeeping requirements, Securities and Investment companies.

XI. Text of the Proposals

In accordance with the foregoing, Title 17, Chapter 11 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, 78*l*, 78m, 78n, 78o, 78w, 78*ll*, 80a–8, 80a–29, 80a–30, 80a–37, 80b–11, unless otherwise noted.

2. By amending § 228.101 to add paragraphs (c) and (d) to read as follows:

§ 228.101 (Item 101) Description of business.

* * * * *

(c) *Reports to security holders.* If the small business issuer is not required to deliver an annual report to security holders, indicate whether it will voluntarily send an annual report and whether the report will include audited financial statements.

(d) *Canadian Issuers.* Canadian issuers shall provide the information required by Item 101(f) of Regulation S–K (§ 228.101(f)) (Enforceability of Civil Liabilities Against Foreign Persons).

3. Section 228.501 is amended by adding an introductory text, revising paragraphs (a)(4), (a)(5), (a)(7) and (a)(8) and removing paragraph (a)(11) to read as follows:

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

The following information must be provided in plain English as required by § 230.421(d) of Regulation C of this chapter.

(a) * * *

(4) Cross reference to and identify the location in the prospectus (e.g., by page number or other specific location) of the risk factors section of the prospectus. The information should be highlighted by prominent type or otherwise.

(5) The small business issuer must provide disclosure that informs investors that the Securities and Exchange Commission has not approved the securities or passed on the adequacy of the disclosures in the prospectus and that any representation to the contrary is a criminal offense. The disclosure may be in one of the following formats or other clear and concise language.

Example A: The Securities and Exchange Commission has not approved or disapproved these securities or passed upon the adequacy of the prospectus. Any representation to the contrary is a criminal offense.

Example B: The Securities and Exchange Commission (''SEC'') has not approved or disapproved these securities or determined if this prospectus is truthful or complete. Any representation to the contrary is a criminal offense.

(6) * * *

(7) If the securities are to be offered for cash, the small business issuer should set forth the price to the public, and the cash underwriting discounts and commissions. The information may be set forth in a table, term sheet format or other clear presentation. The small business issuer may present the information in any format that fits the design of the cover page so long as the information can be easily read and is not misleading. The information must be shown on a per unit and aggregate basis. If the offering is made on a minimum/maximum basis, information on the aggregate minimum/maximum must be shown. For best efforts or best efforts minimum/maximum offerings the cover page should disclose the date the offering will end and the provisions to place the funds in an escrow, trust, or similar account. Note that Item 508(a) requires all compensation and expenses of the underwriters to be disclosed in that section.

(8) A prospectus used before the effective date of the registration statement must include a prominent statement that indicates that:

(i) The information in the prospectus will be amended or completed;

(ii) The securities may not be sold until the registration statement becomes effective; and

(iii) The prospectus is not an offer to sell nor is it seeking an offer to buy the securities in any State where the offering is not permitted. The legend may be in the following language or other clear, and understandable language:

The information in this prospectus is not complete. We may not sell these securities until the registration statement filed with the SEC is effective. This prospectus is not an offer to sell nor is it seeking an offer to buy these securities in any state where the offer or sale is not permitted.

(iv) Comparable information must be provided if the prospectus is used before the determination of the initial public offering price in the case of a prospectus that omits this information as permitted by § 230.430A of this chapter.

* * * * *

4. Section 228.502 is revised to read as follows:

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

A small business issuer must disclose the following information in plain English as required by § 230.421(d) of Regulation C of this chapter.

(a) *Information available to security holders.* (1) On the inside front or outside back cover page of the prospectus, the small business issuer must state whether it is a reporting company; and

(2) The small business issuer shall describe the nature and frequency of the reports and other information the issuer is required to file with the Securities and Exchange Commission (SEC) that are available to investors. The small business issuer shall indicate that the documents can be reviewed and copied at the Commission's Public Reference Room in Washington, DC. 20549. In addition, if the small business issuer is an electronic filer, the disclosure shall indicate that the reports may be viewed on the SEC's Internet site (http://www.sec.gov) or that copies may be obtained, upon payment of a duplicating fee, by writing to the SEC's Public Reference Section. The small business issuer should indicate that information on the operation of the public reference room may be obtained by calling the SEC at 1–800–SEC–0330. Small business issuers are encouraged to give their Internet site address, if one is available.

(3) The small business issuer shall state the name of any national securities exchange on which its securities are listed.

(b) *Address and telephone number.* The small business issuer must include on the inside front cover page, or in the summary of the prospectus, the complete mailing address and telephone number of the small business issuer's principal executive offices.

