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17 CFR Parts 228, et al.
Additional Form 8–K Disclosure Requirements and Acceleration of Filing Date; Proposed Rule

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 228, 229, 240 and 249

[Release Nos. 33–8106; 34–46084; File No. S7–22–02]

RIN 3235–AI47

Additional Form 8–K Disclosure Requirements and Acceleration of Filing Date

AGENCY: Securities and Exchange Commission.

ACTION: Proposed rule.

SUMMARY: We propose to add 11 new items that would require a company to file Form 8–K under the Securities Exchange Act of 1934. In addition, we propose to move two disclosure items currently required to be included in companies' annual and quarterly reports to Form 8–K and to amend several of the existing Form 8–K disclosure items. We also propose to shorten the filing deadline for Form 8–K to two business days after an event triggering the form's disclosure requirements. Currently, the filing deadline is five business days or 15 calendar days after the triggering event, depending on the nature of the event. Finally, we propose to create a new safe harbor for certain violations of the Form 8–K filing requirements and to grant an automatic two business day extension of the filing deadline to companies providing proper notice on Form 12b–25 of an inability to timely file a particular Form 8–K. We propose these amendments to provide investors with better and faster disclosure of important corporate events.

DATES: Comments should be received on or before August 26, 2002.

ADDRESSES: Comments should be submitted in triplicate to Jonathan G. Katz, Secretary, U.S. Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. Comments also may be submitted electronically at the following e-mail address: *rule-comments@sec.gov*. All comment letters should refer to File No. S7–22–02; this file number should be included in the subject line if e-mail is used. Comment letters will be available for inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, DC 20549–0102. Electronically submitted comment letters will be posted on the Commission's Internet Web Site (*http://www.sec.gov*). We do not edit personal information, such as names or electronic mail addresses, from electronic submissions. You should submit only information that you wish to make available publicly.

FOR FURTHER INFORMATION CONTACT: Ray Be, Special Counsel, or N. Sean Harrison, Special Counsel, at (202) 942–2910, Division of Corporation Finance, U.S. Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0312.

SUPPLEMENTARY INFORMATION: We are proposing amendments to Form 8–K,[1] Form 10–K,[2] Form 10–KSB,[3] Form 10–Q,[4] Form 10–QSB,[5] Rule 13a–11,[6] Rule 15d–10,[7] Rule 15d–11,[8] Rule 12b–25[9] and Form 12b–25[10] under the Securities Exchange Act of 1934,[11] Item 10,[12] Item 601[13] and Item 701[14] of Regulation S–B[15] and Item 10,[16] Item 601[17] and Item 701[18] of Regulation S–K.[19]

I. Background

The Exchange Act established a system of continuing disclosure about companies choosing to issue securities to the public. Congress recognized that the ongoing dissemination of accurate information by companies about themselves and their securities is essential to effective operation of the trading markets. The Exchange Act rules require public companies to make periodic disclosures at annual and quarterly intervals, with other important information reported on a more current basis. The Exchange Act specifically provides for current disclosure to maintain the currency and adequacy of information disclosed by companies.[20]

The Commission created Form 8–K in 1936 as the form to be used by companies to file ''current'' reports when specific extraordinary corporate events occur.[21] As originally adopted, companies could file Form 8–K as late as 10 days after the end of the month in which an event requiring disclosure occurred. This meant that a company did not have to report a Form 8–K event occurring on the first day of a month until 40 days later. By today's standards, it would be very difficult to describe reports with such a delayed filing deadline as ''current'' reports.[22]

Since 1936, there have been several substantive changes to Form 8–K. In 1977, we made significant amendments to create the general structure of the form that exists today, including the filing deadlines that require reporting of some corporate events within five business days after their occurrence and others within 15 calendar days after their occurrence.[23] In the intervening years, we have amended Form 8–K at various times to add or delete items. Form 8–K currently consists of nine disclosure items.[24] Six of the items describe specific events that require companies to file Form 8–K. Those events are:

- A change in control of the company;[25]
- The company's acquisition or disposition of a significant amount of assets;[26]
- The company's bankruptcy or receivership;[27]
- A change in the company's certifying accountant;[28]
- The resignation of a company director;[29] and
- A change in the company's fiscal year.[30]

A seventh item requires companies to furnish exhibits and to list any financial statements and pro forma financial information included as part of Form 8–K in connection with a business acquisition.[31] Another item permits companies, at their option, to disclose events that they deem to be of importance to their shareholders.[32] The

