

## SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 228, 229, 230, 239 and  
274

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No. S7-3-97]

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### Plain English Disclosure

AGENCY: Securities and Exchange  
Commission.

ACTION: Final rules.

**SUMMARY:** We are adopting the plain English rule with some changes based on the comments we received and the lessons we learned from the plain English pilot participants. The rule requires issuers to write the cover page, summary, and risk factors section of prospectuses in plain English. We are changing the existing requirements for these sections to the extent they conflict with the plain English rule. We are also giving issuers more specific guidance on how to make the entire prospectus clear, concise, and understandable. We believe that using plain English in prospectuses will lead to a better informed securities market—a market in which investors can more easily understand the disclosure required by the federal securities laws.

**DATES:** *Effective Date.* October 1, 1998.

*Compliance Date.* October 1, 1998. When we act on the amendments to the mutual fund disclosure requirements that we proposed in February 1997, we may change the date by which mutual funds must comply with these amendments.

**FOR FURTHER INFORMATION CONTACT:** Ann D. Wallace or Carolyn A. Miller at (202) 942-2980 or David Maltz at (202) 942-1921 in the Division of Corporation Finance. If your questions involve mutual funds, call Kathleen K. Clarke at (202) 942-0724 or Markian Melnyk at (202) 942-0592 in the Division of Investment Management. Direct your questions on the staff's plain English handbook to Nancy M. Smith at (202) 942-7040.

**SUPPLEMENTARY INFORMATION:** We are adopting amendments to Rules 421,<sup>1</sup> 461<sup>2</sup> and 481<sup>3</sup> of Regulation C<sup>4</sup> and

Items 101,<sup>5</sup> 501,<sup>6</sup> 502,<sup>7</sup> 503,<sup>8</sup> and 508<sup>9</sup> of Regulations S-K<sup>10</sup> and S-B.<sup>11</sup> We are also adopting minor amendments to Forms S-2,<sup>12</sup> S-3,<sup>13</sup> S-4,<sup>14</sup> S-20,<sup>15</sup> F-2,<sup>16</sup> F-3,<sup>17</sup> F-4,<sup>18</sup> and N-2.<sup>19</sup>

Our Office of Investor Education and Assistance will issue, within the next six weeks, a final version of *A Plain English Handbook: How to Create Clear SEC Disclosure Documents*. The handbook will give techniques and tips on how to create plain English disclosure documents. We suggest you order a hard copy by calling 800-SEC-0330. Some of the handbook's graphic elements will not be available on the web version. A draft version is available now on our Internet site (<http://www.sec.gov>).

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<sup>5</sup> 17 C.F.R. 229.101.

<sup>6</sup> 17 C.F.R. 229.501.

<sup>7</sup> 17 C.F.R. 229.502.

<sup>8</sup> 17 CFR 229.503.

<sup>9</sup> 17 CFR 229.508.

<sup>10</sup> 17 CFR 229.10 *et seq.*

<sup>11</sup> 17 CFR 228.10 *et seq.*

<sup>12</sup> 17 CFR 239.12.

<sup>13</sup> 17 CFR 239.13.

<sup>14</sup> 17 CFR 239.25.

<sup>15</sup> 17 CFR 239.20.

<sup>16</sup> 17 CFR 239.32.

<sup>17</sup> 17 CFR 239.33.

<sup>18</sup> 17 CFR 239.34.

<sup>19</sup> 17 CFR 239.14.

Appendix B: List of Plain English Pilot Participants

### I. Executive Summary

Full and fair disclosure is one of the cornerstones of investor protection under the federal securities laws. If a prospectus fails to communicate information clearly, investors do not receive that basic protection. Yet, prospectuses today often use complex, legalistic language that is foreign to all but financial or legal experts. The proliferation of complex transactions and securities magnifies this problem. A major challenge facing the securities industry and its regulators is assuring that financial and business information reaches investors in a form they can read and understand.

In response to this challenge, we undertake today a sweeping revision of how issuers must disclose information to investors. This new package of rules will change the face of every prospectus used in registered public offerings of securities.<sup>20</sup> Prospectuses will be simpler, clearer, more useful, and we hope, more widely read.

First, the new rules require issuers to write and design the cover page, summary, and risk factors section of their prospectuses in plain English. Specifically, in these sections, issuers will have to use: short sentences; definite, concrete, everyday language; active voice; tabular presentation of complex information; no legal or business jargon; and no multiple negatives. Issuers will also have to design these sections to make them inviting to the reader. In response to comments, the new rules will not require issuers to limit the length of the summary, limit the number of risk factors, or prioritize risk factors.

Second, we are giving guidance to issuers on how to comply with the current rule that requires the entire prospectus to be clear, concise, and understandable. Our goal is to purge the entire document of legalese and repetition that blur important information investors need to know.

Also, our Office of Investor Education and Assistance is finalizing a handbook with practical tips on how to prepare plain English documents. This handbook explains how to apply plain English principles to disclosure documents.

To ensure a smooth transition, the plain English rule and the other changes adopted today will apply beginning October 1, 1998. We encourage all

<sup>20</sup> We proposed this package of rules in January 1997. See Release No. 33-7380 (January 14, 1997), 62 FR 3512 (January 21, 1997).

<sup>1</sup> 17 C.F.R. 230.421.

<sup>2</sup> 17 C.F.R. 230.461.

<sup>3</sup> 17 C.F.R. 230.481.

<sup>4</sup> 17 C.F.R. 230.400 *et seq.*

participants in securities offerings to start following these plain English principles now when writing their prospectuses. Our staff will continue its efforts to assist companies in drafting prospectuses in plain English.

## II. Lessons From the Plain English Pilot Program

To test plain English in disclosure documents, the Division of Corporation Finance started a pilot program in 1996 for public companies willing to file plain English documents under either the Securities Act of 1933<sup>21</sup> or the Securities Exchange Act of 1934.<sup>22</sup> More than 75 companies have volunteered to participate in the pilot program. Many participants have prepared disclosure documents that will not be subject to the plain English rule, including proxy statements, footnotes to financial statements,<sup>23</sup> and management's discussion and analysis of financial condition and results of operations.<sup>24</sup>

We have included in Appendix B a list of pilot participants that filed plain English documents. These pilot participants produced examples of disclosure that is clear, well-written, and designed to increase investors' understanding.

Our experience with the pilot participants affirms our belief that preparing documents in plain English increases investors' understanding and helps them make informed investment decisions. The package of rules we are adopting, as well as the handbook, will enable issuers to improve dramatically the clarity of their disclosure documents.

## III. Rules on How To Prepare Prospectuses

### A. Plain English Rule—Rule 421(d)

Rule 421(d), the plain English rule, requires you to prepare the front portion of the prospectus in plain English. You must use plain English principles in the organization, language, and design of the front and back cover pages, the summary, and the risk factors section. Also, when drafting the language in these front parts of the prospectus, you must comply substantially with six basic principles:

- Short sentences;
- Definite, concrete, everyday language;
- Active voice;

- Tabular presentation or bullet lists for complex material, whenever possible;

- No legal jargon or highly technical business terms; and

- No multiple negatives.

A number of comment letters noted that our rule dictates how to write the front of the prospectus. They are correct. We have seen marked improvement in the clarity of disclosure when pilot participants have used these widely recognized, basic principles of clear writing. We believe the benefits to investors support mandating the use of these writing principles for the front of the prospectus.

In addition, you must design the cover page, summary, and risk factors section to make them easy to read. You must format the text and design the document to highlight important information for investors. The rule permits you to use pictures, charts, graphics, and other design features to make the prospectus easier to understand.

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

Rule 421(b) currently requires that the entire prospectus be clear, concise, and understandable. This requirement is in addition to the plain English rule we are adopting, which applies only to the front of the prospectus.

We are adopting, as proposed, amendments to Rule 421(b). These amendments provide guidance on how to prepare a prospectus that is clear, concise, and understandable. The amendments set out four general writing techniques that you must follow and list four conventions to avoid when drafting the prospectus. As several comment letters noted, these amendments codify our earlier interpretive advice.<sup>25</sup>

Amended Rule 421(b) requires you to use the following techniques when writing the entire prospectus:

- Present information in clear, concise sections, paragraphs, and sentences. Whenever possible, use short explanatory sentences and bullet lists;

- Use descriptive headings and subheadings;

- Avoid frequent reliance on glossaries or defined terms as the primary means of explaining information in the prospectus. Define terms in a glossary or other section of the document only if the meaning is unclear from the context. Use a glossary only if it facilitates understanding of the disclosure; and

- Avoid legal and highly technical business terminology.

The new note to Rule 421(b) provides guidance on how to comply with the rule's general requirements. The note lists the following drafting conventions to avoid because they make your document harder to read:

- Legalistic or overly complex presentations that make the substance of the disclosure difficult to understand;

- Vague boilerplate explanations that are readily subject to differing interpretations;

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

- Repetitive disclosure that increases the size of the document, but does not enhance the quality of the information.

### C. Comments on Proposed Amendments to Rule 421(b) and Rule 421(d)

Several comment letters stated that we should permit public companies to use legal and technical business terminology. The letters noted, for example, that high technology companies must use technical terms to distinguish their products or services from others in the industry. We recognize that certain business terms may be necessary to describe your operations properly. But, you should avoid using excessive technical jargon that only your competitors or an industry specialist can understand.

You should write the disclosure in your prospectus for investors. When you use many highly technical terms, the investor must learn your dictionary of terms to understand your disclosure. If technical terms are unavoidable, you should make every effort to explain their meaning the first time you use them.

Several comment letters noted that some investors, particularly institutional investors, want to read the specific terms of contracts or the securities offered. For example, an investor may want to read the specific language of a loan agreement's financial covenants or an indenture's default provisions.

Our current rule permits you to summarize an exhibit's key provisions in your prospectus.<sup>26</sup> Moreover, we require you to file material contracts and any instruments that define the rights of security holders. We believe this approach generally serves the needs of all investors in the market. If you cannot adequately summarize the language from an exhibit in the prospectus, then you should include that language. However, you must

<sup>21</sup> 15 U.S.C. 77a *et seq.*

<sup>22</sup> 15 U.S.C. 78a *et seq.*

<sup>23</sup> See the Forms 10-Q of Pfizer, Inc. (File No. 1-3619) for fiscal 1997.

<sup>24</sup> See the 1996 Form 10-K filed by Baltimore Gas and Electric Company (File No. 1-1910) and the Boddie-Noell Properties, Inc. registration statement filed December 2, 1997 (File No. 333-39803).

<sup>25</sup> See Securities Act Release No. 6900 (June 17, 1991).

<sup>26</sup> Rule 421(c), 17 CFR 230.421(c).

present it clearly and explain what it means to investors.

**IV. Revisions to Regulations S-K and S-B**

We are adopting these revisions largely as we proposed them. However, based on the comment letters and our belief that communicating clearly should be the focus of disclosure to investors, we are not adopting any requirements that would require you to:

- Limit the length of the summary;
- Limit the number of risk factors; or
- Prioritize risk factors.

*A. Item 501—Forepart of Registration Statement and Outside Front Cover Page of Prospectus*<sup>27</sup>

As proposed, we are eliminating the formal design requirements for the prospectus cover page. We are, however, requiring you to limit the front cover of the prospectus to one page. We believe these revisions will allow you to design and write a cover page that will focus investors on key information about the offering and encourage them to read the important information in the

prospectus. Also, we intend for these amendments to give you the flexibility you need to design a cover page tailored to your company and the offering.

Under the revised disclosure item, you are free to use pictures, graphs, charts, and other designs that accurately depict your company, business products, and financial condition. The staff will object to design features and font types that make the disclosure hard to read or understand.

We are amending the formalized requirements on how you present the mandatory legends on the cover page. We are not placing any restrictions on how you present these legends, except:

- You must make the legends prominent; and
- You must make the print type easy to read.

Using all capitalized letters for the legends does not give them proper prominence. Rather, it makes them hard to read. A well-designed cover page that does not crowd the legends with other text can give them the prominence they need.

We have amended Item 501 to give you two plain English examples of the legend that states the Commission has not approved the offering.<sup>28</sup> The item also gives you a plain English example of the legend that states the prospectus is not yet complete, commonly called the “red herring” legend.

We are revising the requirements on information that you must always include on the prospectus cover page. Our goal is to have the cover page focus on key information about the offering. You should avoid moving information to the cover page unnecessarily.

We had proposed to eliminate the requirement that the cover page include a cross-reference to the risk factors section in the prospectus. In response to comment letters emphasizing the importance of this information, we are keeping this requirement. The cover page must reference the risk factors section and state the page number on which the risk factors begin.

The following table shows the current requirements for the prospectus cover page and the changes we are adopting.