(c) *Dealer Prospectus Delivery Obligations.* The small business issuer must set forth information on the outside back cover page of the prospectus which advises dealers conducting transactions in the securities, whether or not they are participating in the distribution, that

they may be required to deliver a prospectus. The disclosure should specify the time period during which dealers must deliver a prospectus as specified in section 4(3) of the Securities Act and § 230.174 of this chapter. The following legend may be used or any other format that includes the required content and is clear and concise;

Until (insert date) all dealers that buy, sell or trade these securities, whether or not participating in this offering, may be required to deliver a prospectus. This is in addition to the dealers' obligation to deliver a prospectus when acting as underwriters and with respect to their unsold allotments or subscriptions.

(d) *Table of Contents.* On the inside front cover page of the prospectus, or immediately following the cover page, the small business issuer should provide a reasonably detailed table of contents showing the location in the prospectus, including page number, if practicable, of the subject matter of the various sections or subdivisions of the prospectus, including the risk factors section required by Item 503 of Regulation S–B.

(e) *Financial Data Graphs.* Registrants are encouraged to use tables, schedules, charts and graphic illustrations of the results of operations, balance sheet, or other financial data that presents the data in an understandable manner. Any presentation must be consistent with the financial statements and related non-financial information. The graphs and charts must be drawn to scale and the information provided must not be misleading.

5. By revising § 228.503 to read as follows:

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

The following information must be furnished in plain English as required by § 230.421(d) of Regulation C of this chapter.

(a) *Summary.* Provide a summary of the information contained in the prospectus where the length and complexity of the prospectus make a summary useful. The summary should be brief. The summary should not and is not required to contain all of the detailed information in the prospectus.

(b)(1) *Risk factors.* Discuss under the caption ''Risk Factors'' any factors that make the offering speculative or risky. The risk factor disclosure should highlight critical factors that the investor must consider in making an investment decision. Generic and boilerplate risks that could apply to any issuer or any offering should not be provided. The risk factors must be discussed in the order of their importance. The factors may include, among other things, the following:

(i) The small business issuer's lack of recent profits from operations;

(ii) The small business issuer's poor financial position;

(iii) The small business issuer's business or proposed business; or

(iv) The lack of a market for the small business issuer's common equity securities.

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

Instruction to Item 503(b)(2)

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

6. Section 228.508 is amended to add a sentence to the end of paragraph (a) and paragraph (j) to read as follows:

§ 228.508 (Item 508) Plan of distribution.

* * * * *

(a) *Underwriters and underwriting obligations.* * * * Disclose in a table all underwriting compensation including the other expenses of the offering specified in Item 511 of this Regulation S–B.

* * * * *

(j) *Stabilization and other transactions.* The small business issuer must provide disclosure which briefly describes any transaction that the underwriters intend to conduct during the offering that stabilizes, maintains or otherwise affects the market price of the offered securities. Disclosure should be provided to indicate, if true, that the underwriters may discontinue these transactions at any time and indicate the exchange or other market on which these transactions may occur.

(1) If the stabilizing begins before the effective date of the registration statement, the small business issuer must state the amount of securities bought, the prices at which they were bought and the period within which they were bought. If § 230.430A of this chapter is used, the final prospectus must include information on the stabilizing transactions before the public offering price was set.

(2) In connection with warrant or rights offerings to existing security holders, where securities not purchased by security holders are reoffered to the public, give the following information in the reoffer prospectus:

(i) The amount of securities bought in stabilization activities during the rights offering period and the price or range of prices at which the securities were bought;

(ii) The amount of the securities subscribed for during the rights offering period;

(iii) The amount of the securities purchased by the underwriter during the rights offering period; and

(iv) The amount of the securities reoffered to the public and the offering price.

Instruction to Paragraph (j)

The disclosure should include information on stabilizing transactions, syndicate short covering transactions, penalty bids or any other transaction that affects the offered security's price. The nature of the transactions should be described in a clear understandable manner.

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

7. The authority citation for part 229 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, 77iii, 77jjj, 77nnn, 77sss, 78c, 78i, 78j, 78*l*, 78m, 78n, 78o, 78w, 78*ll*(d), 79e, 79n, 79t, 80a–8, 80a–29, 80a–30, 80a–37, 80b–11, unless otherwise noted.

* * * * *

8. By amending § 229.101 to add paragraphs (e) and (f) before ''Instructions to Item 101'' to read as follows:

§ 229.101 (Item 101) Description of business.

* * * * *

(e) *Reports to security holders.* Where a registrant is not required to deliver an annual report to security holders (or holders of American Depositary Receipts) by Section 14 of the Exchange Act (15 U.S.C. 78n) or stock exchange requirements, describe briefly the nature and frequency of reports that will be given to security holders. Specify whether or not such reports will contain financial information that has been examined and reported upon, with an opinion expressed by, any independent public or certified public accountant. In the case of the reports of a foreign private issuer, state whether the report will contain financial information prepared in accordance with United States generally accepted accounting

principles, or whether the report will include a reconciliation of such information with such accounting principles.

