root cause of a GCU failure. The FAA has determined that, for this proposed AD, the modification adequately addresses the identified unsafe condition. Therefore, this proposal is not considered to be interim action.

Cost Impact

There are approximately 2,675 airplanes of the affected design in the worldwide fleet. The FAA estimates that 1,091 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 3 work hours per airplane to accomplish the proposed modification, at an average labor rate of $60 per work hour. Required parts would cost approximately $450 per airplane. Based on these figures, the cost impact of the modification proposed by this AD on U.S. operators is estimated to be $687,330, or $630 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Boeing: Docket 98–NM–353–AD.

Applicability: Model 737–100, –200, –300, –400, and –500 series airplanes equipped with generator control units (GCU) having part numbers as listed in Sundstrand Corporation Service Bulletin SB92–101, Revision 1, dated December 10, 1996; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent failure of the filter module assemblies of the generator control units (GCU) due to overcurrent conditions, which could result in an increased risk of smoke, and/or fire in the flight compartment, accomplish the following:

(a) Within 2 years after the effective date of this AD, modify the filter module assemblies of the GCU's identified in Sundstrand Corporation Service Bulletin SB92–101, Revision 1, in accordance with paragraph 2.A or 2.B of the Accomplishment Instructions of the service bulletin, as applicable.

(b) Within 2 years after the effective date of this AD, no person shall install on any airplane a GCU type AVZ122 having part number (P/N) 948F458–1 (Boeing P/N 10–61224–11), and type AVZ22C/D having P/N 915F212–4/–5 (Boeing P/N 10–61224–3), unless modified in accordance with this AD.

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

(d) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished. Issued in Renton, Washington, on February 26, 1999.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 99–5431 Filed 3–4–99; 8:45 am]

BILLING CODE 4910–13–P

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 210, 228 and 240

[Release Nos. 33–7649; 34–41118 International Series No. 1187; File No. S7–7–99]

RIN: 3235–AH52

Financial Statements and Periodic Reports for Related Issuers and Guarantors

AGENCY: Securities and Exchange Commission.

ACTION: Proposed rule.

SUMMARY: We are proposing financial reporting rules for issuers and guarantors of guaranteed securities. We also are proposing an exemption from periodic reporting for subsidiary issuers and guarantors of these securities. These proposals would codify, in large part, the positions the staff has developed through Staff Accounting Bulletin No. 53, later interpretations, and the registration statement review process. We intend for these rules to eliminate any uncertainty about which financial statements and periodic reports subsidiary issuers and guarantors must file.

DATES: We must receive your comments on or before May 4, 1999.

ADDRESSES: Please submit comment letters in triplicate to Jonathan G. Katz, Secretary, U.S. Securities and Exchange Commission, Mail Stop 6–9, 450 Fifth Street, N.W., Washington, D.C. 20549. You also may submit comment letters electronically to the following e-mail address: rule-comments@sec.gov. All comment letters should refer to File No. S7–XX–99. If e-mail is used, include this file number on the subject line. All comments received will be available for public inspection and copying in the Commission's Public Reference Room at the same address. Electronically submitted comments will be posted on

the Commission's Internet web site (http://www.sec.gov).

FOR FURTHER INFORMATION CONTACT: Regarding proposed Rule 12h-5, Michael Hyatte, Julie Hoffman, or Kristina Schillinger at (202) 942–2900; regarding the Regulation S–X and Regulation S–B proposals, Craig Olinger at (202) 942–2960, both in the Division of Corporation Finance.

SUPPLEMENTARY INFORMATION: We are proposing amendments to Rule 3–10 [1] of Regulation S–X [2] and Item 310 of Regulation SB.[3] We are also proposing new Rule 3–16 [4] of Regulation S–X and new Rule 12h–5 [5] under the Securities Exchange Act of 1934.[6]

I. Executive Summary

Over the past two decades, it has become increasingly common for a parent company to raise capital through:

- Offerings of its own securities that are guaranteed by one or more of its subsidiaries; and
- Offerings of securities by a subsidiary that are guaranteed by the parent, and sometimes, one or more of the parent's other subsidiaries.

Absent an exemption, the Securities Act of 1933 [7] requires the offering of both the guaranteed security and the guarantee to be registered. Securities Act registration requires the disclosure of both financial and non-financial information about the issuer of the guaranteed security as well as any guarantors. Moreover, due to the registration of the offer and sale of the guaranteed securities and the guarantees, both the issuer and the guarantors become subject to Section 15(d) [8] of the Exchange Act of 1934. Section 15(d) requires all Securities Act registrants to file Exchange Act periodic reports for at least the fiscal year during which the Securities Act registration statement became effective.

There are circumstances, however, where full Securities Act and Exchange Act disclosure by both the issuer and the guarantors may not be useful to an investment decision and, therefore, may not be necessary. For example, if a subsidiary with no independent assets or operations issues debt securities guaranteed by its parent, full disclosure of the subsidiary's financial information would be of little value. Instead, investors would look to the financial status of the parent which guaranteed the debt to evaluate the likelihood of payment.

As this example demonstrates, subsidiary issuers and guarantors raise a number of practical issues under the Securities Act and the Exchange Act. Included among these issues are:

- What financial information must issuers of guaranteed securities provide to potential investors;
- What financial information must guarantors provide to potential investors; and
- What financial information must those issuers and guarantors continue to provide to the secondary market.

In 1983, the staff addressed these issues in Staff Accounting Bulletin No. 53.[9] In the 15 years since we published SAB 53, guaranteed securities have become significantly more complex. While the basic analysis of SAB 53 remains sound, the staff has had to expand on this analysis in response to registration statements and interpretive requests that involve new and complex offering structures. In addition, the staff has responded to an increasing number of requests for exemptions from Exchange Act reporting. In 1997, nearly half of all interpretive, no-action, or exemptive requests acted on by the Division of Corporation Finance involved SAB 53.

The staff's interpretive structure has been effective in addressing these issues. This approach was designed to properly balance the issuer's obligation to disclose material information fully with the investor's need for this information. We believe that the staff's analysis will adapt well to future developments.

Therefore, we propose to codify, in large part, the staff's current analysis regarding the obligations of issuers and guarantors. We believe these rule proposals are needed because they would:

- Eliminate uncertainty regarding financial statement requirements;
- Eliminate uncertainty regarding on-going reporting;
- Eliminate the burden on these subsidiaries to seek interpretive guidance regarding these requirements; [10] and
- Simplify the staff's interpretive structure by applying one standard condensed consolidating financial information instead of the current approach that requires more or less financial disclosure based solely on the existence of non-guarantor subsidiaries.

We propose to revise Rule 3–10 of Regulation S–X to require condensed consolidating financial information in all situations involving a subsidiary issuer or subsidiary guarantor that is not a finance subsidiary.[11] This condensed financial information would be included in Securities Act registration statements on a combined basis, instead of being presented in separate financial statements for each subsidiary. We also propose Exchange Act Rule 12h–5, which would exempt from Exchange Act reporting requirements those subsidiary issuers and guarantors that may omit financial statements under revised Rule 3–10.

II. The Structure of This Release

We have separated this release into five main sections.

First, we describe how the Securities Act registration requirements apply to offerings of guaranteed securities.

Second, we describe the current financial statement requirements for issuers of guaranteed securities and guarantors. This description begins with the basic requirements of Regulation S–X and addresses the purpose and effect of SAB 53. It also discusses the positions the staff has taken in interpreting basic issues regarding SAB 53, such as the meaning of ''wholly owned subsidiary'' and ''full and unconditional guarantee.'' [12] Finally, we present the developments in the staff's analysis that deal with complex securities and complex corporate structures.

Third, we describe the Exchange Act reporting obligations of subsidiary issuers of guaranteed securities and guarantors. This description addresses the statutory requirement of Section 15(d), the SAB 53 discussion regarding Exchange Act reporting, and the staff's current analysis.

Fourth, we describe our rule proposals regarding the financial

[1] 17 CFR 210.3–10.

[2] 17 CFR 210.1–01 through 12–29.

[3] 17 CFR 228.310.

[4] 17 CFR 210.3–16.

[5] 17 CFR 240.12h–5.

[6] 15 U.S.C. 78a *et seq.*

[7] 15 U.S.C. 77a *et seq.*

[8] 15 U.S.C. 78o(d).

[9] Securities Act Release No. SAB–53. 48 FR 28230 (June 13, 1983).

[10] If we adopt today's proposals, issuers of guaranteed securities and guarantors could still request an interpretive position from the Division of Corporation Finance if proposed Rule 3–10 does not address their situation.

[11] In connection with the proposed revision to Rule 3–10, we also propose:

New Note 3 to Item 310 of Regulation S–B requiring small business issuers to present financial information in accordance with proposed Rule 3–10 for the fiscal periods they are required to present; and

To move the financial statement requirement of affiliates whose securities collateralize a registered issue from current Rule 3–10 and put it in proposed new Rule 3–16 of Regulation S–X.

[12] This release discusses the meanings of a number of terms, including ''finance subsidiary,'' ''debt security,'' ''wholly-owned subsidiary,'' and ''full and unconditional guarantee,'' in the context of SAB 53 and proposed Rule 3–10. Given the unique purpose of SAB 53 and proposed Rule 3–10, the discussion in this release applies only to today's proposals.

information and Exchange Act reporting requirements for subsidiary issuers of guaranteed securities and guarantors.

Fifth, we include appendices at the end of this release to demonstrate how the proposed rules would apply to a number of different fact patterns. We hope that these appendices will increase your understanding of the proposals and assist you in commenting on them.

III. Securities Act Registration Requirements for Offerings of Guarantees

Guarantees of securities are securities themselves for purposes of the Securities Act. As a result, offers and sales of both the guaranteed security and the guarantee must either be registered under the Securities Act or exempt from registration.

IV. Current Financial Statement Requirements for Subsidiary Guarantors and Subsidiary Issuers of Guaranteed Securities

A. Regulation S–X Requirements

1. Guarantors

Rule 3–10 of Regulation S–X identifies which financial statements guarantors must include in Securities Act registration statements, Exchange Act registration statements, and Exchange Act reports.[13] Rule 3–10 currently requires all guarantors to include the same financial statements they would have to include if they were the issuers of the guaranteed securities. Rule 3–10 applies equally to parent guarantors and subsidiary guarantors.

2. Subsidiary Issuers of Guaranteed Securities

Regulation S–X requires subsidiary issuers of guaranteed securities to file the same financial statements as any other issuer of securities.

B. Modified Financial Statement Requirements in Staff Accounting Bulletin No. 53

1. Purpose and Application of SAB 53

In 1983, in response to questions arising from the increased number of guaranteed securities offerings, the Commission published Staff Accounting Bulletin No. 53. The objective of SAB 53 was to elicit full and fair disclosure regarding issuers and guarantors in a format that was:

- Meaningful to investors; and
- Not unduly burdensome to registrants.

SAB 53 did not amend Rule 3–10 of Regulation S–X. Instead, it described the approach the staff would take in its review of registration statements for two types of offerings of guaranteed debt securities:

- Securities issued by a subsidiary that are guaranteed by the parent of that subsidiary; and
- Securities that are issued by a company and guaranteed by a subsidiary of that company.

SAB 53 and the staff interpretations that followed recognize that there is no need for complete financial statements from both the issuer of the guaranteed security and the guarantor when:

- The issuer is a wholly-owned subsidiary of the parent guarantor; and
- The guarantee is full and unconditional.

In this type of issuer/guarantor relationship, there is a unity of financial risk between the two entities. As a result, the need for separate financial disclosure is removed or reduced. We discuss these two conditions below.

a. Meaning of ''Wholly-Owned'' in SAB 53. A subsidiary is ''wholly-owned'' within the meaning of SAB 53 if all of its voting shares and any outstanding securities convertible into its voting shares are owned, directly or indirectly, by its parent.[14] This meaning differs from the general definition of ''wholly-owned subsidiary'' in Rule 1–02(aa) of Regulation S–X.[15] Regulation S–X regards a subsidiary as wholly-owned if substantially all of its voting shares are held by its parent.[16]

Satisfaction of the stricter requirement under SAB 53 ensures that there is no competing interest to the parent's ownership. Any outside voting interest in the subsidiary breaks the financial unity between the subsidiary and its parent that is needed to justify the special relief granted in SAB 53.

b. Meaning of ''Full and Unconditional Guarantee'' in SAB 53.

(i) Guarantor's Payment Obligations Must be the Same as the Issuer's. A guarantee is ''full and unconditional'' when the payment obligations of the issuer and guarantor are essentially identical. When an issuer fails to make a payment called for by the security, the guarantor is obligated to make the scheduled payment immediately and, if it doesn't, the holder of the security may take legal action directly against the guarantor for payment. A guarantee is not full if the amount of the guarantor's liability is less than the issuer's or, should the issuer default, the guarantor's payment schedule differs from the issuer's payment schedule. There can be no conditions, beyond the issuer's failure to pay, to the guarantor's payment obligation. For example, the holder cannot be required to then exhaust its remedies against the issuer before seeking payment from the guarantor.