REGULATION S-K—ITEM 501

Current	Final
<ul style="list-style-type: none"> <li>• Cover page of registration statement .....</li> <li>• Company name .....</li> <li>• Title, amount, and description of securities offered .....</li> <li>• Selling security holders offering .....</li> <li>• Cross-reference to risk factors .....</li> <li>• Formatted distribution table showing price, underwriting commission, and proceeds of offering.</li> <li>• Show bona fide estimate of range of maximum offering price and number of securities.</li> <li>• If price not set, show how price will be determined .....</li> <li>• Formatted best efforts disclosure and distribution table .....</li> <li>• Commission legend .....</li> <li>• State-required legends .....</li> <li>• Underwriters’ over-allotment option, expenses of offering, commissions paid by others, and other non-cash consideration and finders’ fees.</li> <li>• No requirement to identify market for securities, trading symbol, underwriters, or type of underwriting arrangements.</li> <li>• Date of prospectus .....</li> <li>• Prospectus “Subject to Completion” legend .....</li> <li>• No page limit .....</li> </ul>	<ul style="list-style-type: none"> <li>• Same.</li> <li>• Same.</li> <li>• Same.</li> <li>• Same.</li> <li>• Same, except cross-reference must include page number. No print type specified.</li> <li>• Delete distribution table. Use bullet list or other design that highlights the information.</li> <li>• Same.</li> <li>• Same.</li> <li>• Delete distribution table. Use bullet list or other design that highlights the information.</li> <li>• Retain in plain English. Include reference to state securities commissions. No print type specified.</li> <li>• Same.</li> <li>• Identify existence of the option and the number of shares. Move all other information to the plan of distribution section.</li> <li>• Identify market for securities, trading symbol, underwriters, and type of underwriting arrangements.</li> <li>• Same.</li> <li>• Retain in plain English.</li> <li>• Must limit cover to one page.</li> </ul>

<sup>27</sup> Item 501 of Regulation S-K, 17 CFR 229.501, and Item 501 of Regulation S-B, 17 CFR 228.501.

<sup>28</sup> The North American Securities Administrators Association, Inc.’s Disclosure Reform Task Force

recommended that the suggested legend include a reference to the state securities commissions. We have changed the legend to reflect this suggestion.

In our proposing release, we asked whether we should require specific information on the prospectus cover page for certain types of offerings, such as mergers, exchange offers, or limited partnership offerings. Several comment letters suggested that the plain English rule and the revised disclosure requirements should replace our earlier interpretive advice on cover page disclosure for limited partnership offerings.<sup>29</sup>

We believe that the plain English rule and the revised disclosure requirements are consistent with our earlier advice on limited partnership offering prospectuses and similar offerings, with one significant exception. Under our advice, the cover page must list the offering's key risks, resulting in repetitious disclosure of those risks. However, we believe the unique nature of these offerings and the risks they present to investors warrant requiring the issuer to highlight these risks on the

cover page. Of course, the cover page, summary, and risk factors section must otherwise comply with the plain English rule and the revised disclosure requirements we are adopting.

We are not adopting special requirements for any other type of offering. We have had a number of merger prospectuses in the pilot program that provide excellent guidance on how to apply plain English to these offerings.

*B. Item 502—Inside Front and Outside Back Cover Pages of Prospectus<sup>30</sup>*

We are amending the requirements for the inside front cover page and outside back cover page of the prospectus to limit significantly the information you are required to include on these pages. We believe this will give you further freedom to arrange the information in the prospectus from investors' viewpoints. The table at the end of this section shows the current requirements

for these pages and the changes we are adopting.<sup>31</sup>

Although we prefer that the required table of contents immediately follow the cover page, we believe you should continue to have the flexibility to include it on either the inside front or outside back cover page of the prospectus. However, if you deliver a prospectus to investors electronically, you must include the table of contents immediately after the cover page. This placement will benefit investors because they will not have to scroll to the end of the prospectus to see how it is organized.

Although some comment letters recommended that we eliminate the requirement to disclose the dealer's prospectus delivery obligations, we have decided to retain this disclosure on the outside back cover page. We believe this disclosure is helpful to dealers in meeting their legal obligation to deliver the prospectus.

REGULATION S-K—ITEM 502

Current	Final
<ul style="list-style-type: none"> <li>• Availability of Exchange Act reports generally .....</li> <li>• Identify market for securities .....</li> <li>• Availability of annual reports to shareholders with financial statements for foreign issuers and others not subject to proxy rules.</li> <li>• Availability of Exchange Act reports incorporated by reference in short-form registration statements.</li> <li>• Stabilization legend .....</li> <li>• Passive market making activities legend .....</li> <li>• Dealer prospectus delivery .....</li> <li>• Enforceability of civil liability provisions of federal securities laws against foreign persons.</li> <li>• Table of contents .....</li> </ul>	<ul style="list-style-type: none"> <li>• Move to description of business section or, for short-form registration statements, to the incorporation by reference disclosure.</li> <li>• Move to cover page.</li> <li>• Move to description of business section.</li> <li>• Move to incorporation by reference disclosure.</li> <li>• Move to plan of distribution section.</li> <li>• Delete. Disclosure retained in plan of distribution section.</li> <li>• Retain on outside back cover page.</li> <li>• Move to description of business section.</li> <li>• Same. If prospectus delivered electronically, must immediately follow cover page.</li> </ul>

*C. Item 503—Summary Information, Risk Factors, and Ratio of Earnings to Fixed Charges<sup>32</sup>*

1. Summary Information

If you include a summary, it must be brief and in plain English. Further, if you include a summary description of the company's business operations or financial condition, you must write this information in plain English even if you do not caption it a "summary."

Although we have not limited the length of the summary, we believe this section should highlight the most important features of the offering. For example, the summary should not include a lengthy description of the company's business and business

strategy. This detailed information is better suited to the disclosure in the body of the prospectus.

Several comment letters suggested that we require a summary section. We decided against this because a summary may not be helpful in all prospectuses. For example, you may not need to summarize the prospectus in a short-form registration statement.

Several comment letters suggested that we specify the information that must be in a summary. Because we believe you need flexibility to write a summary that is appropriate to your offering, we are not adopting specific disclosure items for the summary. However, because the financial statements are an important part of the

disclosures made by public companies, we believe you should continue to highlight financial information in the summary. You should present this financial information in a manner that allows investors to understand it easily.

2. Risk Factors

If you include a risk factors section in your prospectus, you must write the risk factors in plain English and avoid "boilerplate" risk factors. We believe a discussion of risk in purely generic terms does not tell investors how the risk may affect their investment in a specific company. You should place any risk factor in context so investors can understand the specific risk as it applies to your company and its operations.

<sup>29</sup> See Securities Act Release No. 6900 for our interpretive advice on limited partnership offerings.

<sup>30</sup> Item 502 of Regulation S-K, 17 CFR 229.502, and Item 502 of Regulation S-B, 17 CFR 228.502.

<sup>31</sup> We are also amending Forms S-2, S-3, S-4, F-2, F-3, and F-4. Along with the list of reports incorporated by reference, you will include information on (1) how investors may obtain a copy

of these reports, and (2) how they may obtain copies of the other reports you file with the SEC.

<sup>32</sup> Item 503 of Regulation S-K, 17 CFR 229.503, and Item 503 of Regulation S-B, 17 CFR 228.503.

### 3. Ratio of Earnings to Fixed Charges

When you offer debt or preferred equity, you must disclose a ratio of earnings to fixed charges. Where you include a prospectus summary, amended Item 503 requires you to show the ratio of earnings to fixed charges as part of the summarized financial data.

### V. Plain English for Investment Companies

The plain English rule applies to prospectuses of investment companies and will complement our disclosure initiatives for these companies.<sup>33</sup> Also, the amendments we are adopting to Rule 481 require these companies to write and design the front parts of their prospectuses in plain English.

As part of our commitment to improve mutual fund disclosure, in February 1997, we proposed significant changes to the disclosure requirements for mutual fund prospectuses and new summary disclosure documents called "profiles."<sup>34</sup> These proposals would require a standardized risk/return summary in mutual fund prospectuses and profiles. The risk/return summary would include a concise narrative discussion of fund risks and a bar chart showing a fund's annual returns for the past ten years. We expect to consider these and other changes to mutual fund prospectuses shortly. The plain English rule will apply to the cover page and the risk/return summary in prospectuses and the new fund profiles.<sup>35</sup>

Investment companies must comply with the plain English rule and the revised disclosure requirements for new registration statements filed on or after October 1, 1998. When we act on the changes to the mutual fund disclosure requirements, we may change the compliance date for mutual funds so they may comply with these new requirements with one filing.<sup>36</sup>

### VI. Phase-In of the Plain English Rule and Other Requirements for Issuers Other Than Investment Companies

To ease the transition to plain English and to avoid delaying your access to the

<sup>33</sup> See the amendments to Rule 481 under Regulation C, 17 CFR 230.481.

<sup>34</sup> The proposed amendments to Form N-1A are included in Investment Company Act Release No. 22528 (February 27, 1997) and the proposed profile rule is in Investment Company Act Release No. 22529 (February 27, 1997).

<sup>35</sup> We are also adopting amendments to Rule 481 to require plain English legends in fund prospectuses.

<sup>36</sup> The Commission proposed to allow mutual funds a transition period of six months after the effective date of the proposed rules before they would need to comply with the new prospectus disclosure requirements. See Investment Company Act Release Nos. 22528 and 22529 (February 27, 1997).

capital markets, we will phase in the plain English rule and the other changes as follows:

- If you first file a registration statement on or after October 1, 1998, you must comply with the new requirements.<sup>37</sup> If you file a registration statement before October 1, 1998, but it is not yet effective on that date, you do not have to amend it to comply with the new requirements before it is effective.

- On or after October 1, 1998, any supplement you file to a prospectus in an effective registration statement that relies on Rule 415(a)(1)(x) must comply with the new requirements.

- If you file a post-effective amendment on or after October 1, 1998, either to include the company's latest audited financial statements in the registration statement or to update the prospectus under Section 10(a)(3),<sup>38</sup> you must comply with the new requirements.

If you elect to comply immediately with any of the plain English requirements, we believe you should comply with all of them to make the document more readable. For example, you should not have a plain English cover page and a legalistic summary or risk factors section.

During the phase-in period, we will hold workshops to help issuers, underwriters, and their counsel comply with the plain English rule. Until October 1, 1998, the staff will continue the plain English pilot program, but because of limited resources and because we expect high demand by issuers to participate in the pilot, the staff will no longer offer expedited review. We encourage issuers to participate in the pilot program with both Securities Act and Exchange Act documents.

### VII. Comments on the Plain English Proposals

We received 45 comment letters on the plain English proposals.<sup>39</sup> Generally, the comment letters favored requiring plain English for the front of prospectuses—the cover page, summary, and risk factors section. The American Society of Corporate Secretaries and the American Corporate Counsel Association, as well as several public companies, supported the plain English requirements. They believe that requiring plain English will focus all

<sup>37</sup> If you file a registration statement under Rule 462(b), you must comply with new requirements only if they applied to the earlier offering.

<sup>38</sup> 15 U.S.C. 77j(a)(3).

<sup>39</sup> You may read and copy the comment letters and the staff's summary of these letters in our Public Reference Room at 450 Fifth Street, NW., Washington, DC 20549. Ask for File No. S7-3-97.

parties involved in the offering process—issuers, underwriters, trustees, and counsel—on clear and readable disclosure. Investor groups, such as the American Association of Retired Persons and the Consumer Federation of America, supported adopting the plain English rule to ensure that investors receive clear information.

Other comment letters raised the following general concerns about the plain English rule:

- Will the plain English rule increase a registrant's liability?
- How will the staff review and comment on plain English filings?
- Will the Commission deny acceleration of a filing if it does not comply with the plain English rule?

We address these concerns in the following three sections.

#### A. Liability Concerns

Several comment letters, including those of the American Bar Association and the Securities Industry Association, recommended a voluntary rather than a mandatory approach to improving the readability of prospectuses. These comment letters argued against mandating plain English primarily because of liability concerns.

These comment letters expressed concern that issuers may omit material information in the course of simplifying the language. The comment letters urged us to adopt a safe harbor rule from legal liability to cover the sections of the prospectus that must be in plain English.

Other letters from groups representing public companies and the mutual fund industry stated they believe plain English will not increase their liability. They stated that plain English disclosure should reduce potential liability because it decreases the likelihood that an investor will misunderstand the prospectus.<sup>40</sup>

Using plain English does not mean omitting important information. These rules only require you to disclose information in words investors can understand and in a format that invites them to read the document. For these reasons, we do not believe that a safe harbor rule is necessary or appropriate. We also believe it is inappropriate for you to include language that attempts to create a safe harbor for these sections.

The letters raising liability concerns also questioned whether it is possible to summarize in plain English complex matters covered in the body of the document. We believe the courts will continue to view the summary section,

<sup>40</sup> For example, see the Investment Company Institute's comment letter, dated March 24, 1997.

as its caption indicates, as a highlight of important information in the prospectus. A summary, by its very nature, cannot disclose everything. In determining whether a company has made full disclosure, courts should look at the disclosure in the entire document.