(f) *Enforceability of civil liabilities against foreign persons.* (1) A foreign private issuer shall provide disclosure which informs an investor as to whether actions may be brought under the civil liabilities provisions of the Federal securities laws against the registrant, its officers and directors, the underwriters or experts located in or residents of a foreign country or whose assets are located outside the United States. The disclosure shall address the following matters:

(i) The investor's ability to effect service of process within the United States on the foreign private issuer or any person;

(ii) The investor's ability to enforce judgments obtained in United States courts against the persons based upon the civil liability provisions of the Federal securities laws;

(iii) The investor's ability to enforce, in an appropriate foreign court, judgments of United States courts based upon the civil liability provisions of the Federal securities laws; and

(iv) The investor's ability to bring an original action in an appropriate foreign court to enforce liabilities against the foreign private issuer or any person based upon the Federal securities laws.

(2) If any of the disclosures are based upon an opinion of counsel, counsel must be named in the prospectus. The foreign private issuer must file a signed consent of counsel, to the use of counsel's name and opinion, as an exhibit to the registration statement.

9. By amending § 229.301 by designating the introductory text as paragraph (a), introductory text, redesignating paragraphs (a) and (b) as paragraphs (a)(1) and (a)(2); redesignating existing instruction as ''Instructions to Item 301(a)'' and adding paragraph (b) to read as follows:

§ 229.301 (Item 301) Selected financial data.

* * * * *

(b) *Ratio of Earnings to Fixed Charges.* If debt securities are registered, a ratio of earnings to fixed charges must be shown. If preference equity securities are registered, a ratio of combined fixed charges and preference dividends to earnings must be shown. The ratio must be presented for each of the last five fiscal years and the latest interim period for which financial statements are presented. If proceeds from the sale of debt or preference securities will be used to repay any of the registrant's outstanding securities, and the change in the ratio would be ten percent or greater, a pro forma ratio must be shown.

Instructions to Item 301(b)

1. *Definitions.* The following definitions apply when calculating the ratio of earnings to fixed charges.

A. *Fixed charges.* The term ''fixed charges'' means the sum of the following: (i) Interest expensed and capitalized, (ii) amortized premiums, discounts and capitalized expenses related to indebtedness, (iii) an estimate of the interest within rental expense, and (iv) preference security dividend requirements of consolidated subsidiaries.

B. *Preference security dividend.* The term ''preference security dividend'' is the amount of pre-tax earnings that is required to pay the dividends on outstanding preference securities. The dividend requirement shall be computed as the amount of the dividend divided by (1—the effective income tax rate applicable to continuing operations).

C. *Earnings.* The term ''earnings'' is the amount resulting from adding and subtracting the following items. Add: (i) Pretax income from continuing operations before adjustment for minority interests in consolidated subsidiaries or income or loss from equity investees, (ii) fixed charges; (iii) amortization of capitalized interest, (iv) distributed income of equity investees, and (v) the registrant's share of pre-tax losses of equity investees for which charges arising from guarantees are included in fixed charges. Subtract: (i) interest capitalized, (ii) preference security dividend requirements of consolidated subsidiaries, and (iii) the minority interest in pre-tax income of subsidiaries that have not incurred fixed charges. Equity investees are investments that are accounted for using the equity method. Public utilities following SFAS 71 should not add amortization of capitalized interest in determining earnings, nor reduce fixed charges by any allowance for funds used during construction.

2. *Disclosure.* The following disclosure should be provided when showing the ratio of earnings to fixed charges.

A. *Deficiency.* If a ratio indicates less than one-to-one coverage, the registrant must disclose the dollar amount of the deficiency.

B. *Pro forma ratio.* The pro forma ratio may only be shown for the most recent fiscal year and the latest interim period. Only the net change in interest or dividends of the refinancing may be used to calculate the ratio.

C. *Foreign private issuer.* A foreign private issuer must show the ratio based on the figures in the primary financial statement. If materially different, the ratio also must be shown based on the figures resulting from the reconciliation to U.S. generally accepted accounting principles.

D. *Summary Section.* If a summary section is provided in the prospectus, registrants should show the ratios in that section.

3. *Exhibit.* The registrant must file an exhibit to the registration statement to show the figures used to calculate the ratios. See paragraph (12) of Item 601 of Regulation S–K.

10. By revising § 229.501 to read as follows:

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

(a) *Facing Page.* The facing page must indicate the approximate date of the proposed sale to the public and, where appropriate, must include the delaying amendment legend required by § 230.473 of Regulation C of this chapter.