(ii) Guarantee Still May be Full and Unconditional Even if it Has a Fraudulent Conveyance ''Savings Clause''. A guarantee can be full and unconditional even if it includes a ''savings'' clause related to bankruptcy and fraudulent conveyance laws. These savings clauses prevent the guarantor from making an otherwise required payment if the money needed to make that payment is first recoverable by other creditors under bankruptcy or fraudulent conveyance laws. However, if any clause places a specific limit on the amount of the guarantor's regular payment obligation to avoid application of bankruptcy or fraudulent conveyance laws, it is the staff's position that the guarantee is not full and unconditional.

For example, the following savings clauses *would not* defeat the full and unconditional nature of the guarantee:

- The guarantor's obligation under the guarantee is limited to ''the maximum amount that can be guaranteed without constituting a fraudulent conveyance or fraudulent transfer under applicable insolvency laws.''
- The guarantee is enforceable ''to the fullest extent permitted by law.''

The following savings clauses *would* defeat the full and unconditional nature of the guarantee:

- The guarantee is enforceable ''up to $XX.''
- The guarantor guarantees the indebtedness ''up to $XX.''
- The guarantee is ''limited to $XX, in order to prevent the guarantor from violating applicable fraudulent conveyance or transfer laws.''
- The guarantee is enforceable ''up to XX% of the guarantor's current assets.''
- The guarantee is ''limited to XX% of the guarantor's current assets in order to prevent the guarantor from violating applicable fraudulent conveyance or transfer laws.''

[13] Rule 3–10 also prescribes financial statement requirements for affiliates of reporting issuers when the securities of such affiliates are the collateral for any class of the issuer's registered securities. These requirements are outside the scope of today's proposal. See Section VI.G. for a more complete discussion of those requirements.

[14] A subsidiary may have outstanding securities convertible into its voting shares if its parent owns all of the convertible securities. *Citizens Utilities Company* (May 20, 1996).

[15] 17 CFR 210.1–02(aa).

[16] All securities of a subsidiary that confer the right to elect directors or their functional equivalent annually, whether or not those securities are equity or debt, must be held by the parent to satisfy the ''wholly-owned'' test. This test is unaffected by the existence of other securities that grant the right to vote in the event of special circumstances, such as a default. See 17 CFR 210.1–02(z) for the definition of ''voting shares.''

• The guarantee is enforceable ''so long as it would not result in the subsidiary having less than $XX in net assets (or other financial measure).''

(iii) Guarantee Still May Be Full and Unconditional Even if it has Different Subordination Terms Than the Guaranteed Security. A guarantee can be full and unconditional despite different subordination terms between the guaranteed security and the guarantee.[17] Although different subordination terms mean security holders have different rights in the priority of payment, both the issuer and the guarantor remain fully liable to holders for all amounts due under the guaranteed security.

2. Modified Financial Statements Described in SAB 53

As we discussed above, SAB 53 indicated the staff's acceptance of modified financial information for subsidiary issuers when:

• The subsidiary issuer is a wholly-owned subsidiary of the parent guarantor; and

• The guarantee is full and unconditional.

If either of these conditions is not met, full financial statements for subsidiary issuers of guaranteed securities must be included in the registration statement.

If both of these conditions are met, SAB 53 states that the amount of required financial information regarding the subsidiary issuer will depend on whether the subsidiary has independent operations.

a. Subsidiary Issuer ''Essentially has no Independent Operations''In this situation, SAB 53 states that the subsidiary is not required to provide any separate financial statements because ''the investor's investment decision is based on the credit worthiness of the guarantor.'' This category was intended for finance subsidiaries. These typically are subsidiaries that function as special purpose divisions of the parent to raise capital or conduct financing. They typically have no operations or assets other than those associated with their financing activities.[18]

b. Subsidiary Has ''More than Minimal Independent Operations''. SAB 53 requires summarized financial information when the subsidiary issuer has ''more than minimal independent operations.'' This summarized financial information must meet the requirements of Rule 1–02(bb)(1) of Regulation S–X.[19]

C. Evolution of SAB 53 Analysis

As companies have developed new structures for subsidiary issued and guaranteed securities, the staff has expanded the analysis of SAB 53 through its processing of registration statements and exemptive requests.[20]

1. Expansion of SAB 53 to Securities Other Than Debt

a. Preferred Equity Securities. SAB 53 only speaks of guaranteed debt securities. However, the same principles used under SAB 53 apply to preferred equity securities when the preferred securities have payment terms substantially the same as debt—that is, the payment terms mandate redemption and/or dividend payments. Like debt securities, these preferred equity securities usually lack voting rights.[21]

In order for a guarantor of preferred securities to be eligible for SAB 53 relief, it must fully and unconditionally guarantee all of the issuer's payment obligations under the certificate of designations or other instrument that governs the preferred securities. The guarantor must guarantee the payment, when due, of:

• All accumulated and unpaid dividends that have been declared on the preferred stock out of funds legally available for the payment of dividends;

• The redemption price, on redemption of the preferred stock, including all accumulated and unpaid dividends; and

• Upon liquidation of the issuer of the preferred stock, the aggregate stated liquidation preference and all accumulated and unpaid dividends, whether or not declared, without regard to whether the issuer has sufficient assets to make full payment as required on liquidation.

Some preferred stock guarantees limit the guarantor's redemption and liquidation payments to the amount of funds or assets that are legally available to the issuer of the preferred stock. These guarantees *would not be full and unconditional.* For example, guarantees that contain the following provisions would not be full and unconditional:

• The guarantor guarantees, on redemption of the preferred stock, the redemption price, including all accumulated and unpaid dividends, from funds legally available *therefor under the (governing instrument).*

• Upon liquidation of the issuer of the preferred stock, guarantor agrees to pay the lesser of:

• The aggregate stated liquidation preference and all accumulated and unpaid dividends, whether or not declared; and

• The amount of assets of the issuer of the preferred stock *legally available for distribution to holders of the preferred stock in liquidation.*

b. Trust Preferred Securities/Income Preferred Securities. In recent years the markets have developed complex instruments called trust preferred securities.[22] Trust preferred securities generally are issued by a special purpose business trust created by its parent.[23] The trust exists only to issue the preferred securities and hold debt securities issued by its parent. Payment obligations of the trust are ensured not by a single agreement called a guarantee, but through several agreements and the terms of the debt securities it holds. The agreements normally include a guarantee and an expense undertaking from the parent, the trust indenture for the debt securities the trust holds, and the trust declaration of the trust itself.

The staff has agreed with the view that the bundle of rights provided by these several agreements and the debt securities held by the trust, usually called ''back-up undertakings,'' is the equivalent of a full and unconditional guarantee of the trust's payment obligations. Because the ''back-up undertakings'' place the investor in the same position as if the parent company had fully and unconditionally guaranteed the trust's payment obligations on the preferred securities, the staff has agreed that the SAB 53 principles may be applied.

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[17] *Williams Scotsman, Inc.* (March 19, 1998).

[18] This definition in consistent with the definition in Rule 3a–5 of the Investment Company Act of 1940, which provides that the primary purpose of a finance subsidiary is to finance the business operations of the parent or a company controlled by the parent.

[19] 17 CFR 210.1–02(bb)(1).

[20] SAB 53 applies to both financial statement requirements in Securities Act registration statements and the Exchange Act reporting obligations of subsidiary guarantors and subsidiary issuers of guaranteed securities. The staff applies the same analysis to each of these situations. With regard to the Exchange Act reporting obligations of these subsidiaries, SAB 53 instructs issuers to file exemptive applications under Section 12(h) of the Exchange Act. Early in the development of SAB 53 issues, the staff began accepting these exemptive requests as ''no-action'' letters instead of exemptive applications. this process continues today. Throughout this release, when we discuss ''exemptive requests'' we refer to both exemptive applications and ''no-action'' requests.

[21] Preferred equity securities normally carry very limited voting rights, such as the right of holders to vote on matters affecting their rights as shareholders or business combinations. The right to elect directors is normally conferred only when the issuer has failed to declare or pay a dividend required by the security.

[22] Other names for these securities include ''monthly income preferred securities'' or ''quarterly income preferred securities.'' These securities generally are sold under proprietary names such as MIPs or TOPRs.

[23] These securities typically are issued by a business trust but also may be issued by a limited partnership or a limited liability corporation.

2. Parent Issuer and Subsidiary Guarantor

Under the reasoning of SAB 53, any subsidiary guarantor would be required to file full financial statements.[24] As parent-issuer/subsidiary-guarantor structures became more widely used, the staff revised this position. The staff's response to a 1987 exemptive request states that the staff would treat subsidiary guarantors the same as it treats subsidiary issuers.[25] Based on this position, a subsidiary guarantor's financial reporting obligations could be modified in the same manner as a subsidiary that issues debt securities that are guaranteed by its parent.

3. Use of Condensed Consolidating Financial Information

As stated above, the SAB 53 analysis does not require separate financial statements if the subsidiary issuer or subsidiary guarantor has no independent operations or assets, but it requires summarized financial information when the subsidiary has more than minimal independent operations or assets.[26] Over time, the usefulness of summarized financial information decreased as the corporate structures used in offerings of guaranteed securities evolved and became more complex.

For example, more complex guarantee structures raised the question of how to deal with multiple guarantors. Some interpretive requests involved more than 100 subsidiary guarantors. Other structures presented to the staff involved a subsidiary issuer, a parent guarantor, multiple subsidiary guarantors, and multiple subsidiaries that were not guarantors.

The limited SAB 53 structure did not adequately accommodate these new complexities. In some cases, strict application of the SAB 53 standard would have required more than 100 different sets of summarized financial statements. Not only would that disclosure have been burdensome on the registrant to provide, but it is unlikely to have been useful to investors.

The summarized financial information requirement in Regulation S-X was originally intended to inform investors about a registrant's equity investments in unconsolidated affiliates. This type of financial information is appropriate when the investment decision is based solely on the financial condition of the parent company. The limited data will show the general, indirect effect of the subsidiaries on that parent company's financial condition. However, in adopting SAB 53, the staff did not contemplate the widespread use of summarized data as the primary financial information for decisions about the credit-worthiness of a subsidiary's guarantee of registered debt. The staff also did not contemplate more complex parent-subsidiary structures where investors must assess the subsidiary's financial condition more completely and independently of its parent company and of that parent's other subsidiaries. For example, we believe investors focus on cash flow information in credit decisions, but summarized financial information includes no cash flow information.

Through interpretive requests and the review and comment process, the staff developed a bifurcated approach to address the presentation of useful financial information for guaranteed securities and the guarantees. The first part of this approach relies on the inclusion of ''condensed consolidating financial information'' in lieu of summarized financial information in situations where the presentation of financial statements of the entities would be useful to an investor.[27] Condensed consolidating financial information provides a more complete, meaningful basis for investors to assess the debt-paying ability of subsidiary issuers and guarantors.

Condensed consolidating financial information requires the columnar presentation of each category of parent and subsidiary as issuer, guarantor, or non-guarantor.[28] These presentations more clearly distinguish the assets, liabilities, revenues, expenses, and cash flows of the entities that are legally obligated under the indenture from those that are not. Summarized financial information may obscure these distinctions, particularly if subsidiary guarantors themselves have consolidated operating subsidiaries that are not guarantors.

Condensed consolidating information provides the same level of detail about the financial position, results of operations, and cash flows of subsidiary issuers and guarantors that investors are accustomed to obtaining in interim financial statements of a registrant. It facilitates analysis of trends affecting subsidiary issuers and guarantors and the understanding of relationships among the various components of a consolidated organization.

However, SAB 53 itself requires summarized financial information, not condensed consolidating information. As we described above, the staff developed the requirement for condensed consolidating financial information through interpretive requests because summarized financial information was not adequate financial disclosure for the new financing structures not contemplated when the SAB was created. The second part of the staff's approach to the presentation of financial statements relies on the use of summarized financial information only in those increasingly less frequent situations in which the SAB specifically contemplated that financing structure.

V. Current Exchange Act Periodic Reporting Requirements

A. Exchange Act Reporting Requirements

The registration of an offering of a guarantee under the Securities Act obligates the guarantor to file periodic reports with the Commission. Exchange Act Section 15(d) requires separate annual and interim reports from both the issuer and the guarantor of securities offered under an effective Securities Act registration statement.