Moreover, a company's failure to include everything in the summary should not trigger automatically the application of the "buried facts" doctrine. Under the buried facts doctrine, a court would consider disclosure to be false and misleading only if its overall significance is obscured because material information is "buried," for example, in footnotes or appendices.<sup>41</sup>

The package of rules we are adopting should lead to clearer documents that are easier for investors to understand. We believe that compliance with these requirements will not increase the risk of litigation.

#### *B. Staff Plain English Review and Comment Process*

Several comment letters questioned whether the staff's time would be well spent giving comments on grammar. The letters also stated that the staff's past comments have caused many immaterial disclosures and much of the repetition in current prospectuses.

Our staff will focus on whether you disclose material information and whether that disclosure is clear and readable. The staff will not correct grammatical mistakes.

We recognize that a document can still be clear despite the occasional long sentence or use of passive voice. But we have learned from the plain English pilot program that a document becomes clearer and easier to read when its writer uses plain English.

The staff will issue their comments in plain English and avoid requesting repetitive information in the document. If the staff selects your registration statement for a legal and accounting review, the same people who review your document will issue any plain English comments.

Because the format and design of your document play a large part in its readability, we will request paper copies of the plain English sections that you plan to deliver to investors. We are working to upgrade our Electronic Data Gathering Analysis and Retrieval system, EDGAR, to permit the filing of an exact duplicate of the paper copy

<sup>41</sup> See *Gould v. American Hawaiian Steamship Company*, 331 F. Supp. 981 (D. Del. 1971); *Kohn v. American Metal Climax, Inc.*, 322 F. Supp. 1331 (E.D. Pa. 1970), modified, 458 F.2d 255 (3d Cir. 1972).

sent to investors but this may not occur for some time.

#### *C. Requests for Acceleration*

Rule 461 currently requires the Commission staff, when presented with a request for acceleration, to consider the accuracy and adequacy of the prospectus that you circulated.<sup>42</sup> The rule also requires the staff to consider whether you have made a bona fide effort to make the prospectus reasonably concise and understandable. We are amending Rule 461 to require the staff to consider also whether you have made a bona fide effort to satisfy the plain English rule in drafting the front part of the prospectus. Because compliance with the plain English rule will facilitate investors' understanding of the prospectus information, we believe it is important that the preliminary prospectus that you circulate to investors complies with the plain English rule.

Comment letters expressed concern that the amendment to Rule 461 could frequently delay the effective date of registration statements. We believe that these concerns are unfounded. The procedures for addressing deficiencies and for granting or denying acceleration requests have worked very well for many years. We believe the continued use of these procedures will work in implementing the plain English rule. If we select your registration statement for review, the staff will give you comments on how to comply with the plain English rule as well as other requirements. You will have the same opportunity you have now to work with the staff to resolve all comments on your document, consistent with your financing schedule.

#### **VIII. Cost-Benefit Analysis**

The plain English rule and amendments should improve communications between public companies and investors and promote investor protection. Specifically, we anticipate, and many public comment letters concur, that adopting the plain English rule will:

- Allow investors to make better-informed assessments of the risk and rewards of investment opportunities;
- Reduce the likelihood that investors make investment mistakes because of incomprehensible disclosure documents;
- Reduce investors' costs of investing by lowering the time required to read and understand information;
- Increase consumers' interest in investing by giving them greater

<sup>42</sup> See Rule 461 of Regulation C, 17 CFR 230.461.

confidence in their understanding of investments;

- Reduce the number of costly legal disputes because investors are more likely to better understand disclosure documents; and

- Lower offering costs because investors will ask issuers fewer questions about the offering.

Several comment letters suggested that writing documents in plain English would impose substantial costs on public companies.<sup>43</sup> While there may be some additional costs initially, we expect them to be modest and to diminish over time as firms learn to prepare documents using plain English principles. After a short phase-in period, public companies should incur little, if any, additional cost from this rule or these amendments. In some instances, we anticipate that companies will save on printing and mailing costs because plain English tends to reduce document length. Some firms may also save time answering investors' questions. We believe the substantial benefits to investors and the public markets more than justify the phase-in costs.

We base these conclusions, in part, on companies' experiences in the plain English pilot program. To help assess the benefits and costs, we asked nine randomly selected plain English pilot participants, one of which prepared an initial public offering prospectus, about their experiences preparing plain English documents. Six of the nine participants responded, including the initial public offering issuer. All of the participants agreed that investors benefit from clearer, more readable, less redundant disclosure. Specifically, several predicted that investor misunderstandings and mistakes would decline. They did not generally believe, however, that writing their disclosures in plain English would reduce their liability for disclosures. The consensus was that investors file lawsuits on the basis of disclosure materiality, not brevity or wording. Several participants found, however, that they spent less time answering investors' questions when they wrote their documents in plain English.<sup>44</sup>

In terms of the costs of writing documents in plain English, all of the responding participants spent more time writing their documents in plain English than they otherwise would have

<sup>43</sup> PSA The Bond Market Trade Association, in their comment letter dated March 24, 1997, for example, estimated that costs "could increase by up to 50 percent."

<sup>44</sup> For example, one participant indicated that they spent 12 percent less time answering investors' questions, while another spent 20 percent less time.

if they used conventional language.<sup>45</sup> Pilot participants found that legal and technical writing costs rose for plain English filings by approximately 15 percent.<sup>46</sup> Because legal and technical writing comprises approximately 48 percent of the total burden hours necessary to complete a registration statement (with accounting comprising the other 52 percent),<sup>47</sup> we estimate that total burden hours will rise by

approximately seven percent in the first year. The table below shows the current and estimated burden hours per filing, the estimated change in burden hours per filing, and the number of forms filed in 1997 by form type.<sup>48</sup> The information in the table indicates that we estimate public companies will require on average 60 additional hours per filing to comply with the plain English

requirements in the first year. At \$120 per hour,<sup>49</sup> this translates to an added cost in the first year of approximately \$7,200 per filing.<sup>50</sup> Based on pilot program participants' experiences,<sup>51</sup> we expect the number of hours and cost to fall in the following year to the current level as firms gain experience with the plain English principles. We anticipate the cost to repeat filers to fall even sooner.

Form	Estimated burden hours/filing before plain English rule	Estimated burden hours/filing after plain English rule	Change in estimated burden hours/filing	Filings/year <sup>52</sup>	Change in estimated burden hours by filing type after plain English rule
S-1 .....	1,267	1,358	91	1,067	97,097
S-2 .....	470	504	34	145	4,930
S-3 .....	398	427	29	3,137	90,973
S-4 .....	1,233	1,322	89	2,044	181,916
F-1/S-20 .....	1,868	2,002	134	162	21,708
F-2 .....	559	599	40	3	120
F-3 .....	166	178	12	220	2,640
F-4 .....	1,308	1,402	94	243	22,842
S-11 .....	147	158	11	68	748
SB-1 .....	710	761	51	8	408
SB-2 .....	876	939	63	434	27,342
Total .....				7,531	450,724

<sup>52</sup> These estimates are based on the number of such filings made in calendar year 1997.

We believe the estimate of seven-percent higher cost in the first year is somewhat overstated because it is based on the experiences of pilot participants who did not have models to follow. The time required for future registrants to comply with the requirements should be lower. To help reduce compliance time, the staff is including a list of filings by pilot participants and the information issuers need to locate those filings. The staff is also issuing a handbook on how to prepare plain English documents and will hold workshops to help public

companies, their counsel, and underwriters comply with the rules. We also anticipate that public companies' legal counsel, who will gain experience from all their clients' transactions, will help to speed the transition to plain English. Finally, some firms filed multiple registration statements in 1997 and we applied the same burden hour increase to all filings. We believe that required compliance time for firms' later filings should be lower than earlier writing in plain English.

These results are consistent with those found by the American Society of Corporate Secretaries, which surveyed the 57 member companies represented on its Securities Law Committee. The twelve members who had prepared at least one plain English document predicted no "material change in annual burden reporting or hours."<sup>53</sup> Similarly, Baltimore Gas and Electric Company incurred no additional cost once the company learned the process.<sup>54</sup>

<sup>45</sup> Four of the six participants spent 10 percent longer; the initial public offering issuer spent 15 percent longer; and one participant took "significantly longer." For the participant that took significantly longer, we received two estimates—one from the company of 75 percent longer and one from the firm's legal counsel of 200 percent longer.

<sup>46</sup> This estimate is based on responses to a survey of nine plain English pilot program participants and on a summary of the results of an informal survey of pilot participants conducted by the American Society of Corporate Secretaries. See Public Comment letter dated March 24, 1997.

<sup>47</sup> The Division of Corporation Finance collected Item 511 of Regulation S-K expense information from approximately 1500 registration statements

filed between January 1 and December 31, 1995. Assuming legal costs averaged \$150/hour and accounting costs averaged \$75/hour, the survey indicates that approximately 48 percent of burden hours are for legal and technical writing, while 52 percent are accounting-related. Because the rule and amendments apply predominately to legal and technical writing, we apply the increased burden to those hours.

<sup>48</sup> We do not anticipate that the plain English requirements will change the burden hours or cost for preparing Form N-2. Consequently, we do not include Form N-2 in the table.

<sup>49</sup> We anticipate that some firms will comply, in part, with the plain English requirements using in-house counsel, which will lower hourly costs.

<sup>50</sup> In 1997, registrants filed 7,531 filings. At \$7,200 per filing, the total increase in cost would be approximately \$54 million.

<sup>51</sup> Four of the six participants believed that once they developed plain English formats, it would take them less time to write a document in plain English than in the conventional language. One participant predicted that writing documents in plain English would require no additional time after the initial effort. The other participant did not comment directly.

<sup>53</sup> See American Society of Corporate Secretaries Public Comment letter dated March 24, 1997.

<sup>54</sup> See Baltimore Gas and Electric Company Public Comment letter dated March 26, 1997.

One benefit generally found by pilot program participants was that document length was shortened on average by 11 percent.<sup>55</sup> Given that the average length of an S-1 prospectus is approximately 116 pages, this decline would result in a 13-page reduction. For an S-3 prospectus, whose average length is 52 pages, the decline would save 6 pages. And the length of an S-4 prospectus, which averages 219 pages, would fall by 24 pages.<sup>56</sup> Where plain English shortened documents, several responding participants estimated lower printing and distribution costs. Even if costs dropped by only five percent, firms would save approximately \$3,160 per filing. In aggregate, firms would save approximately \$24 million per year—savings that could continue for as long as firms comply with the plain English requirements.<sup>57</sup>

In summary, while all of the participants that answered our questions incurred some additional document preparation costs, the majority estimated them to be low and predicted that they would fall over time. The participants anticipated little added, and perhaps even lower, overall cost. Some even predicted they might save money on printing and distribution costs and time answering investors' questions. Based on the experiences of pilot program participants, we believe that the substantial benefits to investors of plain English and the on-going cost savings to issuers justify the short-term cost to public companies of learning to prepare documents in plain English.

## IX. Final Regulatory Flexibility Analysis

The staff has prepared this Final Regulatory Flexibility Analysis in accordance with Section 603 of the Regulatory Flexibility Act (5 U.S.C. 603). This analysis relates to revisions of Rules 421, 461, and 481 of Regulation C and Items 101, 501, 502, 503, and 508 of Regulations S-K and S-B to

<sup>55</sup> One of the six participants indicated that writing in plain English shortened their document by 5 percent; one by 10 to 15 percent; one by 15 percent; and one by 35 percent. Interestingly, the pilot participant who spent 75 percent more time on its plain English prospectus shortened its prospectus the largest amount—35 percent. One found no appreciable difference, and one estimated that plain English increased document length by one percent.

<sup>56</sup> The staff randomly selected prospectuses filed in 1997 to estimate document length.

<sup>57</sup> The Division of Corporation Finance collected Item 511 of Regulation S-K expense information from approximately 1500 registration statements filed between January 1 and December 31, 1995. Printing expenses averaged \$63,200 per filing. Assuming five-percent cost savings, public companies would save \$3,160 per filing or a total of about \$24 million in printing and mailing costs on 7,531 filings per year.

implement the Commission's plain English initiative. The Commission is also adopting minor amendments to Forms S-2, S-3, S-4, S-20, F-2, F-3, and F-4 under the Securities Act and Form N-2 under the Investment Company Act.

### *Need for and Objectives of Plain English Rules*

In August 1995, Chairman Arthur Levitt organized the Task Force on Disclosure Simplification to find ways to simplify the disclosure process and increase the effectiveness and efficiency of capital formation where consistent with investor protection. In its final report to the Commission, the Task Force suggested that the Commission require public companies to write certain parts of prospectuses in plain English.<sup>58</sup> The Commission responded in January 1997 by proposing a rule and several amendments that required public companies to write the front of prospectuses using plain English principles.<sup>59</sup> The amendments revised current rules and forms to eliminate certain language requirements in the front of prospectuses and relocate highly technical language within the prospectus. The Commission proposed these rules to enhance the clarity and conciseness of prospectuses.