(b) *Outside Front Cover Page of Prospectus.* The following information, if applicable, must appear on the outside cover page of the prospectus, and must be in plain English as required by § 230.421(d) of Regulation C of this chapter. The information may be presented in a table, bullet list, term sheet format or other clear design. Registrants should design the outside cover page in a manner and format that is easy to read and encourages the investor to read the disclosure. Registrants may use any design that does not diminish the required information and is not misleading.

(1) *Name.* The registrant's name should be set forth. A foreign private registrant must give the English translation of the name.

Instruction to Paragraph 501(b)(1)

If the registrant's name is the same as that of a company that is well known, the registrant must include information to eliminate any possible confusion with the other company. If the name indicates a line of business in which the registrant is not engaged or is engaged only to a limited extent, the registrant must include information to remove a misleading inference as to the registrant's business. In some circumstances disclosure may not be sufficient and the registrant may be required to change its name. A name change is not required where the registrant is an established company, the character of its business has changed, and the investing public is aware generally of the change and the registrant's current business.

(2) *Title and amount of securities.* The title and amount of securities offered must be given. The amount of securities offered by selling security holders must be stated separately. A brief description of the securities must also be given except where the information is clear from the title of the security. For example, no description is necessary for common stock that has full voting rights, dividends and liquidation rights usually associated with common stock.

(3) *Offering price, underwriting commissions and offering proceeds.* Where securities are to be offered for cash, the price to the public, the underwriting discounts and commissions, and the proceeds to be received by the registrant and the proceeds to be received by the selling shareholders, if any, should be shown.

Instructions to Paragraph 501(b)(3)

1. If a preliminary prospectus is circulated and the registrant is not subject to the reporting requirements of Section 13(a) or 15 (d) of the Exchange Act, set forth either:

(A) A *bona fide* estimate of the range of the maximum offering price and the maximum number of securities offered; or

(B) A *bona fide* estimate of the principal amount of the debt securities offered.

2. If it is impracticable to state the price to the public, the method by which the price is to be determined should be explained. If the securities are to offered at the market price, or if the offering price is to be determined by a formula related to the market price, indicate the market and market price of the securities as of the latest practicable date.

3. The term ''commissions'' is defined in paragraph (17) of Schedule A of the Securities Act. Only cash commissions paid by the registrant or selling security holders are to be shown. See Item 508 of Regulation S–K as to the requirements to disclose other expenses of the offering.

4. The proceeds shown should be the gross proceeds of the offering less underwriting discounts and commissions. The price and proceeds information should be shown on both a per unit and an aggregate basis. Registration statements on Form S–8 relating to employee benefit plans, Form S–4 or F–4 covering securities issued in a merger transaction or Form S–3 or F–3 relating to a dividend reinvestment plan are not required to comply with this paragraph.

(4) *State Legend.* Any legend or statement required by the law of any State in which the securities are to be offered should be set forth.

(5) *Commission Legend.* Disclosure should be furnished that indicates that the Securities and Exchange Commission has not approved the securities or passed upon the adequacy of the disclosures in the prospectus and that any contrary representation is a criminal offense. The legend may be in one of the following formats or other clear and concise language:

Example A: The Securities and Exchange Commission has not approved or disapproved these securities or passed upon the adequacy of this prospectus. Any representation to the contrary is a criminal offense.

Example B: The Securities and Exchange Commission (SEC) has not approved or disapproved these securities or determined if this prospectus is truthful or complete. Any representation to the contrary is a criminal offense.

(6) *Underwriting.* Identify the underwriter(s) and briefly indicate the nature of the underwriting arrangements. If the securities are offered on a best efforts basis, set forth the termination date of the offering, any minimum required purchase and any arrangements to place the funds received in an escrow, trust, or similar account. If no such arrangements have been made, so state. Registrants may use any clear, concise, and accurate description of the underwriting arrangements. The following descriptions of underwriting arrangements may be used, where appropriate:

Example A: *Best efforts offering.* The underwriters are not required to sell any specific number or dollar amount of securities but will use their best efforts to sell the securities offered.

Example B: *Best efforts, minimum-maximum offering.* The underwriter must sell the minimum number of securities offered (insert number) but is only required to use their best efforts to sell the maximum number of securities offered (insert number).

Example C: *Firm commitment.* The underwriters are required to purchase all of the securities if any of the securities are purchased.

(7) *Date of Prospectus.* The approximate date of the prospectus should be given.