B. Modification of Exchange Act Reporting Requirements for Subsidiary Guarantors and Subsidiary Issuers of Guaranteed Securities

SAB 53 only briefly addresses the Exchange Act reporting obligations of subsidiary issuers of parent-guaranteed securities. In a footnote, SAB 53 states:

> Where the parent guarantor of an issuer subsidiary in either the first [finance subsidiary issuer-no separate financial statements] or second [operating subsidiary issuer-summarized financial statements] category is a reporting company under the Exchange Act, upon application to the Commission such a subsidiary would be conditionally exempted pursuant to Section 12(h) of the Exchange Act from reporting obligations under such Act.

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[24] SAB 53 states: In the relatively infrequent situations where a registration statement covers the issuance by a parent of a security that is guaranteed by its subsidiary, the staff has concluded that, as a general rule, financial statements for both issuers would be material to the investment decision.

[25] *Anheuser-Busch Companies, Inc.* (April 2, 1987).

[26] Summarized financial information, generally, consists of summarized information as to the assets, liabilities and results of operations of the entity. See 17 CFR 210.1–02(bb) for the specific requirements of summarized financial information.

[27] The staff has applied this standard to those situations that do not involve a single subsidiary issuer or guarantor or that do not involve a finance subsidiary issuer with the parent as the sole guarantor involving finance subsidiaries. The staff first accepted condensed consolidating financial information in connection with its case-by-case review of registration statements for offerings of securities with this structure. Consistent with the earlier development of SAB 53 interpretation, the staff applied the same analysis to exemptive requests for Exchange Act reporting. *Chicago & North Western Acquisition Corp.* (February 6, 1990); *EPIC Properties, Inc.* (March 13, 1992).

[28] The staff permits subsidiary guarantors to combine financial information in one column if their guarantees are joint and several.

Since the issuance of SAB 53, the staff of the Division of Corporation Finance has responded to an increasing number of requests for exemptions from Exchange Act reporting. The staff's analysis of Exchange Act exemptive requests parallels its analysis under the Securities Act of the financial statement requirements for subsidiary guarantors and subsidiary issuers of guaranteed securities. If a subsidiary issuer or guarantor need not include separate financial statements under the SAB 53 analysis, an exemption from separate reporting under the Exchange Act should also be available. Instead of separate reporting for the subsidiary issuer or guarantor, the parent will present in its annual and quarterly reports the same modified information regarding the subsidiary as it presented in its Securities Act registration statement.

VI. The Rule Proposals

We believe that the requirements for subsidiary issuer and guarantor financial information should be set forth in Regulation S–X. We also believe that the exemption from Exchange Act reporting should be set forth in a rule that parallels the financial statement requirements. We propose to codify, in large part, the staff's current approach in these areas. We believe the proposals will provide investors with meaningful and comparable financial information about subsidiary issuers and guarantors.

We believe our proposals will provide significant benefits to subsidiary issuers and guarantors of securities. First, they would remove uncertainty about financial statement requirements. Second, they should greatly reduce the number of exemptive requests registrants must make to the Division of Corporation Finance. This would lessen the administrative burden to registrants and the Division alike.

A. Application of Proposed Rule 3–10

As we discuss in Section IV.C.1. above, the staff has applied SAB 53 to debt and to preferred securities that have payment terms that are substantially the same as debt. We propose the same scope for Rule 3–10. These preferred securities would include trust preferred securities and income preferred securities, as we describe in Section IV.C.1.b. above.[29]

We request your comment on the scope of the rule. Should it apply to preferred securities with payment terms substantially the same as debt or only to debt securities? Are there any other securities, similar to debt, to which the proposed rule should apply? Are there any categories of debt securities to which the rule should not apply? Should it not apply to trust preferred securities and income preferred securities such as MIPs and TOPRs? If so, is the level of disclosure set forth in Exhibit A appropriate? Should we treat the parent's back-up undertakings as a full and unconditional guarantee? Should the parent's financial statements include any more or less disclosure about the preferred securities?

B. Modified Financial Statement Reporting Requirements

First, we propose to restate the general rule that all issuers or guarantors of registered securities must include full financial statements. We then propose to allow modified financial information in registration statements and periodic reports for five issuer/guarantor situations:

- A finance subsidiary issues securities that its parent guarantees;
- An operating subsidiary issues securities that its parent guarantees;
- A subsidiary issues securities that are guaranteed by its parent and one or more other subsidiaries of its parent;
- A parent issues securities that one of its subsidiaries guarantees; and
- A parent issues securities that are guaranteed by more than one of its subsidiaries.

In these five situations, we propose the following two-part analysis to determine whether modified financial information may be provided for subsidiary issuers and guarantors. If the answer to *both* questions is yes, modified financial information would be allowed:

- Is the subsidiary issuer or guarantor wholly-owned by its reporting parent?
- Are all of the guarantees full and unconditional?

We propose to include in Rule 3–10 the same definitions of ''wholly-owned'' and ''full and unconditional guarantee'' that the staff applies under SAB 53. The interpretations of wholly-owned in Section IV.B.1.a. and Appendix C, and of full and unconditional in Section IV.B.1.b. would be applied to these definitions.

We seek comment on whether the five categories listed above are appropriate. Are there other categories of parent/subsidiary relationships that we should separately address? We also seek comment on the proposed definition of ''wholly-owned.'' Are there circumstances in which the parent does not own 100% of the voting shares of its subsidiary that should qualify for special treatment under proposed Rule 3–10? For example, what if a foreign country requires directors to own a certain percentage of a company's voting shares?[30]

What if a subsidiary has outstanding securities convertible into its voting shares not owned, directly or indirectly, by its parent? What if those securities have been issued but are not yet exercisable? What if a subsidiary has granted options to its employees that are exercisable for its voting shares? What if the options have been granted but are not yet exercisable?

We also request comment on the definition of ''wholly-owned'' as it applies to subsidiaries that are trusts, limited partnerships, or limited liability companies. Is there a more appropriate standard than the direct or indirect ownership of 100% of the voting shares of the subsidiary? ''Voting shares,'' as defined in Rule 1–02(z) of Regulation S–X,[31] include ''the sum of all rights, other than as affected by events of default, to vote for election of directors and/or the sum of all interests in an unincorporated person.'' Is this the proper definition of voting shares and, therefore, ''wholly-owned,'' for these types of subsidiaries?

We also request comment on whether the proposed definition of ''full and unconditional'' is appropriate. Should a guarantee be considered full and unconditional when it contains a general fraudulent conveyance savings clause that is not limited to a specific dollar or percentage amount? Are there some circumstances in which a guarantee should be considered full and unconditional even when it contains a limitation of a specific dollar amount or percentage? Are there other limitations on preferred stock guarantees that we have not mentioned that would cause a guarantee not to be full and unconditional? Should we treat the ''back-up undertakings'' that guarantee trust preferred securities and income preferred securities as a full and unconditional guarantee? Should different subordination terms between a guaranteed security and the guarantee call into question the full and unconditional character of the guarantee?

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[29] See Example #23 of Appendix A for the information the proposed rule would require the parent to include in its financial statements with respect to these securities.

[30] *See, e.g.,* Crown Cork & Seal Company, Inc. (March 10, 1997). The staff agreed to a no-action request from a subsidiary organized in the Republic of France even though it had more than one voting shareholder. French law required the subsidiary to have a total of seven shareholders and also required each director to own at least one share. The staff noted that the subsidiary was wholly-owned, except to the minimum extent necessary to satisfy the laws of its home country.

[31] 17 CFR 228.1–02(z).

If *either* the guarantee is not full and unconditional *or* the subsidiary issuer/guarantor is not wholly owned by its reporting parent, then modified financial information would not be allowed. In subsections 1 through 6, below, we assume that each of these conditions has been met.

1. Finance Subsidiary Issuers

We propose to amend Rule 3–10 to codify SAB 53's treatment of finance subsidiary issuers of securities that are guaranteed by the parent company. Specifically, subsidiary issuers would not be required to include any financial statements if:

- The subsidiary has no independent assets or operations other than those associated with the financing activities;
- The parent of the issuer guarantees the securities;
- No other subsidiaries of the parent guarantee the securities;
- The parent company's financial statements are filed for the periods specified by Rules 3–01 and 3–02 of Regulation S–X; and
- The parent company's financial statements include a footnote stating that the issuer is a wholly-owned finance subsidiary of the parent with no independent assets or operations and the parent has fully and unconditionally guaranteed the securities.

2. Operating Subsidiary Issuers

We propose to amend Rule 3–10 to address specifically the structure where the parent of a subsidiary with independent assets or operations guarantees the securities issued by that subsidiary. Under SAB 53 and current staff interpretations, this issuer may disclose only summarized financial information instead of a full financial presentation. Consistent with our view that condensed financial information is more informative, we propose that these issuers need not include separate financial statements if:

- No subsidiaries of the parent guarantee the securities;
- The parent company's financial statements are filed for the periods specified by Rules 3–01 and 3–02 of Regulation S–X; and
- The parent company's financial statement footnotes include condensed consolidating financial information with a separate column for:
- The parent company,
- The subsidiary issuer,
- Any other subsidiaries of the parent on a combined basis,
- Consolidating adjustments, and
- The total consolidated amounts.

3. Subsidiary Issuer of Securities Guaranteed by Its Parent and One or More Other Subsidiaries of That Parent

We propose to codify current staff interpretations for the structure where a subsidiary issues securities and both its parent and one or more other subsidiaries of the parent are guarantors. We propose that these subsidiary issuers and guarantors need not include separate financial statements if:

- The guarantees are joint and several;
- The parent company's financial statements are filed for the periods specified by Rules 3–01 and 3–02 of Regulation S–X; and
- The parent company's financial statement footnotes include condensed consolidating financial information with a separate column for:
- The parent company,
- The subsidiary issuer,
- The guarantor subsidiaries on a combined basis,
- The non-guarantor subsidiaries on a combined basis,
- Consolidating adjustments, and
- The total consolidated amounts.

This proposal would apply the same requirement for condensed consolidating financial information to finance subsidiary issuers and operating subsidiary issuers that are part of this structure.

4. Subsidiary Guarantor of Securities Issued by Its Parent

We propose to codify the current staff interpretation for the structure where a parent company issues securities and one of its subsidiaries guarantees those securities. We propose that the subsidiary guarantor need not include separate financial statements if:

- No other subsidiaries of that parent guarantee the securities;
- The parent company's financial statements are filed for the periods specified by Rules 3–01 and 3–02 of Regulation S–X; and
- The parent company's financial statement footnotes include condensed consolidating financial information with a separate column for:
- The parent company,
- The subsidiary guarantor,
- Other subsidiaries of the parent on a combined basis,
- Consolidating adjustments, and
- The total consolidated amounts.

This proposal would apply the same requirement for condensed consolidating financial information to finance subsidiary guarantors and operating subsidiary guarantors that are part of this structure.

5. Multiple Subsidiary Guarantors of Securities Issued by Their Parent

We propose to codify the staff's position that when a parent company issues securities and more than one of its subsidiaries guarantees the securities, the subsidiary guarantors need not include separate financial statements if:

- The guarantees are joint and several;
- The parent company's financial statements are filed for the periods specified by Rules 3–01 and 3–02 of Regulation S–X; and
- The parent company's financial statement footnotes include condensed consolidating financial information with a separate column for:
- The parent company,
- The subsidiary guarantors on a combined basis,
- The non–guarantor subsidiaries on a combined basis,
- Consolidating adjustments, and
- The total consolidated amounts.

C. Recently Acquired Subsidiary Issuers or Guarantors

A special issue in the financial statement disclosure for issuers and guarantors is the treatment of recently acquired subsidiaries. Because these subsidiaries generally are not included in the consolidated results of the parent company for all periods, condensed consolidating financial information does not effectively present all material information about these subsidiaries to investors.[32]

We propose to require pre-acquisition financial statements for significant, recently acquired subsidiary issuers and guarantors until the condensed consolidating financial information would adequately reflect their cash flows and results of operations. Specifically, we propose to require separate audited financial statements for significant, recently acquired subsidiary issuers and guarantors for the subsidiary's most recent fiscal year. Unaudited financial statements also must be filed for any interim period specified by Rules 3–01 and 3–02 of Regulation S–X.[33]

We propose to require pre-acquisition financial statements in registration

[32] Currently, Rule 3–10 and SAB 53 provide no relief for a subsidiary issuer or guarantor for periods prior to its acquisition. Literal application of Rule 3–10 would require three years of audited financial statements, regardless of the significance of the acquired subsidiary. The staff has administratively permitted registrants to apply the significance tests in Rule 3–10(b) by analogy, but that practice has provided limited relief and created a number of implementation issues.

[33] 17 CFR 210.3–01 and 17 CFR 210.3–02.

statements only. We would not require them in Exchange Act periodic reports.