The Commission received 45 comment letters from 43 entities in response to the proposing release.<sup>60</sup> The commentators generally expressed strong support for the plain English proposals, although several expressed concerns with specific provisions and some suggested alternative approaches for addressing particular issues. The Commission is adopting the plain English proposals with minor modifications that clarify provisions and reflect the suggestions of some comment letters and the plain English pilot program participants. These rules will make prospectuses simpler, clearer, more useful, and, we hope, more widely read.

The amendments will be adopted pursuant to Sections 6, 7, 8, 10, and 19(a) of the Securities Act, Sections 12, 13, 15(d), 16(a), and 23(a) of the Exchange Act, and Sections 8, 24, 30, 31, and 38 of the Investment Company Act of 1940.

<sup>58</sup> See *Report of the Task Force on Disclosure Simplification* (March 1996).

<sup>59</sup> Securities Act Release No. 33-7380.

<sup>60</sup> A summary of comments is available, along with the comment letters, in Public File No. S7-3-97. The file is available for inspection and copying in the Commission's Public Reference Room, 450 Fifth Street N.W., Washington, D.C. 20549.

### *Small Entities Subject to the Rules*

For the purposes of the Regulatory Flexibility Act, the term "small business," as used in reference to a public company other than an investment company, is defined by Rule 157 under the Securities Act as an issuer whose total assets on the last day of its most recent fiscal year were \$5 million or less and is engaged or proposing to engage in small business financing.<sup>61</sup> An issuer is considered to be engaged in small business financing if it is conducting or proposes to conduct an offering of securities that does not exceed \$5 million. The Securities Exchange Act defines a "small business" issuer, other than an investment company, to be an issuer that, on the last day of its most recent fiscal year, had total assets of \$5 million or less. When used with respect to an issuer that is an investment company, the term is defined as an investment company with net assets of \$50 million or less as of the end of its most recent fiscal year.<sup>62</sup>

The Commission estimates that approximately 1,100 of approximately 12,700 Exchange Act reporting companies and 800 investment companies of approximately 3,700 active registered investment companies currently satisfy the definition of "small business," all of which will be subject to the plain English requirements. We have no reliable way, however, to determine how many businesses may become subject to Commission reporting obligations in the future, or may otherwise be impacted by the plain English requirements.

### *Significant Issues Raised by Public Comment*

The Commission received no requests for the Initial Regulatory Flexibility Analysis and received no comments specifically in response to its request for information about the impact of the rule and amendments on small businesses. Nine comment letters, however, discussed the costs and benefits to public companies in general. Six believed that costs would generally be low and temporary as firms learn to write in plain English. Three believed that the costs would be more significant. These costs are discussed in greater detail in the next subsection. The Commission's efforts to minimize the compliance costs to all reporting companies, both large and small, are discussed in the final subsection of this Final Regulatory Flexibility Analysis.

<sup>61</sup> 17 CFR 230.157.

<sup>62</sup> 17 CFR 240.0-10.



### *Projected Reporting, Recordkeeping, and Other Compliance Requirements*

The plain English rules and amendments do not affect the substance of the disclosures that public companies must make. They do not impose any new recordkeeping requirements or require reporting of additional information. We anticipate, however, that there will be a temporary increase in cost that will diminish over time as firms learn to prepare documents using plain English principles. Thus, after a short phase-in period, public companies should incur little, if any, additional cost from this rule or these amendments. In some instances, we anticipate that companies will save on printing and mailing costs because plain English tends to reduce document length. Some firms may also save time answering investors' questions.

We base these conclusions, in part, on companies' experiences in the plain English pilot program. We solicited information about firms' experiences by questioning a group of pilot participants. Based on their responses, discussed in detail in Section VIII, we anticipate a temporary increase in cost that will diminish over time as firms learn to prepare documents using plain English principles. While none of the pilot participants specifically qualified as a "small business," the company that wrote its initial public offering prospectus in plain English had a favorable experience.

In addition, we requested information about the impact of the plain English requirements on small businesses in the proposing release. While no one commented specifically on the burden to small firms, several letters indicated that the additional cost of writing in plain English would be low and would diminish after the initial effort of learning to write in plain English. Some commentators even predicted savings. This evidence contrasts, however, with three letters expressing concern that writing in plain English would increase document preparation costs and lengthen documents. While we considered these concerns, experience from the pilot program suggests that phase-in costs will be low and that documents will be shorter and easier to read and understand.

### *Agency Action To Minimize Effect on Small Businesses*

The Regulatory Flexibility Act directs the Commission to consider significant alternatives that would accomplish the stated objectives, while minimizing any significant adverse impact on small issuers. In connection with the plain

English rules and amendments, we considered several alternatives, including (a) establishing different compliance and reporting requirements for small businesses; and (b) using performance rather than design standards, and (c) exempting small businesses from all or part of the requirements. We do not believe, however, that these alternatives are appropriate. First, these alternatives would be inconsistent with our statutory mandate to require prospectuses to disclose fully and fairly all material information to investors. Second, these alternatives would significantly dilute or negate the important benefits of plain English disclosure to investors. For these reasons, we also believe there would be no benefit in providing separate requirements for small issuers based on the use of performance rather than design standards.

We have tried before, through interpretive advice and other means, to address the problems with current prospectus disclosure, which too often includes arcane, needlessly complex, and incomprehensible language. These earlier measures have not resulted in widespread improvement in prospectus readability. Therefore, we believe the plain English requirements are necessary to improve communication between public companies and investors, particularly given the relatively low compliance burden. In addition, we believe the rules and amendments should apply equally to all entities required to disclose information under the Securities Act to enhance protection of all investors.

The plain English principles are generally broad statements that provide registrants flexibility in how to disclose information. Thus, there are a variety of ways in which registrants, including small businesses, can use the principles and guidance in making their disclosures. Modifications of the plain English proposals by the Commission will reduce the short-term cost to small issuers. Based on suggestions in several comment letters, the Commission is not adopting limitations on the length of summaries, limitations on the number of risk factors or the requirement that companies prioritize risk factors. To provide compliance assistance to both small and large issuers, the release includes a list of filings by pilot participants and the information issuers need to locate those filings. The staff is also issuing a handbook on how to prepare plain English documents and will hold workshops to help small and large issuers, their counsels, underwriters, and others comply with

the rules. Finally, the Commission is minimizing the impact by delaying the effective date of the rules until October 1, 1998.

### **X. Paperwork Reduction Act**

The plain English rule and amendments affect several regulations and forms that contain "collection of information requirements" within the meaning of the Paperwork Reduction Act of 1995.<sup>63</sup> In the proposing release, the Commission stated its belief that the plain English rule and amendments would not result in a substantive or material change to the affected collections of information. Nevertheless, the Commission solicited comment on whether the rule and amendments would materially affect the burden on public companies and mutual funds that prepare prospectuses. Because several comment letters indicated that the burden would increase, at least in the short term, the Commission has determined to submit the rule and amendments to the Office of Management and Budget for review in accordance with 44 U.S.C. 3507(d). The Commission is amending Rules 421, 461, and 481 of Regulation C and Items 101, 501, 502, 503, and 508 of Regulations S-K and S-B. The Commission is also adopting minor amendments to Forms S-2, S-3, S-4, S-20, F-2, F-3, and F-4 under the Securities Act and Form N-2 under the Investment Company Act as a part of the plain English initiative.<sup>64</sup>

The rule and amendments require public companies to write information included in the front of prospectuses the cover page, summary, and risk factors section—in everyday language that investors can understand. The changes also codify existing Commission interpretive advice and eliminate requirements no longer deemed useful. The requirements do not affect the substance of the disclosures that registrants must make. They do not impose any new recordkeeping requirements or require reporting of additional information.

As discussed in detail in Section VII, we anticipate that there will be a temporary increase in burden that will diminish over time as firms learn to prepare documents using plain English principles. As indicated in the Cost/Benefit Analysis table, we estimate that

<sup>63</sup> 44 U.S.C. 3501 *et seq.*

<sup>64</sup> Regulations S-K, S-B, and C do not impose reporting burdens directly on public companies. For administrative convenience, each of these regulations is currently assigned one burden hour. The burden hours imposed by the disclosure regulations are currently included in the estimates for the forms that refer to the regulations.

public companies will require on average 60 additional burden hours per filing or 450,724 hours in total to comply with the plain English requirements in the first year. We then expect burden hours to fall to their current level. Thus, after a short phase-in period, public companies should incur little, if any, additional cost from this rule or these amendments. In some instances, we anticipate that companies will save on printing and mailing costs because plain English tends to reduce document length. Some firms may also save time answering investors' questions. The added burden will be reflected in the estimated burden hours for Regulation C.<sup>65</sup>

The information collection requirements imposed by the forms and regulations are mandatory to the extent that a company elects to do a registered offering. The information is made publicly available. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

In accordance with 44 U.S.C. 3506(c)(2)(B), the Commission solicits comment on the following:

- Whether the changes in the collection of information are necessary for the proper performance of the function of the agency;
- The accuracy of the Commission's estimate of the burden of the changes to the collection of information;
- The quality, utility, and clarity of the information to be collected; and
- Whether there are ways to minimize the burden of the collection of information on those who are to respond, including through the use of automated collection techniques or other forms of information technology.

Anyone desiring to submit comments on the collection of information requirements should direct them to the Office of Management and Budget, Attention: Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Washington, D.C. 20503, and should also send a copy of their comments to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549, with reference to File No. S7-3-97. The Office of Management and Budget is required to make a decision concerning the collection of information between 30 and 60 days after publication, so a comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication.

<sup>65</sup> Regulations S-K and S-B will continue to show an estimated burden hour of one.

## XI. Statutory Authority

The rule amendments are proposed under Sections 6, 7, 8, 10 and 19(a) of the Securities Act, Sections 12, 13, 15(d), 16(a) and 23(a) of the Exchange Act, and Sections 8, 24, 30, 31 and 38 of the Investment Company Act of 1940.

### List of Subjects in 17 CFR Parts 228, 229, 230, 239, and 274

Investment companies, Reporting and recordkeeping requirements, Securities, and Investment Companies.

### Text of the Amendments

For the reasons discussed in the preamble, the Securities and Exchange Commission amends Title 17, Chapter 11 of the Code of Federal Regulations 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, 77z-2, 77aa(25), 77aa(26), 77ddd, 77eee, 77ggg, 77hhh, 77jjj, 77nnn, 77sss, 78l, 78m, 78n, 78o, 78u-5, 78w, 78ll, 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.*

Disclose the following in any registration statement you file under the Securities Act of 1933:

(1) If you are not required to deliver an annual report to security holders, whether you will voluntarily send an annual report and whether the report will include audited financial statements;

(2) Whether you file reports with the Securities and Exchange Commission. If you are a reporting company, identify the reports and other information you file with the SEC; and

(3) That the public may read and copy any materials you file with the SEC at the SEC's Public Reference Room at 450 Fifth Street, N.W., Washington, D.C. 20549. State that the public may obtain information on the operation of the Public Reference Room by calling the SEC at 1-800-SEC-0330. If you are an electronic filer, state that the SEC maintains an Internet site that contains reports, proxy and information statements, and other information regarding issuers that file electronically with the SEC and state the address of that site (<http://www.sec.gov>). You are encouraged to give your Internet address, if available;

(d) *Canadian Issuers.* Provide the information required by Items 101(f)(2) and 101(g) of Regulation S-K (§ 229.101(f)(2) and (g)).

3. Section 228.501 is revised to read as follows:

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

The small business issuer must furnish the following information in plain English. See § 230.421(d) of Regulation C of this chapter.

(a) Limit the outside front cover page of the prospectus to one page and include the following information:

(1) The registrant's name. A foreign registrant also must give the English translation of its name;

(2) The title, amount, and description of securities offered. If the underwriter has any arrangement with the issuer, such as an over-allotment option, under which the underwriter may purchase additional shares in connection with the offering, indicate that this arrangement exists and state the amount of additional shares that the underwriter may purchase under the arrangement;

(3) If there are selling security holders, a statement to that effect;

(4) Whether any national securities exchange or the Nasdaq Stock Market lists the securities offered, naming the particular market(s), and identifying the trading symbol(s) for those securities;

(5) A cross-reference to the risk factors section, including the page number where it appears in the prospectus. Highlight this cross-reference by prominent type or in another manner;

(6) Any legend or statement required by the law of any state in which the securities are offered;

(7) A legend that indicates that neither the Securities and Exchange Commission nor any state securities commission has approved or disapproved of the securities or passed on the adequacy or accuracy of the disclosures in the prospectus. Also make clear that any representation to the contrary is a criminal offense. You may use one of the following or other clear, plain language:

*Example A:* Neither the Securities and Exchange Commission nor any state securities commission has approved or disapproved of these securities or passed upon the adequacy or accuracy of the prospectus. Any representation to the contrary is a criminal offense.