(8) *''Subject to Completion'' Legend.* Any prospectus used before the effective date of the registration statement must include a prominent statement that indicates that:

(i) The information in the prospectus will be amended or completed;

(ii) The securities may not be sold until the registration statement becomes effective; and

(iii) The prospectus is not an offer to sell nor is it seeking offers to buy the securities in any State where offers or sales is not permitted. The legend may be in the following language or other clear, and understandable language:

The information in this prospectus is not complete. We may not sell these securities until the registration statement filed with the SEC is effective. This prospectus is not an offer to sell nor is it seeking an offer to buy these securities in any state where the offer or sale is not permitted.

(iv) Comparable information must be provided if the prospectus is used before to the determination of the initial public offering price in the case of a prospectus that omits this information as permitted by § 230.430A of this chapter.

11. By revising § 229.502 to read as follows:

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

This information must be furnished in plain English as required by § 230.421(d) of Regulation C of this chapter.

(a) *Available Information.* Registrants subject to the reporting requirements of section 13(a) or 15(d) of the Exchange Act (15 U.S.C. 78m(a) or 78*o*(d)) at the time the registration statement is filed must provide disclosure indicating:

(1) That the registrant is subject to the information requirements of the Exchange Act and files reports and other information with the Securities and Exchange Commission;

(2) That reports (and where registrant is subject to sections 14(a) and 14(c) of the Exchange Act (15 U.S.C. 78n(a) and (c)), proxy and information statements) and other information filed by the registrant can be reviewed and copied at the Commission's Public Reference Room in Washington, DC 29549. In addition, if the registrant is an electronic filer, the disclosure must indicate that the reports may be viewed on the SEC's Internet site (http://www.sec.gov) or that copies may be obtained, upon payment of a duplicating fee, by writing to the SEC's Public Reference Section. The registrant must indicate that information on the operation of the public reference rooms may be obtained by calling the SEC at 1–800–SEC–0330. Registrants are encouraged to give their Internet site address, if one is available. This information must appear on the back cover page or in the prospectus where the registrant discloses the reports incorporated by reference;

(3) The name of any national securities exchange on which the registrant's securities are listed.

(b) *Table of Contents.* The registrant must provide on the inside front cover page, or immediately following the cover page, a reasonably detailed table of contents. The table of contents should show the location in the prospectus, including the page number, if practicable, of the subject matter of the various sections or subdivisions of the prospectus, including the risk factor section required by Item 503 of Regulation S–K.

(c) *Address and Telephone Number.* Registrants must include the complete mailing address, including zip code, and the telephone number, including area code, of their principal executive offices.

(d) *Financial Data Graphs.* Registrants are encouraged to use tables, schedules, charts and graphic illustrations of the results of operations, balance sheet, or other financial data that presents the data in an understandable manner. Any presentation must be consistent with the financial statements and related non-financial information. The graphs and charts must be drawn to scale and the information provided must not be misleading.

(e) *Dealer Prospectus Delivery Obligations.* Information must be set forth on the outside back cover page of the prospectus that advises brokers of their prospectus delivery obligation, including the expiration date specified by section 4(3) of the Securities Act (15 U.S.C. 77d(3)) and § 230.174 of this chapter. If the expiration date is not known on the effective date of the registration statement, the date must be included in the copy of the prospectus filed under § 230.424(b) of this chapter. The legend can be in any format so long as the content is set forth. No legend is required if dealers are not required to deliver a prospectus under § 230.174 of this chapter or section 24(d) of the Investment Company Act (15 U.S.C. 80a–24). The legend may read as follows:

Until (insert date) all dealers that buy, sell or trade these securities, whether or not participating in this offering, may be required to deliver a prospectus. This is in addition to the dealers' obligation to deliver a prospectus when acting as underwriters and with respect to their unsold allotments or subscriptions.

12. By revising § 229.503 to read as follows:

§ 229.503 (Item 503) Prospectus summary and risk factors.

The following information must be furnished in plain English as required by § 230.421(d) of Regulation C of this chapter. The information may be presented in table, bullet list, term sheet format, or other clear design. Registrants should structure and organize the prospectus summary and risk factors discussion in a manner and format that is easy to read and encourages investors to read the disclosure. Registrants may use any format or design that does not obscure the required information and is not misleading.

(a) *Prospectus Summary.* Registrants must include a summary of the information in the prospectus where the length or complexity of the prospectus makes a summary appropriate. The summary section should be brief. The summary should not and is not required to contain all of the detailed information in the prospectus.

Instruction to paragraph (a)

The summary section must provide investors with a clear, concise and coherent ''snapshot'' description of the most significant aspects of the offering. Summaries should not randomly repeat the text of the prospectus but should provide a brief overview of the key aspects of the offering. Registrants must carefully consider and identify the aspects of an offering that are the most significant and determine how best to highlight these points in everyday language.