This proposed treatment for recently acquired subsidiaries would apply to any subsidiary issuer or guarantor:

- That has not been included in the audited consolidated results of the parent company for at least a nine-month period; and
- Whose net book value or purchase price, whichever is greater, equals 20% or more of the shareholders' equity of the parent company on a consolidated basis.[34]

We propose to measure the significance of recently acquired issuers and guarantors by comparison to shareholders' equity of the parent company rather than to the amount of the debt being registered. The proposed measure is more consistent with the staff's overall approach to analyzing issuer/guarantor structures, which focuses on the relationship of subsidiary financial information to the parent company's consolidated financial statements. The proposed measure should be a more relevant indicator of the recently acquired subsidiary's relative importance to the parent company. The proposed measure should not cause financial statements to be filed for small guarantors acquired by well-capitalized companies that issue relatively small amounts of debt. Conversely, the proposed measure should result in greater financial disclosure where the parent company is thinly capitalized.

Is 20% of consolidated shareholders' equity the correct measure for requiring the financial statements of a recently acquired subsidiary that issues guaranteed securities or guarantees securities? Would a larger percentage, such as 30%, 40%, 50%, be more appropriate? Would a smaller percentage, such as 15%, 10%, or 5%, be more appropriate? Is shareholders' equity the correct test for applying the requirement? Should other factors be considered instead of, or in addition to, shareholders' equity? If so, what other factors should be considered? Is nine months the proper length of time for this analysis? Should it be shorter, such as three or six months? Should it be longer, such as a full fiscal year or two fiscal years?

D. Instructions for Condensed Consolidating Financial Information Under Proposed Rule 3–10

To help ensure meaningful, consistent presentation of the condensed consolidating financial information, we propose thirteen instructions on how to prepare them. We propose to include these instructions in new paragraph (i) of Rule 3–10. The proposed instructions are:

1. Present the financial information in sufficient detail to allow investors to determine the assets, results of operations, and cash flows of each of the consolidating groups.
2. Follow the general guidance in Rule 10–01 of Regulation S–X for the form and content for condensed financial statements.
3. The financial information should be audited for the same periods that the parent company financial statements are audited.
4. The parent company column should present investments in all subsidiaries under the equity method.
5. All subsidiary issuer or guarantor columns should present investments in non-guarantor subsidiaries under the equity method.
6. Provide separate columns for each guarantor by legal jurisdiction if differences in domestic or foreign laws affect the enforceability of the guarantees.
7. Include the following disclosures:
   - Each subsidiary issuer and/or guarantor is wholly owned by the parent company;
   - All guarantees are full and unconditional; and
   - Where there is more than one guarantor, all guarantees are joint and several.
8. Disclose any significant restrictions on the ability of the parent company or any guarantor to obtain funds from its subsidiaries by dividend or loan.
9. Provide the disclosures prescribed by Rule 4–08(e)(3) with respect to the guarantors.
10. Disclose additional financial and narrative information about each guarantor if the information would be material for investors to evaluate the sufficiency of the guarantee.
11. The financial information shall include sufficient disclosures to make the information presented not misleading.
12. Disclosure that would substantially duplicate disclosure elsewhere in the parent's financial statements is not required.
13. Where the parent company's consolidated financial statements are prepared on a comprehensive basis other than U.S. Generally Accepted Accounting Principles, reconcile the information in each column to U.S. Generally Accepted Accounting Principles to the same extent specified by Item 17 of Form 20–F.

We request comment as to whether these instructions provide sufficient guidance to prepare the financial statements. For example, are the instructions too general or specific? Would further guidance be helpful? Also, do the instructions elicit the appropriate level of disclosure?

E. Condensed Consolidating Financial Information

Our proposals today adopt the first part of the staff's current approach to the presentation of useful financial information: condensed consolidating financial information. We propose to require condensed consolidating financial information in all situations not involving a finance subsidiary, as described above. We request comment on this proposal. Is condensed consolidating financial information adequate for current financing structures of guaranteed securities and guarantees? Will condensed consolidating financial information adapt to the developing financing structures? Are there situations in which summarized financial information is adequate? Is there another type of financial presentation that would be better suited for guaranteed securities and guarantees than either condensed consolidating or summarized financial information?

We propose to amend Item 310 of Regulation S–B to require small business issuers to include the same financial information requirements as in proposed Rule 3–10. We request comment on this proposal. Is it appropriate to propose the same requirements, regardless of the size of the issuer? Should there be different standards for small business issuers? Is the corporate structure of small business issuers less complex and, if so, do investors not need condensed consolidating information?

F. Exchange Act Reporting

Currently, subsidiary issuers or guarantors that are not required to include separate financial statements may seek an exemption from the Exchange Act reporting requirements. As noted above, the volume of these exemptive requests is significant. The staff's consideration of these exemptive requests requires the same analysis we use in determining the level of financial information required.

We propose new Rule 12h–5 to eliminate the need for these exemptive requests and to remove uncertainty regarding the availability of an exemption from Exchange Act reporting. As proposed, Rule 12h–5 would exempt from Exchange Act reporting:

[34] This significance test would be computed by using amounts for the subsidiary and parent as of the most recent fiscal year end before the acquisition.

• Any subsidiary issuer or subsidiary guarantor permitted to omit financial statements by Rule 3–10; and

• Any recently acquired subsidiary issuer or subsidiary guarantor that would be permitted to omit financial statements by Rule 3–10, but for the requirement to provide pre-acquisition financial statements under paragraph (g) of that rule.

As required by Rule 3–10, the parent company periodic reports would include condensed consolidating financial information about the subsidiary issuers and/or guarantors.[35] The parent company periodic reports must contain this information:

• For as long as the issuer and any guarantors would be subject to reporting under Section 15(d) as a result of the securities offering; and

• If the guaranteed securities are registered under Section 12, for as long as the issuer and any guarantors would be subject to reporting obligations under Section 13(a) as a result of the registration of the guaranteed securities under Section 12.

These exemptions are the same as the staff currently provides in its responses to exemptive requests. The staff grants these exemptions because investors should be provided one source for all of the necessary information regarding investment in those securities—the parent company's periodic reports—and condensed information regarding the subsidiaries within those reports is sufficient for a complete understanding of the investment.

Under proposed Rule 12h–5, these subsidiary issuers and subsidiary guarantors would be exempted automatically from Exchange Act reporting requirements. As a result, there would be no need for them to request exemptive relief from the Commission's staff.

We request comment on proposed Rule 12h–5. Should there be additional requirements for the exemption from Exchange Act reporting? For example, would it be appropriate to require the subsidiary to file a Form 15 to inform us that it is not required to file Exchange Act reports due to the Rule 12h–5 exemption? Would it be appropriate for the subsidiary to file a Form 15 filing as a condition to the exemption's availability? Would such a filing be useful information for the public? Would such a filing be an undue burden on the subsidiary? What should be required of subsidiaries that no longer qualify for the exemption from Exchange Act reporting under proposed Rule 12h–5 because they no longer satisfy the requirements of Rule 3–10 (for example, if the guarantee is no longer full and unconditional or the subsidiary is no longer wholly-owned)? For example, should they be required to file a report on Form 8–K to notify investors that they will resume their reports under the Exchange Act? Should some other form of notification be required?

G. Financial Statements of Affiliates Whose Securities Collateralize Registered Securities—Proposed Rule 3–16 of Regulation S–X

The financial statement requirements for affiliates whose securities collateralize registered securities currently are combined with the requirements for guarantors in Rule 3–10 of Regulation S–X. We do not propose to amend the financial statement requirements for these affiliates. Because our proposed amendments to Rule 3–10 would change significantly the structure of that rule, we propose to move the requirements for these affiliates into a rule that applies only to them. This will avoid confusion and make the requirements easier to understand. This proposed rule would be new Rule 3–16 of Regulation S–X.[36]

VII. Request for Comment

A. Request Regarding Specific Proposals

The Commission requests comments on all aspects of the proposed amendments.

In addition, we request comment on the following questions:

• If we adopt today's proposals, should there be a phase-in period for parent companies that currently include only summarized financial information? If so, why would such a phase-in be needed? How long should that phase-in period be? Should it begin with the beginning of the first fiscal year after adoption of the proposals?

• A significant benefit that we seek in today's proposals is the certainty issuers receive by having the disclosure and reporting standards in Commission rules. Is there any additional means by which we could provide this certainty? Are there any means by which subsidiaries could be certain that they have met the standards in proposed Rule 3–10 and, therefore, may rely upon the exemption in proposed Rule 12h–5?

• Today's proposals do not address the situation where a parent company and one of its wholly-owned subsidiaries are co-obligors on a debt or preferred security. In responses to the infrequent exemptive requests on this issue, the staff has treated this as if it were a subsidiary issuer/parent guarantor situation. Because this situation may present unique issues, we would continue to have these issuers contact the staff and request exemptive relief. Should we include the co-obligor situation in Rule 3–10? Is the information required by proposed Rule 3–10 sufficient in a co-obligor situation?

• Should reporting relief be available when a guaranteed security is in default? Should additional disclosures be required in these circumstances?

• Should there be an exception from condensed consolidating information for subsidiary guarantors where:

(1) The parent company issuer has no independent assets or operations,

(2) Substantially all assets and operations are in guarantor subsidiaries, and

(3) The non-guarantor subsidiaries are inconsequential?

Should parent company only financial statements be permitted in these circumstances instead of condensed consolidating information? Should the parent company be the only Exchange Act reporting company in these circumstances?

• We request comment as to how the proposed rule should apply to Foreign Private Issuers. For example, in reports on Form 6–K that include interim period financial statements about the parent company, should we require Foreign Private Issuers to include condensed consolidating information about subsidiaries of the type that we would require the parent to include in its annual report on Form 20–F? What if the parent were required to file a Form 6–K due to financial reporting requirements in its home country but the subsidiary did not have a corresponding reporting obligation? Should the parent's reports on Form 6–K still include condensed consolidating financial information about the subsidiary in that event?

• If we adopt today's proposals, will there be a need for SAB 53? If so, for what purpose would SAB 53 be used? If not, should SAB 53 be rescinded?

[35] In the case of finance subsidiaries, the parent company financial statements would include the narrative information required by proposed Rule 3–10(b)(4).

[36] Under current Rule 3–10, the staff frequently is presented with registration statements in which the registrants did not recognize that the financial statement requirements for guarantors may differ from the requirements for affiliates whose securities collateralize the registered securities. This misunderstanding causes significant issues in structuring securities and considering on-going disclosure responsibilities.

B. General Request Regarding Debt Offerings

Current rules and staff practices related to debt offerings focus on the existence of registered guarantees. An issuer of debt securities that are guaranteed by subsidiaries generally must provide additional financial information about those subsidiaries. However, an issuer of unguaranteed debt is generally not required to provide separate financial information about its subsidiaries, even where substantially all of the assets and operations of the consolidated group are held by the subsidiaries. Current rules require narrative disclosure of the nature and extent of material restrictions on the ability of the subsidiaries to distribute funds to the parent company, but do not require separate financial information about the subsidiaries or the parent on an unconsolidated basis unless restricted net assets of the subsidiaries exceed a specified level.[37]

Some believe that the current rules and practices place a disproportionate burden on issuers that attempt to provide additional protection to debt holders through guarantees, in comparison to issuers of unguaranteed debt. Others believe that narrative disclosures regarding subsidiaries' ability to distribute funds to the issuer are not sufficient to allow investors to interpret the issuer's consolidated financial statements. Additional financial disclosure such as condensed consolidating information or parent-only financial statements would, they argue, enhance investors' ability to evaluate the issuer's debt-paying capacity.

We are requesting comment on whether additional financial disclosures should be required for offerings of debt that are not guaranteed. Are the current requirements adequate? Should condensed consolidating information, or parent-only information as contemplated by Rule 12–04 of Regulation S–X, be required for all debt issuers that have subsidiaries with assets and operations, even if there are no subsidiary guarantors? Should other types of disclosure be required in these circumstances?

We invite any interested persons to submit comments. Please submit comment letters in triplicate to Jonathan G. Katz, Secretary, U.S. Securities and Exchange Commission, Mail Stop 6–9, 450 Fifth Street, N.W., Washington, D.C. 20549. You also may submit comment letters electronically to the following e-mail address: rule-comments@sec.gov. All comment letters should refer to File No. S7–XX–99. If e-mail is used, include this file number on the subject line. The Commission will consider these comments in complying with its responsibilities under Sections 2(b) and 19(a) of the Securities Act and Sections 3(f) and 12(h) of the Exchange Act.

VIII. Costs and Benefits of the Proposed Rule Changes and Their Effects on Efficiency, Competition, and Capital Formation

We are proposing financial reporting rules for issuers and guarantors of guaranteed securities. We are also proposing an exemption from periodic reporting for subsidiary issuers and guarantors of these securities. Our rule proposals would, for the most part, codify the positions the staff has developed through Staff Accounting Bulletin No. 53, later interpretations, and the registration statement review process. The rule proposals deviate from current practice only in the following two situations:

- A subsidiary with more than minimal operations issues securities, its parent guarantees the securities, and no subsidiary guarantees the securities; and
- A parent issues securities, a subsidiary with more than minimal operations guarantees the securities, and no other subsidiary guarantees the securities.