*Example B:* Neither the Securities and Exchange Commission nor any state securities commission has approved or disapproved of these securities or determined if this prospectus is truthful or complete.

Any representation to the contrary is a criminal offense.

(8) If you are not a reporting company and the preliminary prospectus will be circulated, as applicable:

(i) A bona fide estimate of the range of the maximum offering price and maximum number of shares or units offered; or

(ii) A bona fide estimate of the principal amount of debt securities offered;

(9)(i) Name(s) of the lead or managing underwriter(s) and an identification of the nature of the underwriting arrangements;

(ii) If the offering is not made on a firm commitment basis, a brief description of the underwriting arrangements;

(iii) If you offer the securities on a best efforts or best efforts minimum/maximum basis, the date the offering will end, any minimum purchase requirements, and whether or not there are any arrangements to place the funds in an escrow, trust, or similar account; and

(iv) If you offer the securities for cash, the price to the public for the securities, the underwriting discounts and commissions, and proceeds to the registrant or other persons. Show the information on both a per share or unit basis and for the total amount of the offering. If you make the offering on a minimum/maximum basis, show this information based on the total minimum and total maximum amount of the offering. You may present the information in a table, term sheet format, or other clear presentation. You 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;

(10) If the prospectus will be used before the effective date of the registration statement, a prominent statement that:

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

(ii) A registration statement relating to these securities has been filed with the Securities and Exchange Commission;

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

(iv) The prospectus is not an offer to sell the securities and it is not soliciting an offer to buy the securities in any state where offers or sales are not permitted. You may use the following or other clear, plain language:

The information in this prospectus is not complete and may be changed. We may not sell these securities until the registration statement filed with the Securities and

Exchange Commission is effective. This prospectus is not an offer to sell these securities and it is not soliciting an offer to buy these securities in any state where the offer or sale is not permitted.

(11) If you use § 230.430A of this chapter to omit pricing information and the prospectus is used before you determine the public offering price, the information in paragraph (a)(10) of this section; and

(12) The date of the prospectus.

(b) [Reserved]

4. Section 228.502 is revised to read as follows:

**§ 228.502 (Item 502) Inside Front and Outside Back Cover Pages of Prospectus.**

The small business issuer must furnish the following information in plain English. See § 230.421(d) of Regulation C of this chapter.

(a) *Table of contents.* On either the inside front or outside back cover page of the prospectus, provide a reasonably detailed table of contents. It must show the page number of the various sections or subdivisions of the prospectus. Include a specific listing of the risk factors section required by Item 503 of this Regulation S-B (17 CFR 228.503). You must include the table of contents immediately following the cover page in any prospectus you deliver electronically;

(b) *Dealer prospectus delivery obligation.* If applicable to your offering, on the outside back cover page of the prospectus, advise dealers 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. You may use the following or other clear, plain language:

*Dealer Prospectus Delivery Obligation*

Until (insert date), all dealers that effect transactions in 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.

5. By revising § 228.503 to read as follows:

**§ 228.503 (Item 503) Summary Information and Risk Factors.**

The small business issuer must furnish the following information in plain English. See § 230.421(d) of Regulation C of this chapter.

(a) *Summary.* Provide a summary of the information in the prospectus where the length or complexity of the prospectus makes a summary useful. The summary should be brief. The summary should not contain, and is not

required to contain, all of the detailed information in the prospectus. If you provide summary business or financial information, even if you do not caption it as a summary, you still must provide that information in plain English.

*Instruction to paragraph 503(a)*

The summary should not merely repeat the text of the prospectus but should provide a brief overview of the key aspects of the offering. Carefully consider and identify those aspects of the offering that are the most significant and determine how best to highlight those points in clear, plain language.

(b) *Address and phone number.*

Include, either on the cover page or in the summary section of the prospectus, the complete mailing address and telephone number of your principal executive offices.

(c) *Risk factors.* (1) Discuss in a section captioned "Risk Factors" any factors that make the offering speculative or risky. The factors may include, among other things, the following:

(i) Your lack of an operating history;

(ii) Your lack of recent profits from operations;

(iii) Your poor financial position;

(iv) Your business or proposed business; or

(v) The lack of a market for your common equity securities.

(2) The risk factor discussion must immediately follow the summary section. If you do not include a summary section, the risk factor discussion must immediately follow the cover page or the pricing information that immediately follows the cover page. Pricing information means price and price-related information that you may omit from the prospectus in an effective registration statement based on § 230.430A(a) of this chapter.

6. Section 228.508 is amended to revise the heading of paragraph (a), add two sentences to the end of paragraph (a) and revise paragraph (j) to read as follows:

**§ 228.508 (Item 508) Plan of Distribution.**

(a) *Underwriters and underwriting obligations.* \* \* \* The small business issuer must disclose the offering expenses specified in Item 511 of this Regulation S-B (17 CFR 228.511). If there is an arrangement under which the underwriter may purchase additional shares in connection with the offering, such as an over-allotment option, describe that arrangement and disclose information on the total offering price, underwriting discounts and commissions, and total proceeds assuming the underwriter purchases all

of the shares subject to that arrangement.

\* \* \* \* \*

(j) *Stabilization and other transactions.* (1) Briefly describe any transaction that the underwriter intends to conduct during the offering that stabilizes, maintains, or otherwise affects the market price of the offered securities. Include information on stabilizing transactions, syndicate short covering transactions, penalty bids, or any other transaction that affects the offered security's price. Describe the nature of the transactions clearly and explain how the transactions affect the offered security's price. Identify the exchange or other market on which these transactions may occur. If true, disclose that the underwriter may discontinue these transactions at any time;

(2) If the stabilizing began before the effective date of the registration statement, disclose the amount of securities bought, the prices at which they were bought, and the period within which they were bought. If you use § 230.430A of this chapter, the final prospectus must contain information on the stabilizing transactions that took place before the public offering price was set; and

(3) If you are making a warrant or rights offering of securities to existing security holders and the securities not purchased by existing security holders are to be reoffered to the public, disclose the following information in the reoffer prospectus:

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

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

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

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

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

**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 general authority citation for part 229 continues to read as follows:

**Authority:** 15 U.S.C. 77e, 77f, 77g, 77h, 77j, 77k, 77s, 77z-2, 77aa(25), 77aa(26), 77ddd, 77eee, 77ggg, 77hhh, 77iii, 77jjj, 77nnn, 77sss, 78c, 78i, 78j, 78l, 78m, 78n, 78o, 78u-5, 78w, 78ll(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), (f), and (g) before "Instructions to Item 101" to read as follows:

**§ 229.101 (Item 101) Description of business.**

\* \* \* \* \*

(e) *Available information.* Disclose the following in any registration statement you file under the Securities Act of 1933:

(1) Whether you file reports with the Securities and Exchange Commission. If you are reporting company, identify the reports and other information you file with the SEC.

(2) That the public may read and copy any materials you file with the SEC at the SEC's Public Reference Room at 450 Fifth Street, N.W., Washington, D.C. 20549. State that the public may obtain information on the operation of the Public Reference Room by calling the SEC at 1-800-SEC-0330. If you are an electronic filer, state that the SEC maintains an Internet site that contains reports, proxy and information statements, and other information regarding issuers that file electronically with the SEC and state the address of that site (<http://www.sec.gov>). You are encouraged to give your Internet address, if available;

(f) *Reports to security holders.* Disclose the following information in any registration statement you file under the Securities Act:

(1) If the SEC's proxy rules or regulations, or stock exchange requirements, do not require you to send an annual report to security holders or to holders of American depository receipts, describe briefly the nature and frequency of reports that you will give to security holders. Specify whether the reports that you give will contain financial information that has been examined and reported on, with an opinion expressed "by" an independent public or certified public accountant.

(2) For a foreign private issuer, if the report will not contain financial information prepared in accordance with U.S. generally accepted accounting principles, you must state whether the report will include a reconciliation of this information with U.S. generally accepted accounting principles.

(g) *Enforceability of civil liabilities against foreign persons.* Disclose the following if you are a foreign private issuer filing a registration statement under the Securities Act:

(1) Whether or not investors may bring actions under the civil liability provisions of the U.S. federal securities laws against the foreign private issuer, any of its officers and directors who are residents of a foreign country, any underwriters or experts named in the registration statement that are residents of a foreign country, and whether investors may enforce these civil liability provisions when the assets of the issuer or these other persons are located outside of the United States. The disclosure must 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 U.S. courts against foreign persons based upon the civil liability provisions of the U.S. federal securities laws;

(iii) The investor's ability to enforce, in an appropriate foreign court, judgments of U.S. courts based upon the civil liability provisions of the U.S. 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 U.S. federal securities laws.

(2) If you provide this disclosure based on an opinion of counsel, name counsel in the prospectus and file as an exhibit to the registration statement a signed consent of counsel to the use of its name and opinion.

\* \* \* \* \*

9. By revising § 229.501 to read as follows:

**§ 229.501 (Item 501) Forepart of Registration Statement and Outside Front Cover Page of Prospectus.**

The registrant must furnish the following information in plain English. See § 230.421(d) of Regulation C of this chapter.

(a) *Front cover page of the registration statement.* Where appropriate, include the delaying amendment legend from

§ 230.473 of Regulation C of this chapter.

(b) *Outside front cover page of the prospectus.* Limit the outside cover page to one page. If the following information applies to your offering, disclose it on the outside cover page of the prospectus.

(1) *Name.* The registrant's name. A foreign registrant must give the English translation of its name.

*Instruction to paragraph 501(b)(1).*

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

(2) *Title and amount of securities.* The title and amount of securities offered. Separately state the amount of securities offered by selling security holders, if any. If the underwriter has any arrangement with the issuer, such as an over-allotment option, under which the underwriter may purchase additional shares in connection with the offering, indicate that this arrangement exists and state the amount of additional shares that the underwriter may purchase under the arrangement. Give a brief description of the securities except where the information is clear from the title of the security. For example, you are not required to describe common stock that has full voting, dividend and liquidation rights usually associated with common stock.

(3) *Offering price of the securities.* Where you offer securities for cash, the price to the public of the securities, the underwriter's discounts and commissions, the net proceeds you receive, and any selling shareholder's net proceeds. Show this information on both a per share or unit basis and for the total amount of the offering. If you make the offering on a minimum/maximum basis, show this information based on the total minimum and total maximum amount of the offering. You may present the information in a table, term sheet format, or other clear presentation. You 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:

*Instructions to paragraph 501(b)(3)*

1. If a preliminary prospectus is circulated and you are not subject to the reporting requirements of Section 13(a) or 15(d) of the Exchange Act, provide, as applicable:

(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, explain the method by which the price is to be determined. If the securities are to be 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. If you file a registration statement on Form S-8, you are not required to comply with this paragraph (b)(3).

(4) *Market for the securities.* Whether any national securities exchange or the Nasdaq Stock Market lists the securities offered, naming the particular market(s), and identifying the trading symbol(s) for those securities;

(5) *Risk factors.* A cross-reference to the risk factors section, including the page number where it appears in the prospectus. Highlight this cross-reference by prominent type or in another manner;

(6) *State legend.* Any legend or statement required by the law of any state in which the securities are to be offered. You may combine this with any legend required by the SEC, if appropriate;

(7) *Commission legend.* A legend that indicates that neither the Securities and Exchange Commission nor any state securities commission has approved or disapproved of the securities or passed upon the accuracy or adequacy of the disclosures in the prospectus and that any contrary representation is a criminal offense. You may use one of the following or other clear, plain language:

Example A: Neither the Securities and Exchange Commission nor any state securities commission has approved or disapproved of these securities or passed upon the adequacy or accuracy of this prospectus. Any representation to the contrary is a criminal offense.

Example B: Neither the Securities and Exchange Commission nor any state securities commission has approved or disapproved of these securities or determined if this prospectus is truthful or complete. Any representation to the contrary is a criminal offense.

(8) *Underwriting.* (i) Name(s) of the lead or managing underwriter(s) and an identification of the nature of the underwriting arrangements;

(ii) If the offering is not made on a firm commitment basis, a brief description of the underwriting arrangements. You may use any clear,

concise, and accurate description of the underwriting arrangements. You may use the following descriptions of underwriting arrangements 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 underwriters must sell the minimum number of securities offered (insert number) if any are sold. The underwriters are required to use only their best efforts to sell the maximum number of securities offered (insert number).

(iii) If you offer the securities on a best efforts or best efforts minimum/maximum basis, the date the offering will end, any minimum purchase requirements, and any arrangements to place the funds in an escrow, trust, or similar account. If you have not made any of these arrangements, state this fact and describe the effect on investors;

(9) *Date of prospectus.* The date of the prospectus;

(10) *Prospectus "Subject to Completion" legend.* If you use the prospectus before the effective date of the registration statement, a prominent statement that:

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

(ii) A registration statement relating to these securities has been filed with the Securities and Exchange Commission;

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

(iv) The prospectus is not an offer to sell the securities and it is not soliciting an offer to buy the securities in any state where offers or sales are not permitted. The legend may be in the following or other clear, plain language:

The information in this prospectus is not complete and may be changed. We may not sell these securities until the registration statement filed with the Securities and Exchange Commission is effective. This prospectus is not an offer to sell these securities and it is not soliciting an offer to buy these securities in any state where the offer or sale is not permitted.