(b) *Risk Factors.* Where appropriate, registrants must set forth under the caption ''Risk Factors'' a discussion of the most significant factors that make the offering speculative or one of high risk. The risk factors must be discussed in the order of their importance. The risk factors discussion should be short, concise and organized in a logical manner. The prioritized risk factors must highlight critical factors the investor must weigh in making an investment decision. Generic and boilerplate risk that could apply to any registrant or any offering should not be provided. Each risk factor must be set forth under a subcaption that adequately describes the risk. The risk factor discussion should immediately follow the summary section, if one is included, or the cover page of the prospectus. The factors may include, among other things, the following:

(1) The registrant's lack of an operating history;

(2) The registrant's lack of profitable operations in recent periods;

(3) The registrant's financial position;

(4) The registrant's business or proposed business; or

(5) The lack of a market for the registrant's common equity securities or securities convertible into or exercisable for common equity securities.

13. By amending § 229.508 by revising paragraphs (b) and (e) and adding paragraph (l) to read as follows:

§ 229.508 (Item 508) Plan of distribution.

* * * * *

(b) *New Underwriters.* Where securities being registered are those of a registrant that has not previously been required to file reports under section 13(a) or 15(d) of the Exchange Act (15 U.S.C. 78m(a) or 78*o*(d)) and any of the managing underwriter(s) (or where there are no managing underwriters, a majority of the principal underwriters) was organized, reactivated, or first registered as a broker-dealer within the past three years, these facts should be disclosed in the prospectus. If appropriate, disclosure that the principal business function of the underwriters is to sell the securities to be registered, or that the promoters of the registrant have a material relationship with such underwriter(s) should be provided. Sufficient details shall be given to allow full appreciation of the underwriter(s)' experience and its relationship with the registrant, promoters and their controlling persons.

* * * * *

(e) *Underwriters' compensation.* Set forth in tabular form the nature of the compensation and the amount of discounts and commissions to be allowed or paid to the underwriters. Separately show amounts to be paid by the company and the selling shareholders. In addition, all other items deemed by the National Association of Securities Dealers to constitute underwriting compensation for purposes of the Association's Rules of Fair Practice must be shown in the table.

Instructions to Paragraph 508(e)

1. The term ''commissions'' is defined in paragraph (17) of Schedule A of the Securities Act. Show cash commissions paid by the registrant or selling security holders separately in the table. Commissions paid by other persons also shall be set forth in the table. Any finder's fee or similar payments shall be disclosed in a note in the table.

2. Where an underwriter has received an over-allotment option, maximum-minimum information shall be presented in the table, based on the purchase of all or none of the shares subject to the option. The terms of the option should be described in the narrative.

* * * * *

(*l*) *Stabilization and other transactions.* (1) The registrant must provide disclosure which briefly describes any transaction that the underwriter(s) intends to conduct during the offering that stabilizes, maintains or otherwise affects the market price of the offered securities. Disclosure should be provided to indicate, if true, that the underwriter(s) may discontinue these transactions at any time and indicate the exchange or other market on which these transactions may occur.

(2) If the stabilizing began before the effective date of the registration statement, set forth the amount of securities bought, the prices at which the securities were bought and the period within which they were bought. In the event that § 230.430A of this chapter is used, the prospectus filed pursuant to § 230.424(b) of this chapter or included in a post-effective amendment must include information

as to stabilizing transactions effected before the determination of the public offering price set forth in such prospectus.

(3) If the securities being registered are to be offered to existing security holders pursuant to warrants or rights and any securities not taken by security holders are to be reoffered to the public after the expiration of the rights offerings period, the registrant shall be set forth, in a supplement or otherwise, in the prospectus used in connection with such reoffering:

(i) The amount of securities bought in stabilization activities during the rights offering period and the price or range of prices at which such securities were bought;

(ii) The amount of the offering securities subscribed for during such period;

(iii) The amount of the offered securities subscribed for by the underwriters during the period;

(iv) The amount of the offered securities sold during such period by the underwriters and the price, or range of prices, at which the securities were sold; and

(v) The amount of the offered securities to be reoffered to the public and the public offering price.

Instruction to Paragraph (j)

The disclosure should include information on stabilizing transactions, syndicate short covering transactions, penalty bids or any other transaction that affects the offered security's price. The nature of the transactions should be described in a clear, understandable manner.

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

14. 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, 78(d), 78*l*, 78m, 78n, 78o, 78w, 78*ll*(d), 79t, 80a–8, 80a–29, 80a–30, and 80a–37, unless otherwise noted.

* * * * *

15. By amending § 230.421 by revising paragraph (b) and adding paragraph (d) to read as follows:

§ 230.421 Presentation of information in prospectuses.