Those registrants currently are permitted to provide summarized financial information instead of full financial statements. Under our proposals, those registrants would be required to provide condensed consolidating financial information instead of summarized financial information.

Because the proposed rules are essentially codifying staff position, we do not believe the proposed rules would impose substantial regulatory costs on registrants. To illustrate this point, we note the additional burdens these proposals would have on registrants who were granted no-action relief in calendar year 1997. The Division provided 641 written responses to requests for no-action letters in 1997. Shareholder proposal requests pursuant to Exchange Act Rule 14a–8 accounted for 343 of these responses. Of the 298 non-shareholder proposal no-action responses, 140 were requests concerning SAB 53. Of the 140 SAB 53 no-action responses the Division issued, 29 were permitted to provide summarized financial statements. Under our proposals, those 29 registrants would be required to provide condensed consolidating financial information. We have estimated the average cost of providing condensed consolidating information instead of summarized financial information for each of those registrants to be approximately $1000.[38] Therefore, we estimate that the aggregate additional annual cost to all registrants will be approximately $29,000 (29 registrants × $1000 per registrant). We request your comments on the reasonableness of our estimates.

The costs of the proposed rules are counter-balanced by the benefits to registrants and investors. First, we intend for these rules to eliminate uncertainty about which financial statements and periodic reports subsidiary issuers and guarantors must file. Second, the proposed rules require financial information that is more helpful to an investor in the two areas where summarized financial statements are permitted today.[39] Finally, because registrants would be required to provide condensed consolidating financial information in all situations in which they must provide separate financial information, the investors will be able to compare the financial information among all offerings.

The proposed codification of current staff positions would also benefit companies by eliminating the need to create, submit, and obtain a no-action letter response from the Division. As stated above, in 1997, the Division issued responses to 140 requests for SAB 53 no-action positions. Based on discussions with external legal counsel who prepare no-action requests, we estimate that, on average, it takes 35 hours to prepare a request for a no-action letter. Assuming that the external professional help costs $175 per hour,

[37] See Rule 4–08 of Regulation S–X (17 CFR 210.4–08) and Rule 12–04 of Regulation S–X [17 CFR 210.12–04].

[38] Depending on the number of subsidiaries, the complexity of the financing structure, and other factors, the time required to provide condensed consolidating financial information instead of summarized financial information could vary significantly. Based on consultation with an outside consultant, we estimate that, on average, it would take an additional 16 hours to provide condensed consolidating financial information in lieu of summarized financial information. Assuming that the corporate staff preparing this information are compensated at the rate of $63 per hour, we estimate the cost of providing condensed consolidating information to be approximately $1008 per registrant ($63 per hour × 16 hours).

[39] Condensed consolidating financial information requires the columnar presentation of each category of parent and subsidiary as issuer, guarantor, or non-guarantor. This more clearly distinguishes the assets, liabilities, revenues, expenses, and cash flows of the entities that are legally obligated under the indenture from those that are not, particularly if subsidiary guarantors themselves have consolidated operating subsidiaries that are not guarantors. Another important element of credit decisions is cash flow information. Condensed consolidating financial information requires this information while summarized financial information does not.

the total cost for preparing a request for a no-action position is approximately $6100 per request. Applying these figures to the number of no-action letter requests to which we respond annually, we estimate the number of attorney hours spent annually on creating a request for a SAB 53 no-action position to be 4900 hours and the annual savings to registrants to be approximately $850,000. We request your comment on the reasonableness of our estimates.

Section 23(a) of the Exchange Act [40] requires us to consider the impact any new Exchange Act rule would have on competition. We do not believe that the proposed rules would have any anti-competitive effects since the proposed rules, to a large extent, simply codify the reporting requirements to which registrants are already subject. In the two situations in which the proposed rules require more than the current staff positions, we do not believe the proposed requirement to provide condensed consolidating financial information instead of summarized financial information would cause any anti-competitive effect. We request comment on whether the proposals, if adopted, would have an adverse effect on competition or would impose a burden on competition that is neither necessary nor appropriate in furthering the purposes of the Exchange Act. In addition, Section 3(f) of the Exchange Act requires us to consider adopting rules that require a public interest finding to consider whether the proposed rule will promote efficiency, competition and capital formation. We believe that the proposed rule amendments will have a positive, but unquantifiable, effect on efficiency, competition, and capital formation. We seek comment on the intended benefits and how these changes would affect competition, capital formation and market efficiency.

For purposes of the Small Business Regulatory Enforcement Fairness Act of 1996, we also request information regarding the potential impact of the proposals on the economy on an annual basis. Would the amendments, if adopted, result or be likely to result in:

- An annual effect on the economy of $100 million or more;
- A major increase in costs or prices for consumers or individual industries; or
- Significant adverse effects on competition, investment, or innovation?

Commentators should provide empirical data to support their views.

Commenters are encouraged to provide views and data relating to any costs or benefits associated with the rule proposal. In particular, please identify any costs or benefits associated with the rule proposal relating to the preparation of condensed consolidating financial information instead of summarized financial information. Will the proposal have no substantial effect as anticipated, or will the proposal result in additional costs and benefits? Please describe and, if possible, quantify any foreseeable significant effects.

IX. Regulatory Flexibility Act Certification

Pursuant to section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 605(b), the Chairman of the Commission has certified that the proposal would not, if adopted, have a significant economic impact on a substantial number of small entities. The proposed rules largely codify the positions the staff has developed through Staff Accounting Bulletin No. 53, later interpretations and the registration statement review process. The rule proposals deviate from current practice only in the following two situations:

- A subsidiary with more than minimal operations issues securities, its parent guarantees the securities, and no subsidiary guarantees the securities; and
- A parent issues securities, a subsidiary with more than minimal operations guarantees the securities, and no other subsidiary guarantees the securities.

Today, those registrants currently are permitted to provide summarized financial information instead of full financial statements. Under our proposals, those registrants would be required to provide condensed consolidating financial information instead of summarized financial information. As we discussed in our analysis of the costs and benefits of the proposed rule changes above, the burden to provide condensed consolidating information instead of summarized financial information would not have a substantial effect on any registrant.

More specifically, we do not believe that our proposed rules would have a substantial impact on small entities. In the last ten years, the Division has responded to only one SAB 53 request in which the related offering was registered on a small business issuer form, and that company would not meet the definition of small business entity for Regulatory Flexibility Act purposes.[41] We include the certification in this release as Attachment D and encourage written comments relating to it. Commenters should describe the nature of any impact on small entities and provide empirical data to support the extent of the impact.

X. Paperwork Reduction Act

We have submitted the proposals to the Office of Management and Budget for review in accordance with the Paperwork Reduction Act of 1995, 44 U.S.C. 3501 *et seq.* Current Rule 3–10 requires full financial statements for all guarantors or securities and for all affiliates of those guarantors whose securities constitute a substantial portion of the collateral. For those registrants who qualify, we anticipate that proposed Rule 3–10 of Regulation S–X would reduce or eliminate the existing information collection requirements that are associated with current Rule 3–10. This information would potentially be required to be presented in several Securities Act registration statements and Exchange Act reports to assist investors in the determination of the credit worthiness of a security.

The proposed rules will affect the inclusion of information in Securities Act registration Forms S–1, F–1, S–4 and F–4 (OMB control numbers 3235–0065, 3235–0258, 3235–0324, and 3235–0325, respectively). We estimate that the proposed rules will increase the average burden per form by approximately five minutes.[42] The proposed rules also will affect the inclusion of information in Exchange Act Forms 10–K and 10–Q (OMB control numbers 3235–0063 and 3235–0070). We estimate the proposed rules will increase the average burden per form by approximately three minutes and one minute, respectively.[43]

[40] 15 U.S.C. 78w(a)(2).

[41] In order to qualify to use small business issuer forms to register an offering, the issuer must, among other things, have less than $25 million in assets and no more than $25 million in public float. Small business issuers who qualify to use small business issuer registration forms may also elect to use standard registration forms.

[42] To arrive at this number, we divided the estimated number of companies that will have to provide condensed consolidating financial information in lieu of summarized financial information per year (29) by the estimated number of filings on these forms per year (5653) and multipled that quotient (.00513) by the estimated number of hours to convert financials (16).

[43] To arrive at this number for Form 10–K, we divided the estimated number of companies that will have to provide condensed consolidating financial information in lieu of summarized financial information per year (29) by the estimated number of filings on these forms per year (10,329) and multipled that quotient (.00279) by the estimated number of hours to convert financials (16). To arrive at this number for Form 10–Q, we divided the estimated number of companies that will have to provide condensed consolidating financial information in lieu of summarized financial information per year (29) by the estimated number of filings on these forms per year (29,551)

Continued

We estimated the increased burden hours for each form by dividing the estimated aggregate increased burden for all forms, whether or not the filers would be required to report under Rule 3–10, by the estimated total number of filers. The burden for Regulation S–X (OMB control number 3235–0009) will remain unchanged.

The proposed changes would not affect the retention period. The filing of financial statements, as described in this release, is mandatory. They are not kept confidential. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a correctly valid control number.

In accordance with 44 U.S.C. 3506(c)(2)(B), the Commission solicits comments to:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility;
- Evaluate the accuracy of the Commission's estimate of the burden of the proposed collection of information;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of collection of information on those who are to respond, including through the use of automated collection techniques or other forms for information technology.

Persons desiring to submit comments on the collection of information requirements should direct them to the following persons: Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, D.C. 20503; and Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549, and refer to File No. S7–7–99. The Office of Management and Budget is required to make a decision concerning the collection of information between 30 and 60 days after publication of this release in the **Federal Register**, so a comment to OMB is best assured of having its full effect if OMB receives it within 30 days of this publication.

XI. Statutory Bases

We propose the rule changes explained in this release pursuant to sections 7,[44] 10,[45] and 19(a)[46] of the Securities Act and sections 12,[47] 13,[48] and 15(d)[49] of the Exchange Act.

List of Subjects in 17 CFR Parts 210, 228 and 240

Reporting and recordkeeping requirements, Securities.

Text of the Proposed Rules

For the reasons set out in the preamble, the Securities and Exchange Commission proposals to amend title 17, chapter II of the Code of Federal Regulations as follows:

PART 210—FORM AND CONTENT OF AND REQUIREMENTS FOR FINANCIAL STATEMENTS, SECURITIES ACT OF 1933, SECURITIES EXCHANGE ACT OF 1934, PUBLIC UTILITY HOLDING COMPANY ACT OF 1935, INVESTMENT COMPANY ACT OF 1940, AND ENERGY POLICY AND CONSERVATION ACT OF 1975

1. The authority citation for Part 210 continues to read as follows:

Authority: 15 U.S.C. 77f, 77g, 77h, 77j, 77s, 77z–2, 77aa(25), 77aa(26), 78j–i, 78*l*, 78m, 78n, 78o(d), 78u–5, 78w(a), 78*ll*(d), 79e(b), 79j(a), 79n, 79t(a), 80a–8, 80a–20, 80a–29, 80a–30, 80a–37(a), unless otherwise noted.

2. Section 210.3–10 is revised to read as follows:

§ 210.3–10 Financial statements of guarantors, certain issuers of guaranteed securities registered or being registered.

(a)(1) General rule. As a general rule, every issuer of a registered security that is guaranteed and every guarantor of a registered security must file the financial statements required for a registrant by Regulation S–X.

(2) Operation of this rule. Paragraphs (b), (c), (d), (e), and (f) of this section are exceptions to the general rule of paragraph (a)(1) of this section. Paragraph (g) of this section is a special rule for recently acquired issuers or guarantors that overrides each of these exceptions. Only one paragraph can apply to a single issuer or guarantor. Paragraph (h) of this section defines some of the terms used in this section. Paragraph (i) of this section states the requirements for preparing the condensed consolidating financial information required by paragraphs (c), (d), (e), and (f) of this section.

(b) *Finance subsidiary issuer of securities guaranteed by its parent.* When a company with no independent assets or operations issues securities and its parent guarantees those securities, the registration statement, annual report, or quarterly report need not include financial statements of the issuer if:

(1) The issuer is wholly-owned by the parent guarantor;

(2) The guarantee is full and unconditional;

(3) No other subsidiaries of the parent guarantee the securities; and

(4) The parent company's financial statements are filed for the periods specified by § § 210.3–01 and 210.3–02 and include a footnote stating that the issuer is a wholly-owned finance subsidiary of the parent with no independent assets or operations and the parent has fully and unconditionally guaranteed the securities.