(11) If you use § 230.430A of this chapter to omit pricing information and the prospectus is used before you determine the public offering price, the information and legend in paragraph (b)(10) of this section.

10. By revising § 229.502 to read as follows:

**§ 229.502 (Item 502) Inside Front and Outside Back Cover Pages of Prospectus.**

The registrant must furnish this information in plain English. See § 230.421(d) of Regulation C of this chapter.

(a) *Table of contents.* On either the inside front or outside back cover page of the prospectus, provide a reasonably detailed table of contents. It must show the page number of the various sections or subdivisions of the prospectus. Include a specific listing of the risk factors section required by Item 503 of this Regulation S-K (17 CFR 229.503). You must include the table of contents immediately following the cover page in any prospectus you deliver electronically.

(b) *Dealer prospectus delivery obligation.* On the outside back cover page of the prospectus, advise dealers 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 you do not know the expiration date on the effective date of the registration statement, include the expiration date in the copy of the prospectus you file under § 230.424(b) of this chapter. You do not have to include this information 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). You may use the following or other clear, plain language:

*Dealer Prospectus Delivery Obligation*

Until (insert date), all dealers that effect transactions in 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.

11. By revising § 229.503 to read as follows:

**§ 229.503 (Item 503) Prospectus Summary, Risk Factors, and Ratio of Earnings to Fixed Charges.**

The registrant must furnish this information in plain English. See § 230.421(d) of Regulation C of this chapter.

(a) *Prospectus summary.* Provide a summary of the information in the prospectus where the length or complexity of the prospectus makes a summary useful. The summary should be brief. The summary should not contain, and is not required to contain, all of the detailed information in the prospectus. If you provide summary business or financial information, even if you do not caption it as a summary,

you still must provide that information in plain English.

*Instruction to paragraph 503(a).*

The summary should not merely repeat the text of the prospectus but should provide a brief overview of the key aspects of the offering. Carefully consider and identify those aspects of the offering that are the most significant and determine how best to highlight those points in clear, plain language.

(b) *Address and telephone number.* Include, either on the cover page or in the summary section of the prospectus, the complete mailing address and telephone number of your principal executive offices.

(c) *Risk factors.* Where appropriate, provide under the caption "Risk Factors" a discussion of the most significant factors that make the offering speculative or risky. This discussion must be concise and organized logically. Do not present risks that could apply to any issuer or any offering. Explain how the risk affects the issuer or the securities being offered. Set forth each risk factor under a subcaption that adequately describes the risk. The risk factor discussion must immediately follow the summary section. If you do not include a summary section, the risk factor section must immediately follow the cover page of the prospectus or the pricing information section that immediately follows the cover page. Pricing information means price and price-related information that you may omit from the prospectus in an effective registration statement based on § 230.430A(a) of this chapter. The risk factors may include, among other things, the following:

- (1) Your lack of an operating history;
- (2) Your lack of profitable operations in recent periods;
- (3) Your financial position;
- (4) Your business or proposed business; or
- (5) The lack of a market for your common equity securities or securities convertible into or exercisable for common equity securities.

(d) *Ratio of earnings to fixed charges.* If you register debt securities, show a ratio of earnings to fixed charges. If you register preference equity securities, show the ratio of combined fixed charges and preference dividends to earnings. Present the ratio for each of the last five fiscal years and the latest interim period for which financial statements are presented in the document. If you will use the proceeds from the sale of debt or preference securities to repay any of your outstanding debt or to retire other securities and the change in the ratio

would be ten percent or greater, you must include a ratio showing the application of the proceeds, commonly referred to as the pro forma ratio.

*Instructions to paragraph 503(d)*

1. *Definitions.* In calculating the ratio of earnings to fixed charges, you must use the following definitions:

(A) *Fixed charges.* The term "fixed charges" means the sum of the following: (a) interest expensed and capitalized, (b) amortized premiums, discounts and capitalized expenses related to indebtedness, (c) an estimate of the interest within rental expense, and (d) 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 must be computed as the amount of the dividend divided by (1 minus 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 the following: (a) Pre-tax income from continuing operations before adjustment for minority interests in consolidated subsidiaries or income or loss from equity investees, (b) fixed charges, (c) amortization of capitalized interest, (d) distributed income of equity investees, and (e) your share of pre-tax losses of equity investees for which charges arising from guarantees are included in fixed charges. From the total of the added items, subtract the following: (a) interest capitalized, (b) preference security dividend requirements of consolidated subsidiaries, and (c) the minority interest in pre-tax income of subsidiaries that have not incurred fixed charges. Equity investees are investments that you account for using the equity method of accounting. 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.* Disclose the following information when showing the ratio of earnings to fixed charges:

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

(B) *Pro forma ratio.* You may show the pro forma ratio only for the most recent fiscal year and the latest interim period. Use the net change in interest or dividends from the refinancing to calculate the pro forma ratio.

(C) *Foreign private issuers.* A foreign private issuer must show the ratio based on the figures in the primary financial statement. A foreign private issuer must show the ratio based on the figures resulting from the reconciliation to U.S. generally accepted accounting principles if this ratio is materially different.

(D) *Summary Section.* If you provide a summary or similar section in the prospectus, show the ratios in that section.

3. *Exhibit.* File an exhibit to the registration statement to show the figures used to

calculate the ratios. See paragraph (b)(12) of Item 601 of Regulation S-K (17 CFR 229.601(b)(12)).

12. By amending § 229.508 by revising paragraphs (e) and (l) to read as follows:

§ 229.508 (Item 508) Plan of distribution.

(e) Underwriter's compensation. Provide a table that sets out the nature of the compensation and the amount of discounts and commissions to be paid to the underwriter for each security and in total. The table must show the separate amounts to be paid by the company and the selling shareholders. In addition, include in the table all other items considered by the National Association of Securities Dealers to be underwriting compensation for purposes of that Association's Rules of Fair Practice.

Instructions to paragraph 508(e)

1. The term "commissions" is defined in paragraph (17) of Schedule A of the Securities Act. Show separately in the table the cash commissions paid by the registrant and selling security holders. Also show in the table commissions paid by other persons. Disclose any finder's fee or similar payments in the table.

2. Disclose the offering expenses specified in Item 511 of Regulation S-K (17 CFR 229.511).

3. If the underwriter has any arrangement with the issuer, such as an over-allotment option, under which the underwriter may purchase additional shares in connection with the offering, indicate that this arrangement exists and state the amount of additional shares that the underwriter may purchase under the arrangement. Where the underwriter has such an arrangement, present maximum-minimum information in a separate column to the table, based on the purchase of all or none of the shares subject to the arrangement. Describe the key terms of the arrangement in the narrative.

\* \* \* \* \*

(l) Stabilization and other transactions. (1) Briefly describe any transaction that the underwriter intends to conduct during the offering that stabilizes, maintains, or otherwise affects the market price of the offered securities. Include information on stabilizing transactions, syndicate short covering transactions, penalty bids, or any other transaction that affects the offered security's price. Describe the nature of the transactions clearly and explain how the transactions affect the offered security's price. Identify the exchange or other market on which these transactions may occur. If true, disclose that the underwriter may discontinue these transactions at any time;

(2) If the stabilizing began before the effective date of the registration

statement, disclose the amount of securities bought, the prices at which they were bought and the period within which they were bought. If you use § 230.430A of this chapter, the prospectus you file under § 230.424(b) of this chapter or include in a post-effective amendment must contain information on the stabilizing transactions that took place before the determination of the public offering price; and

(3) If you are making a warrants or rights offering of securities to existing security holders and any securities not purchased by existing security holders are to be reoffered to the public, disclose in a supplement to the prospectus or in the prospectus used in connection with the reoffering:

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

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

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

(iv) The amount of the offered securities sold during the offering period by the underwriter and the price or price ranges at which the securities were sold; and

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

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

13. The general authority citation for part 230 is revised to read as follows:

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

\* \* \* \* \*

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

§ 230.421 Presentation of information in prospectuses.

\* \* \* \* \*

(b) You must present the information in a prospectus in a clear, concise and understandable manner. You must prepare the prospectus using the following standards:

(1) Present information in clear, concise sections, paragraphs, and sentences. Whenever possible, use short, explanatory sentences and bullet lists;

(2) Use descriptive headings and subheadings;

(3) Avoid frequent reliance on glossaries or defined terms as the primary means of explaining information in the prospectus. Define terms in a glossary or other section of the document only if the meaning is unclear from the context. Use a glossary only if it facilitates understanding of the disclosure; and

(4) Avoid legal and highly technical business terminology.

Note to § 230.421(b):

In drafting the disclosure to comply with this section, you should avoid the following:

- 1. Legalistic or overly complex presentations that make the substance of the disclosure difficult to understand;
2. Vague "boilerplate" explanations that are imprecise and readily subject to different 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 but does not enhance the quality of the information.

\* \* \* \* \*

(d)(1) To enhance the readability of the prospectus, you must use plain English principles in the organization, language, and design of the front and back cover pages, the summary, and the risk factors section.

(2) You must draft the language in these sections so that at a minimum it substantially complies with each of the following plain English writing principles:

- (i) Short sentences;
(ii) Definite, concrete, everyday words;
(iii) Active voice;
(iv) Tabular presentation or bullet lists for complex material, whenever possible;
(v) No legal jargon or highly technical business terms; and
(vi) No multiple negatives.

(3) In designing these sections or other sections of the prospectus, you may include pictures, logos, charts, graphs, or other design elements so long as the design is not misleading and the required information is clear. You are encouraged to use tables, schedules, charts and graphic illustrations of the results of operations, balance sheet, or other financial data that present the data in an understandable manner. Any presentation must be consistent with the financial statements and non-financial information in the prospectus. You must draw the graphs and charts to scale. Any information you provide must not be misleading.

Instruction to § 230.421

You should read Securities Act Release No. 33-7497 (January 28, 1998) for information on plain English principles.

15. By revising paragraph (b)(1) of § 230.461 to read as follows.

**§ 230.461 Acceleration of effective date.**

\* \* \* \* \*

(b) \* \* \*

(1) Where there has not been a bona fide effort to make the prospectus reasonably concise, readable, and in compliance with the plain English requirements of Rule 421(d) of Regulation C (17 CFR 230.421(d)) in order to facilitate an understanding of the information in the prospectus.

\* \* \* \* \*

16. Revise § 230.481 to read as follows:

**§ 230.481 Information required in prospectuses.**

Disclose the following in registration statements prepared on a form available solely to investment companies registered under the Investment Company Act of 1940 or in registration statements filed under the Act for a company that has elected to be regulated as a business development company under Sections 55 through 65 of the Investment Company Act (15 U.S.C. 80a-54-80a-64):

(a) *Facing page.* Indicate the approximate date of the proposed sale of the securities to the public.

(b) *Outside front cover page.* If applicable, include the following in plain English as required by § 230.421(d):

(1) *Commission legend.* Provide a legend that indicates that the Securities and Exchange Commission has not approved or disapproved of the securities or passed upon the accuracy or adequacy of the disclosure in the prospectus and that any contrary representation is a criminal offense. The legend may be in one of the following 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 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.

(2) *"Subject to Completion" legend.*

(i) If a prospectus or Statement of Additional Information will be used before the effective date of the registration statement, include on the outside front cover page of the prospectus or Statement of Additional Information, a prominent statement that:

(A) The information in the prospectus or Statement of Additional Information will be amended or completed;

(B) A registration statement relating to these securities has been filed with the Securities and Exchange Commission;

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

(D) In a prospectus, that the prospectus is not an offer to sell the securities and it is not soliciting an offer to buy the securities in any state where offers or sales are not permitted, or in a Statement of Additional Information, that the Statement of Additional Information is not a prospectus.

(ii) The legend may be in the following language or other clear and understandable language:

The information in this prospectus (or Statement of Additional Information) is not complete and may be changed. We may not sell these securities until the registration statement filed with the Securities and Exchange Commission is effective. This prospectus (or Statement of Additional Information) is not an offer to sell these securities and is not soliciting an offer to buy these securities in any state where the offer or sale is not permitted.

(iii) In the case of a prospectus that omits pricing information under § 230.430A, provide the information and legend in paragraph (b)(2) of this section if the prospectus or Statement of Additional Information is used before the initial public offering price is determined.

(c) *Table of contents.* Include on either the outside front, inside front, or outside back cover page of the prospectus, a reasonably detailed table of contents. It must show the page number of the various sections or subdivisions of the prospectus. Include this table of contents immediately following the cover page in any prospectus delivered electronically.