* * * * *

(b) The information set forth in a prospectus should be presented in a clear, concise and understandable fashion. All information contained in a prospectus shall be set forth under appropriate captions or headings reasonably indicative of the principal subject matter set forth thereunder. Except as to financial statements and other tabular data, all information set forth in a prospectus shall be divided into reasonably short paragraphs or sections. Registrants shall prepare the prospectus using the following standards:

(1) Information shall be presented in clear, concise paragraphs and sentences. If possible, information shall be presented in short explanatory sentences and ''bullet'' lists;

(2) Captions and subheading titles shall specifically describe the disclosure included in the section;

(3) Terms that are not clear from the context generally should be defined in a glossary or other section of the document. Glossaries are recommended where they facilitate understanding. Frequent reliance on defined terms as the primary means of explaining information in the body of the prospectus must be avoided; and

(4) Legal and highly technical business terminology should be avoided.

Notes to § 230.421(b)

In drafting prospectus information, registrants should avoid the following:

1. Legalistic, overly complex presentations that make the substance of the disclosure difficult to understand;

2. Vague ''boilerplate'' explanations that are imprecise and readily subject to differing interpretations;

3. Complex information copied directly from legal documents without any clear and concise explanation of the provision(s); and

4. Disclosure repeated in different sections of the document that increases the size of the document, does not enhance the quality of the information, and overwhelms the reader.

(d)(1) The registrant must use plain English principles in the organization, language, and structure of the front and back cover pages, and the summary and risk factors sections, if any, included in the prospectus. These sections should communicate the information clearly to investors. At a minimum, the disclosure should substantially comply with each of the following plain English writing principles:

(i) Active voice;

(ii) Short sentences;

(iii) Definite, concrete, everyday words;

(iv) Tabular presentation or ''bullet'' list for complex material, whenever possible;

(v) No legal jargon, or highly technical business terms; and

(vi) No multiple negatives.

(2) The design of these sections or other sections of the prospectus may include pictures, logos, charts, graphs or other design elements so long as the design is not misleading and the required information is clear.

16. By amending § 230.461 by adding a sentence to the end of paragraph (b)(1) to read as follows.

§ 230.461 Acceleration of effective date.

* * * * *

(b) * * *

(1) * * * Where the plain English prospectus requirements of § 230.421(d) of this chapter have not been met.

PART 239—FORMS PRESCRIBED UNDER THE SECURITIES ACT OF 1933

17. The authority citation for Part 239 continues to read as follows:

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

* * * * *

§ 229.12 [Form S–2 Amended]

18. By amending Form S–2 (referenced in § 239.12), Item 12 to add paragraph (d) 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

* * * * *

Item 12. Incorporation of Certain Information by Reference.

* * * * *

(d) The registrant shall indicate that it will provide, without charge to each person, including any beneficial owner to whom a prospectus is delivered, upon their written or oral request, a copy of any and all of the information that has been incorporated by reference in the prospectus but not delivered with the prospectus. Registrants are not required to send the exhibits to the information that is incorporated by reference unless such exhibits are specifically incorporated by reference into the information that the prospectus incorporates. The registrant shall give the title or department including the address and telephone number where the request should be made.

* * * * *

§ 239.13 [Form S–3 Amended]

19. By amending Form S–3 (referenced in § 239.13) Item 12 to add paragraph (c) before the instruction 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

* * * * *

Item 12. Incorporation of Certain Information by Reference.

* * * * *

(c) The registrant shall indicate that it will provide, without charge to each person, including any beneficial owner to whom a prospectus is delivered, upon their written or oral request, a copy of any and all of the information that has been incorporated by reference in the prospectus but not delivered with the prospectus. Registrants are not required to send the exhibits to the information that is incorporated by reference unless such exhibits are specifically incorporated by reference into the information that the prospectus incorporates. The registrant shall give the title or department including the address and telephone number where the request should be made.

* * * * *

§ 239.20 [Form S–20 Amended]

20. By amending Form S–20 (referenced in § 239.20) to revise the reference in Item 1 ''Item 502(f) of Regulation S–K [§ 229.502(f) of this chapter]'' to read ''Item 101(f) of Regulation S–K [§ 229.101(f) of this chapter]''.

§ 239.25 [Form S–4 Amended]

21. By amending Form S–4 (referenced in § 239.25) to revise Item 2 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

* * * * *

Item 2. Inside Front and Outside Back Cover Pages of the Prospectus.

Set forth the information required by Item 502 of Regulation S–K (§ 229.502 of this chapter). In addition, on the inside front cover page, the registrant shall include information that highlights by print type or otherwise that the prospectus incorporates by reference important business and financial information about the company that is not included in or delivered with the document but which is available to security holders upon request. Give the name, address and telephone number where the request should be directed. In addition, the registrant should indicate that in order to obtain timely delivery, the request should be made no later than five business days prior to the date on which the investment decision must be made.