(c) *Operating subsidiary issuer of securities guaranteed by its parent.* When a company with independent assets or operations issues securities and its parent guarantees those securities, the registration statement, annual report, or quarterly report need not include financial statements of the issuer if:

(1) The issuer is wholly-owned by the parent guarantor;

(2) The guarantee is full and unconditional;

(3) There are no subsidiaries of the parent that guarantee those securities; and

(4) The parent company's financial statements are filed for the periods specified by §§ 210.3–01 and 210.3–02 and include, in a footnote, condensed consolidating information for the same periods with a separate column for the parent company, the subsidiary issuer, any other subsidiaries of the parent on a combined basis, consolidating adjustments, and the total consolidated amounts.

(d) *Subsidiary issuer of securities guaranteed by its parent and one or more other subsidiaries of that parent.* When a company issues securities and both its parent and one or more other subsidiaries of that parent guarantee those securities, the registration statement need not include financial statements of the issuer or the subsidiary guarantor(s) if:

(1) The issuer and each of the subsidiary guarantors are wholly-owned by the parent guarantor;

(2) The guarantees are full and unconditional;

(3) The guarantees are joint and several; and

(4) The parent company's financial statements are filed for the periods specified by §§ 210.3–01 and 210.3–02

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and multipled that quotient (.0009814) by the estimated number of hours to convert financials (16).

[44] 15 U.S.C. 77g.

[45] 15 U.S.C. 77j.

[46] 15 U.S.C. 77t.

[47] 15 U.S.C. 78l.

[48] 15 U.S.C. 78m.

[49] 15 U.S.C. 78o(d).

and include, in a footnote, condensed consolidating financial information for the same periods with a separate column for the parent company, the subsidiary issuer, the guarantor subsidiaries on a combined basis, the non-guarantor subsidiaries on a combined basis, consolidating adjustments, and the total consolidated amounts.

(e) *Subsidiary guarantor of securities issued by the parent of that subsidiary.* When a parent company issues securities and one subsidiary of that issuer guarantees those securities, the registration statement need not include financial statements of the subsidiary guarantor if:

(1) The subsidiary guarantor is wholly-owned by the parent issuer;

(2) The guarantee is full and unconditional;

(3) There are no other subsidiaries of that parent that guarantee the securities; and

(4) The parent company's financial statements are filed for the periods specified by §§ 210.3–01 and 210.3–02 and include, in a footnote, condensed consolidating financial information for the same periods with a separate column for the parent company, the subsidiary guarantor, any other subsidiaries of the parent on a combined basis, consolidating adjustments, and the total consolidated amounts.

(f) *Subsidiary guarantors of securities issued by the parent of those subsidiaries.* When a parent company issues securities and more than one subsidiary of that issuer guarantees those securities, the registration statement need not include financial statements of the subsidiary guarantors if:

(1) Each of the subsidiary guarantors is wholly-owned by the parent issuer;

(2) The guarantees are full and unconditional;

(3) The guarantees are joint and several; and

(4) The parent company's financial statements are filed for the periods specified by §§ 210.3–01 and 210.3–02 and include, in a footnote, condensed consolidating financial information for the same periods with a separate column for the parent company, the subsidiary guarantors on a combined basis, the non-guarantor subsidiaries on a combined basis, consolidating adjustments, and the total consolidated amounts.

(g) *Recently acquired issuers or guarantors.* (1) The registration statement of the parent company must include the financial statements specified in paragraph (g)(2) of this section for any subsidiary that otherwise would meet the conditions in paragraph (c), (d), (e), or (f) of this section for omission of separate financial statements if:

(i) The subsidiary has not been included in the audited consolidated results of the parent company for at least a nine month period; and

(ii) The net book value or purchase price, whichever is greater, of the subsidiary exceeds 20% of the shareholders' equity of the parent company on a consolidated basis.

Instruction to paragraph (g)(1): The significance test of paragraph (g)(1)(ii) of this section should be computed using amounts for the subsidiary and parent as of the most recent fiscal year end preceding the acquisition.

(2) Financial statements required—

(i) Audited financial statements for a subsidiary described in paragraph (g)(1) of this section must be filed for at least the subsidiary's most recent fiscal year. In addition, unaudited financial statements must be filed for any interim periods specified in §§ 210.3–01 and 210.3–02.

(ii) The financial statements should conform to the requirements of Regulation S–X, except that supporting schedules need not be filed.

(3) Acquisitions of a group of subsidiary issuers or guarantors that are related prior to their acquisition shall be aggregated for purposes of applying the 20% test in paragraph (g)(1)(ii) of this section. Subsidiaries shall be deemed to be related prior to their acquisition if:

(i) They are under common control or management;

(ii) The acquisition of one subsidiary is conditioned on the acquisition of each subsidiary; or

(iii) The acquisition of each subsidiary is conditioned on a single common event.

(4) Information required by this paragraph (g) of this section is not required to be included in an annual report or quarterly report.

(h) *Definitions.* For the purposes of this section—

(1) A subsidiary is *wholly-owned* if all of its outstanding voting shares are owned, either directly or indirectly, by the parent company. If the subsidiary is not in corporate form, it is ''wholly-owned'' if all of its outstanding ownership interests are owned, either directly or indirectly, by the parent company.

(2) A guarantee is *full and unconditional*, if, when an issuer of a guaranteed security has failed to make a scheduled payment, any holder of the guaranteed security may immediately bring suit directly against the guarantor for payment of all amounts due and payable.

(3) *Annual report* refers to annual reports on Form 10–K, Form 10–KSB, or Form 20–F (§ § 249.310, 249.310b, or 249.220f of this chapter).

(4) *Quarterly report* refers to quarterly reports on Form 10–Q or Form 10–QSB (§ § 249.308a or 249.308b of this chapter).

(i) *Instructions for preparation of the condensed consolidating financial information required by paragraphs (c), (d), (e), and (f) of this section.*

(1) Present the financial information in sufficient detail to allow investors to determine the assets, results of operations, and cash flows of each of the consolidating groups;

(2) Follow the general guidance in § 210.10–01 for the form and content for condensed financial statements;

(3) The financial information should be audited for the same periods that the parent company financial statements are audited;

(4) The parent company column should present investments in all subsidiaries under the equity method;

(5) All subsidiary issuer or guarantor columns should present investments in non-guarantor subsidiaries under the equity method;

(6) Provide separate columns for each guarantor by legal jurisdiction if differences in domestic or foreign laws affect the enforceability of the guarantees;

(7) Include the following disclosures:

(i) Each subsidiary issuer and/or guarantor is wholly owned by the parent company;

(ii) All guarantees are full and unconditional; and

(iii) Where there is more than one guarantor, all guarantees are joint and several;

(8) Disclose any significant restrictions on the ability of the parent company or any guarantor to obtain funds from its subsidiaries by dividend or loan;

(9) Provide the disclosures prescribed by § 210.4–08(e)(3) with respect to the guarantors;

(10) Disclose additional financial and narrative information about each guarantor if the information would be material for investors to evaluate the sufficiency of the guarantee;

(11) The financial information shall include disclosures sufficient so as to make the information presented not misleading;

(12) Disclosure that would substantially duplicate disclosure elsewhere in the parent's financial statements is not required; and

(13) Where the parent company's consolidated financial statements are

prepared on a comprehensive basis other than U.S. Generally Accepted Accounting Principles, reconcile the information in each column to U.S. Generally Accepted Accounting Principles to the same extent specified by Item 17 of Form 20–F (§ 249.220f of this chapter).

3. Section 210.3–16 is added to read as follows:

§ 210.3–16 Financial statements of affiliates whose securities collateralize an issue registered or being registered.

(a) For each of the registrant's affiliates whose securities constitute a substantial portion of the collateral for any class of securities registered or being registered, there shall be filed the financial statements that would be required if the affiliate were a registrant and required to file financial statements. However, financial statements need not be filed pursuant to this section for any person whose statements are otherwise separately included in the filing on an individual basis or on a basis consolidated with its subsidiaries.

(b) For the purposes of this section, securities of a person shall be deemed to constitute a substantial portion of collateral if the aggregate principal amount, par value, or book value of the securities as carried by the registrant, or the market value of such securities, whichever is the greatest, equals 20 percent or more of the principal amount of the secured class of securities.

PART 228—INTEGRATED DISCLOSURE SYSTEM FOR SMALL BUSINESS ISSUERS

4. 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, 78*l*, 78m, 78n, 78o, 78u–5, 78w, 78*ll*, 80a–8, 80a–29, 80a–30, 80a–37, and 80b–11, unless otherwise noted.

5. Section 228.310 is amended by redesignating Note 3 as Note 4 and adding new Note 3 to read as follows:

§ 228.310. (Item 310) Financial Statements.

Notes:

* * * * *

3. Financial statements for a subsidiary of a small business issuer that issues securities guaranteed by the small business issuer or guarantees securities issued by the small business issuer should be presented as required by Rule 3–10 of Regulation S–X (17 CFR 210.3–10), except that the periods presented are those required by paragraph (a) of this item.

* * * * *

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

6. The authority citation for part 240 continues to read, in part, as follows:

Authority: 15 U.S.C. 77c, 77d, 77g, 77j, 77s, 77z–2, 77eee, 77ggg, 77nnn, 77sss, 77ttt, 78c, 78d, 78f, 78i, 78j, 78j–1, 78k, 78k–1, 78l, 78m, 78n, 78*o*, 78p, 78q, 78s, 78u–5, 78w, 78x, 78*ll*(d), 78mm, 79q, 79t, 80a–20, 80a–23, 80a–29, 80a–37, 80b–3, 80b–4, and 80b–11, unless otherwise noted.

* * * * *

7. Section 240.12h–5 is added to read as follows:

§ 240.12h–5 Exemption for subsidiary guarantors and subsidiary issuers of guaranteed securities.

(a) Any issuer of a guaranteed security or guarantor of a security that is permitted to omit financial statements by § 210.3–10 of Regulation S–X of this Chapter is exempt from the requirements of Section 13(a) or 15(d) of the Act (15 U.S.C. 78m(a) or 78o(d)).

(b) Any issuer of a guaranteed security or guarantor of a security that would be permitted to omit financial statements by § 210.3–10 of Regulation S–X of this Chapter, except for the operation of paragraph (g) of that section, is exempt from the requirements of Section 13(a) or 15(d) of the Act (15 U.S.C. 78m(a) or 78o(d)).

Dated: February 26, 1999.

By the Commission.

Margaret H. McFarland,

Deputy Secretary.

Note: Appendices A, B, C, and D to the preamble will not appear in the Code of Federal Regulations.

Appendix A—Applying the Proposed Rule to Specific Fact Patterns

In each of the following examples, assume that:

- All guarantees are full and unconditional;
- All guarantees are joint and several; and
- All subsidiaries are wholly-owned.

Examples 1–3: Parent Issuer With No Operations

Example Number 1: All Subsidiaries Guarantee Securities

Parent company issues securities. The parent company is a holding company with no independent operations. All of the parent company's subsidiaries guarantee the securities.

Required financial information: Condensed consolidating financial information prepared in accordance with proposed Rule 3–10(f). That financial information would include a separate column for: the parent company, the subsidiary guarantors on a combined basis, consolidating adjustments, and the total consolidated amounts.

Example Number 2: More Than One, but not All, of the Subsidiaries Guarantee the Securities

Parent company issues securities. The parent company is a holding company with no independent operations. More than one, but not all, of the parent company's subsidiaries guarantee the securities.

Required financial information: Condensed consolidating financial information prepared in accordance with proposed Rule 3–10(f). That financial information would include a separate column for: the parent company, the subsidiary guarantors on a combined basis, the non-guarantor subsidiaries on a combined basis; consolidating adjustments, and the total consolidated amounts.

Example No. 3: One Subsidiary Guarantees the Securities

Parent company issues securities. The parent company is a holding company with no independent operations. One of the parent company's subsidiaries guarantees the securities.

Required financial information: Condensed consolidating financial information prepared in accordance with proposed Rule 3–10(e). That financial information would include a separate column for: the parent company, the subsidiary guarantor, the non-guarantor subsidiaries on a combined basis, consolidating adjustments, and the total consolidated amounts.

Examples 4–6: Parent Issuer With Operations

Example No. 4: All Subsidiaries Guarantee the Securities

Parent company issues securities. In addition to its subsidiaries, the parent company has independent operations. All of the parent company's subsidiaries guarantee the securities.

Required financial information: Condensed consolidating financial information prepared in accordance with proposed Rule 3–10(f). That financial information would include a separate column for: the parent company, the subsidiary guarantors on a combined basis, consolidating adjustments, and the total consolidated amounts.

Example No. 5: More Than One, but not All, of the Subsidiaries Guarantee the Securities

Parent company issues securities. In addition to its subsidiaries, the parent company has independent operations. More than one, but not all, of the parent company's subsidiaries guarantee the securities.

Required financial information: Condensed consolidating financial information prepared in accordance with proposed Rule 3–10(f). That financial information would include a separate column for: the parent company, the subsidiary guarantors on a combined basis, the non-guarantor subsidiaries on a combined basis, consolidating adjustments, and the total consolidated amounts.