(d) *Stabilization and Other Transactions.* (1) Indicate on the front cover page of the prospectus if the underwriter has any arrangement with the issuer, such as an over-allotment option, under which the underwriter may purchase additional shares in connection with the offering, and state the amount of additional shares the underwriter may purchase under the arrangement. Provide disclosure in the prospectus that briefly describes any transaction that the underwriter intends to conduct during the offering that stabilizes, maintains, or otherwise affects the market price of the offered securities. Include information on stabilizing transactions, syndicate short covering transactions, penalty bids, or any other transactions that affect the

offered security's price. Describe the nature of the transactions clearly and explain how the transactions affect the offered security's price. Identify the exchange or other market on which these transactions may occur. If true, disclose that the underwriter may discontinue these transactions at any time;

(2) If the stabilizing began before the effective date of the registration statement, disclose in the prospectus the amount of securities bought, the prices at which they were bought and the period within which they were bought. In the event that § 230.430A of this chapter is used, the prospectus filed under § 230.497(h) or included in a post-effective amendment must contain information on the stabilizing transactions that took place before the determination of the public offering price shown in the prospectus; and

(3) If you are making a warrant or rights offering of securities to existing security holders and the securities not purchased by existing security holders are to be reoffered to the public, disclose in the prospectus used in connection with the reoffering:

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

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

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

(iv) The amount of the offered securities sold during the offering 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.

(e) *Dealer prospectus delivery obligations.* On the outside back cover page of the prospectus, advise dealers of their prospectus delivery obligation, including the expiration date specified by Section 4(3) of the Act (15 U.S.C. 77d(3)) and § 230.174. If the expiration date is not known on the effective date of the registration statement, include the expiration date in the copy of the prospectus filed under § 230.497. This information need not be included if dealers are not required to deliver a prospectus under § 230.174 or Section 24(d) of the Investment Company Act of 1940 (15 U.S.C. 80a-24). Use the following or other clear, plain language:



Dealer Prospectus Delivery Obligation

Until (insert date), all dealers that effect transactions in 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.

(f) Electronic distribution. Where a prospectus is distributed through an electronic medium, issuers may satisfy legibility requirements applicable to printed documents, such as paper size, type size and font, bold-face type, italics and red ink, by presenting all required information in a format readily communicated to investors, and where indicated, in a manner reasonably calculated to draw investor attention to specific information.

PART 239—FORMS PRESCRIBED UNDER THE SECURITIES ACT OF 1933

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

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

\* \* \* \* \*

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)(1) You must state (i) that you will provide to each person, including any beneficial owner, to whom a prospectus is delivered, a copy of any or all of the information that has been incorporated by reference in the prospectus but not delivered with the prospectus;

(ii) that you will provide this information upon written or oral request;

(iii) that you will provide this information at no cost to the requester; and

(iv) the name, address, and telephone number to which the request for this information must be made.

Note to Item 12(d)(1)

If you send any of the information that is incorporated by reference in the prospectus to security holders, you also must send any

exhibits that are specifically incorporated by reference in that information.

(2) You must (i) identify the reports and other information that you file with the SEC; and

(ii) state that the public may read and copy any materials you file with the SEC at the SEC's Public Reference Room at 450 Fifth Street, N.W., Washington, D.C. 20549. State that the public may obtain information on the operation of the Public Reference Room by calling the SEC at 1-800-SEC-0330. If you are an electronic filer, state that the SEC maintains an Internet site that contains reports, proxy and information statements, and other information regarding issuers that file electronically with the SEC and state the address of that site (http://www.sec.gov). You are encouraged to give your Internet address, if available.

\* \* \* \* \*

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)(1) You must state (i) that you will provide to each person, including any beneficial owner, to whom a prospectus is delivered, a copy of any or all of the information that has been incorporated by reference in the prospectus but not delivered with the prospectus;

(ii) that you will provide this information upon written or oral request;

(iii) that you will provide this information at no cost to the requester; and

(iv) the name, address, and telephone number to which the request for this information must be made.

Note to Item 12(c)(1)

If you send any of the information that is incorporated by reference in the prospectus to security holders, you also must send any exhibits that are specifically incorporated by reference in that information.

(2) You must (i) identify the reports and other information that you file with the SEC; and

(ii) state that the public may read and copy any materials you file with the SEC at the SEC's Public Reference Room

at 450 Fifth Street, N.W., Washington, D.C. 20549. State that the public may obtain information on the operation of the Public Reference Room by calling the SEC at 1-800-SEC-0330. If you are an electronic filer, state that the SEC maintains an Internet site that contains reports, proxy and information statements, and other information regarding issuers that file electronically with the SEC and state the address of that site (http://www.sec.gov). You are encouraged to give your Internet address, if available.

\* \* \* \* \*

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(g) of Regulation S-K [§ 229.101(g) of this chapter]."

(Note: The text of Form S-20 does not, and this amendment will not, appear in the Code of Federal Regulations)

21. By amending Form S-4 (referenced in § 239.25) to revise Item 2 and adding paragraph (c) to Item 11 and paragraph (d) to Item 13 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 Prospectus.

Provide the information required by Item 502 of Regulation S-K. In addition, on the inside front cover page, you must state (1) that the prospectus incorporates important business and financial information about the company that is not included in or delivered with the document; and

(2) that this information is available without charge to security holders upon written or oral request. Give the name, address, and telephone number to which security holders must make this request. In addition, you must state that to obtain timely delivery, security holders must request the information no later than five business days before the date they must make their investment decision. Specify the date by which security holders must request this information. You must highlight this statement by print type or otherwise.

Note to Item 2.

If you send any of the information that is incorporated by reference in the prospectus to security holders, you also must send any

exhibits that are specifically incorporated by reference in that information.

\* \* \* \* \*

**Item 11. Incorporation of Certain Information by Reference.**

\* \* \* \* \*

(c) You must (1) identify the reports and other information that you file with the SEC; and

(2) state that the public may read and copy any materials you file with the SEC at the SEC's Public Reference Room at 450 Fifth Street, N.W., Washington, D.C. 20549. State that the public may obtain information on the operation of the Public Reference Room by calling the SEC at 1-800-SEC-0330. If you are an electronic filer, state that the SEC maintains an Internet site that contains reports, proxy and information statements, and other information regarding issuers that file electronically with the SEC and state the address of that site (<http://www.sec.gov>). You are encouraged to give your Internet address, if available.

\* \* \* \* \*

**Item 13. Incorporation of Certain Information by Reference**

\* \* \* \* \*

(d) You must (1) identify the reports and other information that you file with the SEC; and

(2) state that the public may read and copy any materials you file with the SEC at the SEC's Public Reference Room at 450 Fifth Street, N.W., Washington, D.C. 20549. State that the public may obtain information on the operation of the Public Reference Room by calling the SEC at 1-800-SEC-0330. If you are an electronic filer, state that the SEC maintains an Internet site that contains reports, proxy and information statements, and other information regarding issuers that file electronically with the SEC and state the address of that site (<http://www.sec.gov>). You are encouraged to give your Internet address, if available.

\* \* \* \* \*

22. By amending Form F-2 (referenced in § 239.32) to revise Item 12 to read as follows:

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

**Form F-2**

*Registration Statement Under the Securities Act of 1933*

\* \* \* \* \*

Item 12. Information with respect to the Registrant.

(a) You must state (1) that you will provide to each person, including any beneficial owner, to whom a prospectus is delivered, a copy of any or all of the information that has been incorporated by reference in the prospectus but not delivered with the prospectus;

(2) that you will provide this information upon written or oral request;

(3) that you will provide this information at no cost to the requester; and

(4) the name, address, and telephone number to which the request for this information must be made.

*Note to Item 12(a)*

If you send any of the information that is incorporated by reference in the prospectus to security holders, you also must send any exhibits that are specifically incorporated by reference in that information.

(b) You must (1) identify the reports and other information that you file with the SEC; and

(2) state that the public may read and copy any materials you file with the SEC at the SEC's Public Reference Room at 450 Fifth Street, N.W., Washington, D.C. 20549. State that the public may obtain information on the operation of the Public Reference Room by calling the SEC at 1-800-SEC-0330. If you are an electronic filer, state that the SEC maintains an Internet site that contains reports, proxy and information statements, and other information regarding issuers that file electronically with the SEC and state the address of that site (<http://www.sec.gov>). You are encouraged to give your Internet address, if available.

\* \* \* \* \*

23. By amending Form F-3 (referenced in § 239.33) by adding paragraphs (d) and (e) 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) You must state (1) that you will provide to each person, including any beneficial owner, to whom a prospectus is delivered, a copy of any or all of the information that has been incorporated

by reference in the prospectus but not delivered with the prospectus;

(2) that you will provide this information upon written or oral request;

(3) that you will provide this information at no cost to the requester; and

(4) the name, address, and telephone number to which the request for this information must be made.

*Note to Item 12(d)*

If you send any of the information that is incorporated by reference in the prospectus to security holders, you also must send any exhibits that are specifically incorporated by reference in that information.

(e) You must (1) identify the reports and other information that you file with the SEC; and

(2) state that the public may read and copy any materials you file with the SEC at the SEC's Public Reference Room at 450 Fifth Street, N.W., Washington, D.C. 20549. State that the public may obtain information on the operation of the Public Reference Room by calling the SEC at 1-800-SEC-0330. If you are an electronic filer, state that the SEC maintains an Internet site that contains reports, proxy and information statements, and other information regarding issuers that file electronically with the SEC and state the address of that site (<http://www.sec.gov>). You are encouraged to give your Internet address, if available.

\* \* \* \* \*

24. By amending Form F-4 (referenced in § 239.34) to revise Item 2 and add paragraph (b) to Item 11 and paragraph (c) to Item 13 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 Prospectus

Provide the information required by Item 502 of Regulation S-K. In addition, on the inside front cover page, you must state (1) that the prospectus incorporates important business and financial information about the company that is not included in or delivered with the document; and

(2) that this information is available without charge to security holders upon written or oral request. Give the name, address, and telephone number to which security holders must make this

request. In addition, you must state that to obtain timely delivery, security holders must request the information no later than five business days before the date they must make their investment decision. Specify the date by which security holders must request this information. You must highlight this statement by print type or otherwise.

*Note to Item 2.*

If you send any of the information that is incorporated by reference in the prospectus to security holders, you also must send any exhibits that are specifically incorporated by reference in that information.

\* \* \* \* \*

**Item 11. Incorporation of Certain Information by Reference**

\* \* \* \* \*

(b) You must (1) identify the reports and other information that you file with the SEC; and

(2) state that the public may read and copy any materials you file with the SEC at the SEC's Public Reference Room at 450 Fifth Street, N.W., Washington, D.C. 20549. State that the public may obtain information on the operation of the Public Reference Room by calling the SEC at 1-800-SEC-0330. If you are an electronic filer, state that the SEC maintains an Internet site that contains reports, proxy and information statements, and other information regarding issuers that file electronically with the SEC and state the address of that site (<http://www.sec.gov>). You are encouraged to give your Internet address, if available.

\* \* \* \* \*

**Item 13. Incorporation of Certain Information by Reference**

\* \* \* \* \*

(c) You must (1) identify the reports and other information that you file with the SEC; and

(2) state that the public may read and copy any materials you file with the SEC at the SEC's Public Reference Room at 450 Fifth Street, N.W., Washington, D.C. 20549. State that the public may obtain information on the operation of the Public Reference Room by calling the SEC at 1-800-SEC-0330. If you are an electronic filer, state that the SEC maintains an Internet site that contains reports, proxy and information statements, and other information regarding issuers that file electronically with the SEC and state the address of that site (<http://www.sec.gov>). You are encouraged to give your Internet address, if available.

\* \* \* \* \*

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

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

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

26. Amend Form N-2 (referenced in § 274.11a-1) to revise Item 2, Item 3, and Item 14 to read as follows:

(**Note:** The text of Form N-2 does not, and this amendment will not, appear in the Code of Federal Regulations.)

**Form N-2**

\* \* \* \* \*

**Item 2. Cover Pages; Other Offering Information**

1. Disclose whether any national securities exchange or the Nasdaq Stock Market lists the securities offered,

naming the particular market(s), and identify the trading symbol(s) for those securities, on the inside front or outside back cover page of the prospectus unless the information appears on the front cover page.

2. Provide the information required by paragraph (d) of Rule 481 under the Securities Act [17 CFR 230.481(d)] in an appropriate place in the prospectus.

3. Provide the information required by paragraph (e) of Rule 481 under the Securities Act [17 CFR 230, 481(d)] on the outside back cover page of the prospectus.

**Item 3. Fee Table and Synopsis**

\* \* \* \* \*

3. In the case of a business development company, include the information required by Item 101(e) of Regulation S-K [17 CFR 229.101(e)] (concerning reports and other information filed with the SEC).