* * * * *

§ 239.33 [Form F–3 amended]

22. By amending Form F–3 (referenced in § 239.33) by adding paragraph (d) to Item 12 before the instruction 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

* * * * *

Item 12. Incorporation of Certain Information by Reference.

* * * * *

(d) The registrant shall indicate that it will provide, without charge to each person, including any beneficial owner to whom a prospectus is delivered, upon their written or oral request, a copy of any and all of the information that has been incorporated by reference in the prospectus but not delivered with the prospectus. Registrants are not required to send the exhibits to the information that is incorporated by reference unless such exhibits are specifically incorporated by reference into the information that the prospectus incorporates. The registrant shall give the title or department including the address and telephone number where the request should be made.

* * * * *

§ 239.34 [Form F–4 Amended]

23. By amending Form F–4 (referenced in § 239.34) to revise Item 2 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 2. Inside Front and Outside Back Cover Pages of the Prospectus.

Set forth the information required by Item 502 of Regulation S–K (§ 229.502 of this chapter). In addition, on the inside front cover page, the registrant shall include information that highlights by print type or otherwise that the prospectus incorporates by reference important business and financial information about the company that is not included in or delivered with the document but which is available to security holders upon request. Give the name, address and telephone number where the request should be directed. In addition, the registrant should indicate that in order to obtain timely delivery, the request should be made no later than five business days prior to the date on which the investment decision must be made.

* * * * *

Dated: January 14, 1997.

By the Commission.

Margaret H. McFarland,

Deputy Secretary.

Note: Appendix A to the Preamble does not appear in the Code of Federal Regulations and the examples to Appendix A will not be in the Federal Register but may be viewed on our Internet site (http://www.sec.gov)

Appendix A—Examples of Plain English Disclosure Documents

The following pages are before and after samples taken from document filed by some of the Plain English Pilot participants:

- Bell Atlantic Corporation
- ITT Corporation
- Baltimore Gas and Electric Company
- Unisource Worldwide, Inc.

Some of the ''after'' examples do not contain all of the information that appears in the corresponding ''before''. To make these documents clearer and easier for investors to understand, these registrants either moved this information to a more logical section of the document or eliminated it because it was redundant.

Note: Appendix B to the Preamble does not appear in the Code of Federal Regulations

Appendix B—Chart on Small Business Issuer Rule Proposals

REGULATION S–B—ITEM 501—FRONT OF REGISTRATION STATEMENT AND OUTSIDE FRONT COVER OF PROSPECTUS

Current	Proposed
• Small business issuer name	• Same.
• Title, amount and description of securities offered	• Same.
• Selling security holders' offering identified	• Same.
• Cross-reference to risk-factors	• Same.
• SEC legal legend	• Rewritten in plain English.
• Formatted distribution table showing price, underwriting commission, and proceeds.	• Bullet list or other design that highlights the information
• Instruction on bona fide estimate of price	• Retain
• Instruction requiring terms of best efforts offering	• Retain on cover page. No longer permitted in summary.
• Legal legend where preliminary prospectus incomplete	• Rewritten in plain English.
• Legend required by state law	• Rewritten in plain English.
• Date of prospectus	• Retain.

REGULATION S–B—ITEM 501—FRONT OF REGISTRATION STATEMENT AND OUTSIDE FRONT COVER OF PROSPECTUS—Continued

Current	Proposed
• Expenses of offering	• Move to underwriting section.

REGULATION S–B—ITEM 502—INSIDE FRONT AND OUTSIDE BACK COVER PAGES OF PROSPECTUS

Current	Proposed
• Availability of Exchange Act Reports	• Retain on back cover page or include with incorporation by reference disclosure in short-form registration statements.
• Availability of reports with audited financial statements	• Move to business description section.
• Availability of reports incorporated by reference	• Move to prospectus where incorporation by reference disclosure provided.
• Stabilization legend	• Move to underwriting section.
• Passive market making legend	• Delete.
• Dealer prospectus delivery legend	• Move to back cover page of prospectus.
• Table of contents	• Inside front cover page or immediately following cover page.
• Canadian issuers disclosure on enforceability of civil liability against foreign person.	• Retain as part of business description.

REGULATION S–B—ITEM 503—SUMMARY INFORMATION AND RISK FACTORS

Current	Proposed
• Summary	• Retain in plain English. Propose to require discussion to be brief.
• Small business issuer address and telephone number	• Move to inside cover page or summary.
• Risk factors	• Retain in plain English. Codify prior interpretation to prioritize risk factors.

[FR Doc. 97–1300 Filed 1–17–97; 8:45 am]

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