Example No. 6: One Subsidiary Guarantees the Securities

Parent company issues securities. In addition to its subsidiaries, the parent company has independent operations. One of the parent company's subsidiaries guarantees the securities.

Required financial information: Condensed consolidating financial information prepared in accordance with proposed Rule 3–10(f). That financial information would include a separate column for: the parent company, the subsidiary guarantor, the non-guarantor subsidiaries on a combined basis, consolidating adjustments, and the total consolidated amounts.

Examples 7–10: Finance Subsidiary Issuer. Parent Guarantees the Securities and Has No Operations

Example No. 7: No Other Subsidiaries Guarantee the Securities

A finance subsidiary issues securities. The ultimate parent of that finance company guarantees those securities. The parent company has no independent operations. None of the parent company's other subsidiaries guarantee the securities. Required financial information: In accordance with proposed Rule 3–10(b), the only required financial information would be the financial statements of the parent company. Those financial statements would include a footnote stating that the issuer is a wholly-owned finance subsidiary of the parent with no independent assets or operations and the parent has fully and unconditionally guaranteed the securities.

Example No. 8: All Other Subsidiaries Guarantee the Securities

A finance subsidiary issues securities. The ultimate parent of that finance company guarantees those securities. The parent company has no independent operations. All of the parent company's other subsidiaries guarantee the securities. Required financial information: Condensed consolidating financial information prepared in accordance with proposed Rule 3–10(d). That financial information would include a separate column for: the parent company, the subsidiary issuer, the subsidiary guarantors on a combined basis, consolidating adjustments, and the total consolidated amounts.

Example No. 9: More than one, but not all, of the other subsidiaries guarantee the securities

A finance subsidiary issues securities. The ultimate parent of that finance company guarantees those securities. The parent company has no independent operations. More than one, but not all, of the parent company's other subsidiaries guarantee the securities.

Required financial information: Condensed consolidating financial information prepared in accordance with proposed Rule 3–10(d). That financial information would include a separate column for: the parent company, the subsidiary issuer, the subsidiary guarantors on a combined basis, the non-guarantor subsidiaries on a combined basis, consolidating adjustments, and the total consolidated amounts.

Example No. 10: One Other Subsidiary Guarantees the Securities

A finance subsidiary issues securities. The ultimate parent of that finance company guarantees those securities. The parent company has no independent operations. One of the parent company's other subsidiaries guarantees the securities.

Required financial information: Condensed consolidating financial information prepared in accordance with proposed Rule 3–10(d). That financial information would include a separate column for: the parent company, the subsidiary issuer, the subsidiary guarantor, the non-guarantor subsidiaries on a combined basis, consolidating adjustments, and the total consolidated amounts.

Examples 11–14: Finance Subsidiary Issuer. Parent Guarantees the Securities and Has Operations

Example No. 11: No Other Subsidiaries Guarantee the Securities

A finance subsidiary issues securities. The ultimate parent of that finance company guarantees those securities. In addition to its subsidiaries, the parent company has independent operations. None of the parent company's other subsidiaries guarantee the securities.

Required financial information: In accordance with proposed Rule 3–10(b), the only required financial information would be the financial statements of the parent company. Those financial statements would include a footnote stating that the issuer is a wholly-owned finance subsidiary of the parent with no independent assets or operations and the parent has fully and unconditionally guaranteed the securities.

Example No. 12: All Other Subsidiaries Guarantee the Securities

A finance subsidiary issues securities. The ultimate parent of that finance company guarantees those securities. In addition to its subsidiaries, the parent company has independent operations. All of the parent company's other subsidiaries guarantee the securities.

Required financial information: Condensed consolidating financial information prepared in accordance with proposed Rule 3–10(d). That financial information would include a separate column for: the parent company, the subsidiary issuer, the subsidiary guarantors on a combined basis, consolidating adjustments, and the total consolidated amounts.

Example No. 13: More Than One, but not All, of the Other Subsidiaries Guarantee the Securities

A finance subsidiary issues securities. The ultimate parent of that finance company guarantees those securities. In addition to its subsidiaries, the parent company has independent operations. More than one, but not all, of the parent company's other subsidiaries guarantee the securities.

Required financial information: Condensed consolidating financial information prepared in accordance with proposed Rule 3–10(d). That financial information would include a separate column for: the parent company, the subsidiary guarantors on a combined basis, the non-guarantor subsidiaries on a combined basis, consolidating adjustments, and the total consolidated amounts.

Example No. 14: One Other Subsidiary Guarantees the Securities

A finance subsidiary issues securities. The ultimate parent of that finance company guarantees those securities. In addition to its subsidiaries, the parent company has independent operations. One of the parent company's other subsidiaries guarantees the securities.

Required financial information: Condensed consolidating financial information prepared in accordance with proposed Rule 3–10(d). That financial information would include a separate column for: the parent company, the subsidiary issuer, the subsidiary guarantor, the non-guarantor subsidiaries on a combined basis, consolidating adjustments, and the total consolidated amounts.

Examples 15–18: Operating Subsidiary Issuer. Parent Guarantees the Securities and Has No Operations

Example No. 15: No Other Subsidiaries Guarantee the Securities

An operating subsidiary issues securities. The ultimate parent of that operating subsidiary guarantees those securities. The parent company has no independent operations. None of the parent company's other subsidiaries guarantee the securities.

Required financial information: Condensed consolidating financial information prepared in accordance with proposed Rule 3–10(c). That financial information would include a separate column for: the parent company, the subsidiary issuer, any other subsidiaries on a combined basis, consolidating adjustments, and the total consolidated amounts.

Example No. 16: All Other Subsidiaries Guarantee the Securities

An operating subsidiary issues securities. The ultimate parent of that operating subsidiary guarantees those securities. The parent company has no independent operations. All of the parent company's other subsidiaries guarantee the securities.

Required financial information: Condensed consolidating financial information prepared in accordance with proposed Rule 3–10(d). That financial information would include a separate column for: the parent company, the subsidiary issuer, the subsidiary guarantors on a combined basis, consolidating adjustments, and the total consolidated amounts.

Example No. 17: More Than One, But Not All, of the Other Subsidiaries Guarantee the Securities

An operating subsidiary issues securities. The ultimate parent of that operating subsidiary guarantees those securities. The parent company has no independent operations. More than one, but not all of the parent company's other subsidiaries guarantee the securities.

Required financial information: Condensed consolidating financial information prepared in accordance with proposed Rule 3–10(d). That financial information would include a separate column for: the parent company, the subsidiary issuer, the subsidiary guarantors on a combined basis, the non-guarantor subsidiaries on a combined basis, consolidating adjustments, and the total consolidated amounts.

Example No. 18: One Other Subsidiary Guarantees the Securities

An operating subsidiary issues securities. The ultimate parent of that operating

subsidiary guarantees those securities. The parent company has no independent operations. One of the parent company's other subsidiaries guarantees the securities.

Required financial information: Condensed consolidating financial information prepared in accordance with proposed Rule 3–10(d). That financial information would include a separate column for: the parent company, the subsidiary issuer, the subsidiary guarantor, the non-guarantor subsidiaries on a combined basis, consolidating adjustments, and the total consolidated amounts.

Examples 19–22: Operating Subsidiary Issuer. Parent Guarantees the Securities and Has Independent Operations

Example No. 19: No Other Subsidiaries Guarantee the Securities

An operating subsidiary issues securities. The ultimate parent of that operating subsidiary guarantees those securities. In addition to its subsidiaries, the parent company has independent operations. None of the parent company's other subsidiaries guarantee the securities.

Required financial information: Condensed consolidating financial information prepared in accordance with Rule 3–10(c). That financial information would include a separate column for: the parent company, the subsidiary issuer, the non-guarantor subsidiaries on a combined basis, consolidating adjustments, and the total consolidated amounts.

Example No. 20: All Other Subsidiaries Guarantee the Securities

An operating subsidiary issues securities. The ultimate parent of that operating subsidiary guarantees those securities. In addition to its subsidiaries, the parent company has independent operations. All of the parent company's other subsidiaries guarantee the securities.

Required financial information: Condensed consolidating financial information prepared in accordance with proposed Rule 3–10(d). That financial information would include a separate column for: the parent company, the subsidiary issuer, the subsidiary guarantors on a combined basis, consolidating adjustments, and the total consolidated amounts.

Example No. 21: More Than One, But Not All, of the Other Subsidiaries Guarantee the Securities

An operating subsidiary issues securities. The ultimate parent of that operating subsidiary guarantees those securities. In addition to its subsidiaries, the parent company has independent operations. More than one, but not all, of the parent company's other subsidiaries guarantee the securities.

Required financial information: Condensed consolidating financial information prepared in accordance with proposed Rule 3–10(d). That financial information would include a separate column for: the parent company, the subsidiary issuer, the subsidiary guarantors on a combined basis, the non-guarantor subsidiaries on a combined basis, consolidating adjustments, and the total consolidated amounts.

Example No. 22: One Other Subsidiary Guarantees the Securities

An operating subsidiary issues securities. The ultimate parent of that operating subsidiary guarantees those securities. In addition to its subsidiaries, the parent company has independent operations. One of the parent company's other subsidiaries guarantees the securities.

Required financial information: Condensed consolidating financial information prepared in accordance with proposed Rule 3–10(d). That financial information would include a separate column for: the parent company, the subsidiary issuer, the subsidiary guarantor, the non-guarantor subsidiaries on a combined basis, consolidating adjustments, and the total consolidated amounts.

Example 23: Trust Preferred Securities

A wholly-owned special purpose business trust with no independent operations issues trust preferred securities. The trust loans the proceeds of the offering of the trust preferred securities to its ultimate parent and the parent issues debentures to the trust. The ultimate parent guarantees the trust preferred securities through a series of ''back-up undertakings.'' In this situation, the trust would be treated as a finance subsidiary under Rule 3–10(b), so the only required financial information would be a narrative discussion of the trust and the securities.

Required financial information: Parent would present the preferred securities as a separate line item on its balance sheet entitled ''Company-Obligated Mandatorily Redeemable Preferred Securities of Subsidiary Trust Holding Solely Debentures of the Company.''

- Parent would include, in a footnote to its financial statements, disclosure that the sole assets of the trust are the parent's debentures.
- Parent would specify in a footnote to its financial statements the principal amount, interest rate and maturity date of the debentures held by the trust.
- Parent would include in an audited footnote to its audited financial statements disclosure:

1. That the trust is wholly-owned;
2. That the sole assets of the trust are the parent's debentures;
3. Of the principal amount, interest rate and maturity date of the parent's debentures held by the trust; and
4. That, considered together, the ''back-up undertakings'' constitute a full and unconditional guarantee by the parent of the trust's obligations under the preferred securities.

Appendix B—Applying the Proposed Rules to Subsidiary Guarantors That Are Added or Deleted in the Future

The analysis regarding the financial information required in a Securities Act registration statement is based solely on the securities that are offered under that registration statement. You should look at the registrants and the securities required to be listed on the cover page of the registration statement when you determine which financials statements you must include. A common question involves how to treat guarantors that you add *after* the registration statement becomes effective. The answer will relate to three areas:

- Securities Act treatment of the ''later-added'' guarantees;
- Financial statement requirements for ''later-added'' guarantors; and
- The separate Exchange Act reporting obligations of those ''later-added'' guarantors.

The following examples involve the application of the proposed rules to these three areas. In each of the following examples, assume that:

- All guarantees are full and unconditional;
- All guarantees are joint and several; and
- All subsidiaries are wholly-owned.

Example No. 1. Parent company registers an offering of its debt securities under the Securities Act. More than one, but not all, of its subsidiaries guarantee the securities. The indenture states that the parent company may, without the approval of the debt holders, add or delete subsidiary guarantors in the future. The securities offering is not a shelf offering.

Financial information required in the Securities Act registration statement: The registration statement would include condensed consolidating financial information prepared in accordance with proposed Rule 3–10(f). That financial information would include a separate column for: the parent company, the subsidiary guarantors as of the date the registration statement became effective on a combined basis, the subsidiaries that were not guarantors as of the date the registration statement became effective on a combined basis, consolidating adjustments, and the total consolidated amounts.

Treatment of future guarantees under the Securities Act: There would be no Securities Act event at the time future guarantors are added or deleted. The decision to add or delete guarantors would not involve an investment decision by the debt holders. Therefore, there would be no need to amend the registration statement after it became effective.

Exchange Act reporting requirements of existing and future guarantors: Proposed Rule 12h–5 would exempt the existing guarantors from separately reporting under the Exchange Act. Because future guarantors would not be registrants on a Securities Act registration statement, they would have no separate reporting obligation under Section 15(d) of the Exchange Act. Therefore, there would be no need to provide an exemption for these future guarantors from the requirements of Section 15(d).