\* \* \* \* \*

**Item 14. Cover Page**

1. The outside cover page must contain the following information:

\* \* \* \* \*

(e) The statement required by paragraph (b)(2) of Rule 481 under the Securities Act [17 CFR 230.481(b)(2)].

\* \* \* \* \*

By the Commission.

Dated: January 28, 1998.

**Margaret H. McFarland,**

*Deputy Secretary.*

**Note:** Appendices A and B to the Preamble will not appear in the Code of Federal Regulations.

**Appendix A—Charts on Amendments to Small Business Issuer Rules**

CHART 1: REGULATION S-B ITEM 501

Current	Final
<ul style="list-style-type: none"> <li>• Small business issuer name .....</li> <li>• Title, amount, and description of securities offered .....</li> <li>• Selling security holders offering .....</li> <li>• Cross-reference to risk factors .....</li> </ul>	<ul style="list-style-type: none"> <li>• Same.</li> <li>• Same.</li> <li>• Same.</li> <li>• Same, except cross-reference must include page number. No print type specified.</li> </ul>
<ul style="list-style-type: none"> <li>• Formatted distribution table showing price, underwriting commission, and proceeds of offering.</li> <li>• Show bona fide estimate of range of maximum offering price and number of shares.</li> <li>• Formatted best efforts disclosure and distribution table .....</li> </ul>	<ul style="list-style-type: none"> <li>• Delete distribution table. Use bullet list or other design that highlights the information.</li> <li>• Same.</li> <li>• Delete distribution table. Use bullet list or other design that highlights the information.</li> </ul>
<ul style="list-style-type: none"> <li>• Prospectus "Subject to Completion" legend .....</li> <li>• Commission legend .....</li> </ul>	<ul style="list-style-type: none"> <li>• Retain in plain English.</li> <li>• Retain in plain English. Include reference to state securities commissions. No print type specified.</li> </ul>
<ul style="list-style-type: none"> <li>• State-required legends .....</li> <li>• Underwriters' over-allotment option, expenses of offering, commissions paid by others, and other non-cash consideration and finders fees.</li> <li>• Date of prospectus .....</li> <li>• Expenses of offering .....</li> </ul>	<ul style="list-style-type: none"> <li>• Same.</li> <li>• Identify existence of the option and the number of shares. Move all other information to the plan of distribution section.</li> <li>• Same.</li> <li>• Move to plan of distribution section.</li> </ul>

CHART 1: REGULATION S-B ITEM 501—Continued

Current	Final
<ul style="list-style-type: none"> <li>• No requirement to identify market for securities .....</li> <li>• No page limit .....</li> </ul>	<ul style="list-style-type: none"> <li>• Identify market for securities, trading symbol, underwriters, and type of underwriting.</li> <li>• Must limit cover to one page.</li> </ul>

CHART 2: REGULATION S-B ITEM 502

Current	Final
<ul style="list-style-type: none"> <li>• Availability of Exchange Act Reports .....</li> <li>• Identify market for securities .....</li> <li>• Availability of reports with audited financial statements .....</li> <li>• Availability of reports incorporated by reference. ....</li> <li>• Stabilization legend .....</li> <li>• Passive market making activities legend .....</li> <li>• Dealer prospectus delivery obligation .....</li> <li>• Canadian issuers' disclosure on enforceability of civil liability against foreign person.</li> <li>• Table of contents .....</li> <li>• Summary .....</li> <li>• Address and telephone number .....</li> <li>• Risk factors .....</li> </ul>	<ul style="list-style-type: none"> <li>• Move to description of business section or, for short-form registration statements, include with incorporation by reference disclosure.</li> <li>• Move to cover page.</li> <li>• Move to description of business section.</li> <li>• Move to incorporation by reference disclosure.</li> <li>• Move to plan of distribution section.</li> <li>• Delete. Disclosure retained in plan of distribution section.</li> <li>• Retain on outside back page of prospectus.</li> <li>• Move to description of business section.</li> <li>• Same. If prospectus delivered electronically, must immediately follow cover page.</li> <li>• Retain in plain English.</li> <li>• Retain. Permit on cover page or in summary.</li> <li>• Retain in plain English.</li> </ul>

Appendix B—List of Plain English Pilot Participants

Company name	File No.	Type of file	Date filed
AMBAC Inc .....	1-10777	Annual Proxy/Schedule 14A .....	4/1/97.
American Family Holdings, Inc .....	333-37161	Consent Solicitation/Form S-4 .....	11/5/97.
AmerUs Life Holdings, Inc .....	333-40065	Merger Proxy/Form S-4 .....	11/12/97.
ANTEC Corporation .....	333-19129	Merger Proxy/Form S-4 .....	12/31/96.
Associated Banc-Corp .....	333-18181	Merger Proxy/Form S-4 .....	1/22/97.
Baltimore Gas and Electric Company .....	333-22697	Selling Shareholder Prospectus/Form S-3 ..	3/4/97.
Baltimore Gas and Electric Company .....	333-19263	Medium Term Note Prospectus/Form S-3 ..	1/3/97.
Baltimore Gas and Electric Company .....	1-1910	Management's Discussion and Analysis in the Form 10-K for the year ended 12/31/96.	3/28/97.
Bell Atlantic Corporation .....	333-11573	Merger Proxy/Form S-4 .....	9/9/96.
BellSouth Corporation .....	333-25703	Merger Proxy/Form S-4 .....	4/23/97.
The B.F. Goodrich Company .....	333-40291	Merger Proxy/Form S-4 .....	11/14/97.
Boddie-Noell Properties, Inc .....	333-39803	Common Stock Offering/Form S-2 .....	12/2/97.
British Telecommunications PLC (MCI Communications Corporation).	333-6422	Merger Proxy/Form F-4 .....	Foreign issuer not filed electronically. Provided in hard copy.
The Brooklyn Union Gas Company .....	333-30353	Merger Proxy/Form S-4 .....	6/30/97.
Buckeye Partners, L.P .....	1-09356	Consent Solicitation/Schedule 14A .....	6/26/97.
Caterpillar Inc .....	1-768	Annual Proxy/Schedule 14A .....	2/25/97.
The Chase Manhattan Corporation .....	1-5805	Annual Proxy/Schedule 14A .....	3/28/97.
ChoicePoint Inc .....	1-13069	Form 10 .....	6/9/97.
Citizens Bancorp .....	333-29031	Savings & Loan Conversion/Form S-1 .....	7/31/97.
Compaq Computer Corporation .....	333-32401	Merger Proxy/Form S-4 .....	7/30/97.
CVS Corporation .....	333-24163	Merger Proxy/Form S-4 .....	4/17/97.
Dean Witter, Discover & Co. (Morgan Stanley Group Inc.).	333-25003	Merger Proxy/Form S-4 .....	4/11/97.
Delaware First Financial Corporation .....	333-36757	Savings & Loan Conversion/Form SB-2 .....	11/7/97.
Detroit Diesel Corporation .....	1-12394	Annual Proxy/Schedule 14A .....	3/27/97.
Dollar Thrifty Automotive Group, Inc .....	333-39661	Common Stock Offering IPO/Form S-1 .....	12/16/97.
Dominion Resources, Inc .....	333-35501	Universal Shelf/Form S-3 .....	9/15/97.
Eastman Kodak Company .....	333-31759	Direct Purchase Plan/Form S-3 .....	7/22/97.
Emerson Electric Co .....	333-40871	Merger Proxy/Form S-4 .....	11/24/97.
Farmland Industries, Inc .....	333-40759	Subordinated Debenture Bonds/Form S-1 ..	12/9/97.
FDX Corporation .....	333-39483	Merger Proxy/Form S-4 .....	12/4/97.
FFP Marketing Company, Inc .....	333-41709	Merger Proxy/Form S-4 .....	12/10/97.
The FINOVA Group Inc .....	1-11011	Annual Proxy/Schedule 14A .....	4/2/97.
Ford Motor Company .....	1-3950	Annual Proxy/Schedule 14A .....	4/7/97.
General Electric Company .....	333-30845	Merger Proxy/Form S-4 .....	7/8/97.
General Mills, Inc .....	333-20429	Merger Proxy/Form S-4 .....	1/24/97.
General Motors Corporation .....	333-37215	Spin-off Proxy/Form S-4 .....	11/10/97.
Great Pee Dee Bancorp, Inc .....	333-36489	Savings & Loan Conversion/Form SB-2 .....	10/23/97.
Hercules Incorporated .....	1-496	Annual Proxy/Schedule 14A .....	3/14/97.
Honeywell Inc .....	0-20629	Annual Proxy/Schedule 14A .....	3/4/97.

Company name	File No.	Type of file	Date filed
International Business Machines Corporation	333-27669	Selling Shareholder Prospectus/Form S-3 ..	5/29/97.
ITT Corporation .....	333-7221	Universal Shelf/Form S-3 .....	6/28/96.
Keebler Foods Company .....	333-42075	Common Stock Offering IPO/Form S-1 .....	1/7/98.
MBNA Master Credit Card Trust II .....	(1)	Asset-Backed Securities Offering .....	Provided in hard copy.
Medical Science Systems, Inc .....	333-37441	Common Stock Offering/Form SB-2 .....	11/21/97.
Mellon Bank Corporation .....	333-38213	Direct Stock Purchase Plan/Form S-3 .....	10/17/97.
Monsanto Company .....	1-2516	Spin-off Proxy Solicitation/Schedule 14A ....	7/14/97.
North Arkansas Bancshares, Inc .....	333-35985	Savings & Loan Conversion/Form SB-2 .....	10/30/97.
Ohio Edison Company .....	333-1489	Merger Proxy/Form S-4 .....	4/12/96.
Parent Holding Corp. (Doubletree Corpora- tion).	333-40233	Merger Proxy/Form S-4 .....	11/14/97.
Perkins Family Restaurants, L.P .....	1-09214	Merger Proxy Solicitation/Schedule 14A .....	11/28/97.
Pfizer Inc .....	1-3619	Notes to Financial Statements/Form 10-Q for the periods 3/30/97, 6/29/97 and 9/28/ 97.	5/13/97, 8/13/97 and 11/12/97.
Pfizer Inc .....	33-56435	Dividend Reinvestment Plan/Form 424B3 ...	11/17/97.
Premium Cigars International, Ltd .....	333-29985	Common Stock Offering IPO/Form SB-2 ....	8/18/97.
Price Communications Corporation .....	333-34017	Merger Proxy/Form S-4 .....	9/4/97.
Providian Bancorp, Inc .....	1-12897	Form 10 .....	4/17/97.
RSL Communications, Ltd .....	333-34281	Exxon Capital Exchange Debt Offering/ Form S-1.	9/29/97.
Rymer Foods Inc .....	333-27895	Prepackaged Bankruptcy Proxy/Form S-4 ..	5/28/97.
Santa Anita Realty Enterprises, Inc .....	333-34831	Merger 1 Proxy/Form S-4 .....	9/26/97.
Sara Lee Corporation .....	1-3344	Annual Proxy/Schedule 14A .....	9/22/97.
SCANA Corporation .....	333-18149	Direct Purchase Plan/Form S-3 .....	1/10/97.
SFB Bancorp, Inc .....	333-23505	Saving & Loan Conversion/Form SB-2 .....	4/9/97.
SFBS Holding Company .....	333-40955	Savings & Loan Conversion/Form SB-2 .....	12/23/97.
SIS Bancorp, Inc .....	333-38889	Merger Proxy/Form S-4 .....	10/28/97.
Sullivan & Cromwell .....	(2)	Description of American Depository Re- ceipts.	Provided in hard copy.
Tejas Gas Corporation .....	1-11580	Cash Merger Proxy Solicitation/Schedule 14A.	11/21/97.
Traveler Group Inc .....	333-38647	Merger Proxy/Form S-4 .....	10/24/97.
Tyco International Ltd .....	333-31631	Merger Proxy/Form S-4 .....	7/29/97.
Union Community Bancorp .....	333-35799	Savings & Loan Conversion/Form S-1 .....	11/10/97.
Unisource Worldwide, Inc .....	1-14482	Form 10 .....	11/26/97.
United Tennessee Bankshares, Inc .....	333-36465	Savings & Loan Conversion/Form SB-2 ....	11/12/97.
UP Sedona, Inc .....	333-22643	Condo Offering Prospectus/Form S-11 .....	8/11/97.
Valero Refining and Marketing Company .....	333-27013	Spin-off and Merger Proxy/Form S-1 .....	5/13/97.
Wal-Mart Stores, Inc .....	1-6991	Annual Proxy/Schedule 14-A .....	4/18/97.
The Warnaco Group, Inc .....	333-40207	Merger Proxy/Form S-4 .....	11/14/97.
WICOR, Inc .....	333-27415	Direct Stock Purchase Plan/Form S-3 .....	5/19/97.
WSB Holding Company .....	333-29389	Savings & Loan Conversion/Form SB-2 ....	7/15/97.

<sup>1</sup> Not filed yet.

<sup>2</sup> Not on file.

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