Financial statement requirements in parent company's Exchange Act reports: The financial statements in the parent company's periodic reports would be the same as in the Securities Act registration statement and there would continue to be condensed consolidating financial information with the same columns of information. However, as the companies that comprise each column would change, the parent company would revise the makeup of that column of information. For example, the guarantor subsidiaries column and the non-guarantor subsidiaries column may reflect different subsidiaries, depending on which

subsidiaries were in each category at that time. In each of its Exchange Act reports, the parent company would look to which of its subsidiaries was a guarantor as of the end of the period reflected in that periodic report. A footnote to the condensed consolidating financial information should discuss any changes in the composition of the guarantors that comprise the guarantor column.

Example No. 2. Parent company files a Securities Act registration statement relating to a shelf offering of its debt securities. The registration statement states that more than one, but not all, of its subsidiaries will guarantee the securities. The registration statement includes each of the current subsidiary guarantors as a co-registrant. The indenture states that the parent company may, without the approval of the debt holders, add or delete subsidiary guarantors in the future.

Financial information required in the Securities Act registration statement: The registration statement would include condensed consolidating financial information prepared in accordance with proposed Rule 3–10(f). That financial information would include a separate column for: the parent company, the subsidiary guarantors as of the date the registration statement became effective on a combined basis, the subsidiaries that were not guarantors as of the date the registration statement became effective on a combined basis, consolidating adjustments, and the total consolidated amounts.

Treatment of future guarantees under the Securities Act: You will have different answers depending on whether the guaranteed securities have already been offered or whether they will be offered after guarantors are added or deleted. For purposes of this analysis, assume:

- That the shelf registration statement registered the offer and sale of $500 million in debt securities;
- That the parent company sold $200 million of those securities after the registration statement became effective; and
- After that sale, the parent company elected to add or delete subsidiary guarantors, both with respect to the $200 million of securities it has sold and the $300 million of securities that it may sell in the future.

For the same reasons as we discussed in Example No. 1, there would not be a Securities Act registration event with respect to the $200 million of securities that were already sold. However, the registration statement would have to be updated to properly reflect the subsidiary guarantors with respect to any offers or sales of the remaining $300 million of securities. If new guarantors were added to the registration statement, this update would relate to offers and sales of guarantees that were not registered originally. Therefore, this update could not be done through a post-effective amendment. Instead, a new registration statement would be filed to reflect the new guarantors. The parent company and the continuing guarantors could rely on Rule 429 to combine this registration statement with the original shelf registration statement. There would be no additional fee. This new registration statement would have to be filed before any offers of those guarantees could be made and would have to be effective before any sales. Also, the new registration statement would continue to include condensed consolidating financial information in accordance with proposed Rule 3–10(f). However, because the companies that comprise each column would have changed, the parent company would revise the makeup of that column. For example, the guarantor subsidiaries column and the non-guarantor subsidiaries column would reflect different subsidiaries, depending on which subsidiaries were in each category at that time. A footnote to the condensed consolidating financial information should discuss any changes in the composition of the guarantors that comprise the guarantor column.

Exchange Act reporting requirements of existing and future guarantors: Proposed Rule 12h–5 would exempt the existing guarantors from separately reporting under the Exchange Act. Because future guarantors on the $200 million of securities that were already sold would not be registrants on a Securities Act registration statement, they would have no separate reporting obligation at that time. Therefore, there would be no need to provide an exemption for these future guarantors. However, if future guarantors were added to the registration statement with respect to offers and sales of the $300 million of securities remaining on the registration statement, they would have a separate reporting obligation when the registration statement that included them as registrants became effective. Proposed Rule 12h–5 would exempt these guarantors from the requirements of Section 15(d).

Financial statement requirements in parent company's Exchange Act reports: The financial information in the parent company's periodic reports would be the same as in the Securities Act registration statement and there would continue to be condensed consolidating financial information with the same columns of information. However, as the companies that comprise each column would change, the parent company would revise the makeup of that column of information. In each of its Exchange Act reports, the parent company would look to which of its subsidiaries was a guarantor as of the end of the period reflected in that periodic report. A footnote to the condensed consolidating financial information should discuss any changes in the composition of the guarantors that comprise the guarantor column.

Appendix C—What does "wholly-owned" mean under proposed Rule 3–10?

Example No. 1. Parent company own 100% of the voting shares of SubA. SubA owns 100% of the voting shares of Sub1.

Is SubA a wholly-owned subsidiary of the parent company? Yes.

Is Sub1 a wholly-owned subsidiary of SubA? Yes.

Is Sub1 an indirect, wholly-owned subsidiary of the parent company? Yes.

Example No. 2. Parent company own 100% of the voting shares of SubA. SubA owns 99% of the voting shares of Sub1. The remaining 1% of the voting shares of Sub1 is owned by a party that is not a wholly-owned subsidiary of the parent company.

Is SubA a wholly-owned subsidiary of the parent company? Yes.

Is Sub1 a wholly-owned subsidiary of SubA? No.

Is Sub1 an indirect, wholly-owned subsidiary of the parent company? No.

Example No. 3. Parent company owns 99% of the voting shares of SubA. The remaining 1% of the voting shares of SubA are owned by a party that is not a wholly-owned subsidiary of the parent company. SubA owns 100% of the voting shares of Sub1.

Is SubA a wholly-owned subsidiary of the parent company? No.

Is Sub1 a wholly-owned subsidiary of SubA? Yes.

Is Sub1 an indirect, wholly-owned subsidiary of the parent company? No.

Example No. 4. Parent company owns 100% of the voting shares of SubA and 100% of the voting shares of SubB. SubA owns 60% of the voting shares of Sub1 and SubB owns 40% of the voting shares of Sub1.

Is SubA a wholly-owned subsidiary of the parent company? Yes.

Is SubB a wholly-owned subsidiary of the parent company? Yes.

Is Sub1 a wholly-owned subsidiary of SubA? No.

Is Sub1 a wholly-owned subsidiary of SubB? No.

Is Sub1 an indirect, wholly-owned subsidiary of the parent company? Yes.

Example No. 5. Parent company owns 100% of the voting shares of SubA.

Parent company also owns 60% of the voting shares of Sub1. SubA owns 40% of the voting shares of Sub1.

Is SubA a wholly-owned subsidiary of the parent company? Yes.

Is Sub1 a wholly-owned subsidiary of SubA? No.

Is Sub1 an indirect, wholly-owned subsidiary of the parent company? Yes.

Example No. 6. Parent company owns 99% of the voting shares of SubA. As required by the law in its home country, a director of SubA owns the remaining 1% of the voting shares of SubA. SubA owns 100% of the voting shares of Sub1.

Is SubA a wholly-owned subsidiary of the parent company? No.

Is Sub1 a wholly-owned subsidiary of SubA? No.

Is Sub1 an indirect, wholly-owned subsidiary of the parent company? No.

Note: This position is different than current staff interpretations.

Example No. 7. Parent company owns 100% of the voting shares of SubA. SubA has outstanding securities convertible into its voting shares. These convertible securities are held by a party that is not a wholly-owned subsidiary of the parent.

Is SubA a wholly-owned subsidiary of the parent company? No.

Example No. 8. Parent company owns 100% of the voting shares of SubA. SubA has outstanding securities convertible into the parent company's voting shares. These convertible securities are held by a party that is not a wholly-owned subsidiary of the parent.

Is SubA a wholly-owned subsidiary of the parent company? Yes.

Example No. 9. Parent company owns 100% of the voting shares of SubA. SubA has outstanding options exercisable into its voting shares. These options are held by a party that is not a wholly-owned subsidiary of the parent.

Is SubA a wholly-owned subsidiary of the parent company? No.

Example No. 10. Parent company owns 100% of the voting shares of SubA. SubA has outstanding options exercisable into the parent company's voting shares. These convertible securities are held by a party that is not a wholly-owned subsidiary of the parent.

Is SubA a wholly-owned subsidiary of the parent company? Yes.

Example No. 11. Parent company owns 100% of the common stock of SubA. SubA has a class of preferred stock outstanding. That preferred stock is 100% owned by a party that is not a wholly-owned subsidiary of the parent company. The common equity has full voting rights. The preferred stock is non-voting.

Is SubA a wholly-owned subsidiary of the parent company? Yes.

Appendix D—Regulatory Flexibility Act Certification

I, Arthur Levitt, Chairman of the Securities and Exchange Commission, hereby certify pursuant to 5 U.S.C. 605(b) that proposed amendments to Rule 3–10 of Regulation S–X and Item 310 of Regulation S–B, as well as new Rule 3–16 of Regulation S–X and new Exchange Act Rule 12h–5, if adopted, will not have a significant economic impact on a substantial number of small entities. The amendments and new rules largely codify the positions the staff has developed through Staff Accounting Bulletin No. 53, later interpretations and the registration statement review process. Since the registrants already follow these standards, the proposed amendments would not impose a significant impact. Additionally, a review of Division responses to SAB 53 exemptive requests over the last ten years indicates that only one request related to an offering that was registered on a small business form, and that company would not meet the definition of small business entity for Regulatory Flexibility Act purposes. Accordingly, the proposed amendments and new rules would not have a significant economic impact on a substantial number of small entities.

Dated: February 26, 1999.

Arthur Levitt,

Chairman.

[FR Doc. 99–5444 Filed 3–4–99; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 94

[FRL–6307–2]

RIN 2060–AI17

Extension of Comment Period for Control of Emissions of Air Pollution From New CI Marine Engines At or Above 37 Kilowatts; Proposed Rule

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule; notice of extension of comment period.

SUMMARY: EPA is extending the comment period for the proposed rule for the control of emissions of air pollution from new CI marine engines at or above 37 kilowatts. The Notice of Proposed Rulemaking (NPRM) was published in the **Federal Register** on December 11, 1998 (63 FR 68507). The close of the comment period for the proposed rule was originally February 26, 1999. EPA is extending the closure of the comment period to March 15, 1999. This extension is being granted while taking into consideration the court-ordered signature date for the final rule of November 23, 1999.

DATES: Comments regarding all issues related to the proposed rule will be accepted until March 15, 1999.

ADDRESSES: Comments on this proposal should be sent to Public Docket A–97–50 at the U.S. Environmental Protection Agency, 401 M Street, S.W., Room M–1500, Washington, DC 20460. EPA requests that a copy of comments also be sent to Jean Marie Revelt, U.S. EPA, Engine Programs and Compliance Division, 2000 Traverwood Dr., Ann Arbor, MI 48105.

FOR FURTHER INFORMATION CONTACT: Margaret Borushko, U.S. EPA, Engine Programs and Compliance Division, (734) 214–4334; Borushko.Margaret@epa.gov.

SUPPLEMENTARY INFORMATION: On December 11, 1998 EPA published a proposal for an emission control program for new compression-ignition marine engines rated at or above 37 kilowatts (63 FR 68507). The comment period was scheduled to end February 26, 1999.

EPA held a public hearing on January 19, 1999, to provide opportunities for the regulated community and other interested parties to comment on issues pertaining to the proposed rule. At the hearing, several commenters requested a longer comment period. EPA has also received several written requests to extend the comment period by 30 days to give affected parties more time to address the issues raised in the NPRM. While EPA agrees that an extension of the comment period may be beneficial, EPA is concerned with allowing the full 30 days requested, given the court ordered requirement to finalize this rulemaking by November 23, 1999. Therefore, EPA is proposing to extend the comment period to March 15, 1999.

Dated: February 25, 1999.

Robert Perciasepe,

Assistant Administrator for Air and Radiation.

[FR Doc. 99–5488 Filed 3–4–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 136

[FRL–6307–3]

Guidelines Establishing Test Procedures for the Analysis of Pollutants; Measurement of Mercury in Water; Notice of Data Availability and Request for Comment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of data availability and request for comment.

SUMMARY: On May 26, 1998 (63 FR 28867), EPA proposed to amend the Guidelines Establishing Test Procedures for the Analysis of Pollutants under section 304(h) of the Clean Water Act by adding EPA Method 1631: Mercury in Water by Oxidation, Purge and Trap, and Cold Vapor Atomic Fluorescence. EPA Method 1631 measures mercury reliably at the low levels associated with ambient water quality criteria for mercury. The comment period on the proposal closed on July 29, 1998. EPA obtained additional effluent and environmental data after the close of the comment period and intends to consider these data in its final rulemaking concerning the use of EPA Method 1631. Therefore, EPA is making these additional data available for public review and comment.

DATES: Written comments on this notice must be submitted on or before April 5, 1999.

ADDRESSES: Written or electronic comments on this notice may be submitted. Written comments on this notice may be sent to ''EPA Method 1631–Notice of Data Availability,'' Comment Clerk, Water Docket MC–4101, Environmental Protection Agency, 401 M Street, S.W., Washington, D.C.