[1] 17 CFR 249.308.
[2] 17 CFR 249.310.
[3] 17 CFR 249.310a.
[4] 17 CFR 249.308a.
[5] 17 CFR 249.308b.
[6] 17 CFR 240.13a–11.
[7] 17 CFR 240.15d–10.
[8] 17 CFR 240.15d–11.
[9] 17 CFR 240.12b–25.
[10] 17 CFR 249.322.
[11] 15 U.S.C. 78a *et seq.*
[12] 17 CFR 228.10.
[13] 17 CFR 228.601.
[14] 17 CFR 228.701.
[15] 17 CFR 228.10 *et seq.*
[16] 17 CFR 229.10 *et seq.*
[17] 17 CFR 229.601.
[18] 17 CFR 229.701.
[19] 17 CFR 229.
[20] 15 U.S.C. 78m(a).
[21] Release No. 34–925 (Nov. 11, 1936).
[22] See Release No. 34–8683 (Sept. 15, 1969) [35 FR 18512]. In that release, we noted that prompt reporting of an event within a few days of its occurrence appeared to be difficult to administer and unduly burdensome. This was in large part attributable to the state of technology at the time.
[23] Release No. 34–13156 (Jan. 13, 1977) [42 FR 4424]. Item 7 of Form 8–K states that financial statements required to be included on Form 8–K when a company acquires a business may be filed with the initial report or by amendment not later than 60 days after the date that the initial Form 8–K to report the acquisition must be filed. See Item 7(a)(3) of Form 8–K.
[24] On April 12, 2002, we proposed adding a tenth item to Form 8–K that would require prompt disclosure by a company on Form 8–K of transactions by its officers and directors in the company's securities (Release No. 33–8090 (Apr. 12, 2002) [67 FR 19914]).
[25] Current Item 1 of Form 8–K.
[26] Current Item 2 of Form 8–K.
[27] Current Item 3 of Form 8–K.
[28] Current Item 4 of Form 8–K.
[29] Current Item 6 of Form 8–K.
[30] Current Item 8 of Form 8–K.
[31] Current Item 7 of Form 8–K.
[32] Current Item 5 of Form 8–K.

ninth item permits companies to use Form 8–K as a non-exclusive method to satisfy their public disclosure requirements under Regulation FD.[33]

In 1998, we published proposals to expand Form 8–K disclosure and shorten the filing date in a package of proposed revisions intended to effect comprehensive reform of the Securities Act offering system.[34] Specifically, we proposed to add six disclosure items to Form 8–K[35] and to shorten the Form 8–K filing deadline to five calendar days for some items and one business day for other items.[36]

Comments on the substantive and timing changes to Form 8–K that we proposed in 1998 varied greatly and no consensus was reached as to the advisability of the changes.[37] We did not adopt these proposals. As described more fully below, we are re-proposing the addition to Form 8–K of four of the six items regarding which we previously solicited public comment,[38] along with several new proposed disclosure items. We also again propose to shorten the Form 8–K filing deadline, but in a different manner than proposed in 1998.

The last few decades have been marked by significant advancements in communications technologies, including the Internet. Such technologies provide investors and securities markets with instantaneous access to a wide array of investment information with varying degrees of reliability. As a result, investors and the securities markets today demand and expect more ''real-time'' access to a greater range of reliable information concerning important corporate events that affect publicly traded securities. Although no disclosure regime can eliminate all fraud in the securities markets, more prompt disclosure by companies of significant events should reduce the opportunities for deception and manipulation that stem from delayed disclosure. Accordingly, we propose to expand the list of events that trigger a public company's obligation to file a current report on Form 8–K under the Exchange Act. We have identified the following extraordinary events as specific disclosure items because we believe such events are presumptively of such importance to investors that prompt disclosure is necessary.[39] In addition, we encourage companies to continue to use Form 8–K[40] to disclose any other information that may be material or otherwise of importance to investors.

We also propose to accelerate the Form 8–K filing deadline by requiring companies to file Form 8–K within two business days after the occurrence of a triggering event.[41] In 1977, when we established the five business day and 15 calendar day deadlines, we had to consider potential problems associated with the delivery and filing of Form 8–K in paper, such as delays in the U.S. mail. For the past several years, the EDGAR electronic filing system has enabled domestic public companies to file their documents with the Commission from anywhere in the world within significantly shortened timeframes. These documents are now available to the public through EDGAR on a real-time basis.[42]

In establishing the appropriate timeframe for filing Form 8–K, we must balance investors' need for timely access to information about the companies in which they have invested or as to which they are making investment decisions with the time needed by companies to prepare accurate and complete information. In light of advances in technology that make it possible for companies to capture, analyze and broadly disseminate information much more quickly than in 1977 and greater investor demand for timely information, we believe that the proposed changes are consistent with the statutory intent reflected in Section 13(a) of the Exchange Act ''to keep reasonably current the information and documents required to be included in or filed with an application or registration statement filed pursuant to Section 12.'' [43] These changes are part of the Commission's initiative to improve the delivery of timely, high-quality information to the securities markets to ensure that securities are traded on the basis of current information.[44]

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[33] Current Item 9 of Form 8–K. We adopted Regulation FD in 2000. See Release No. 33–7881 (Aug. 10, 2000) [65 FR 51716]. Regulation FD requires a company that discloses material nonpublic information to securities industry professionals, institutions or other persons who may buy or sell securities of the issuer on the basis of that information, to publicly disclose the information. A company choosing to publicly disclose the information on Form 8–K can elect either to furnish the information pursuant to Item 9, which is specifically designated for Regulation FD disclosure, or to file the information under Item 5, the general voluntary Form 8–K disclosure item. If an issuer elects to furnish the information under Item 9, that information is not considered filed under the Exchange Act. Alternatively, a company may comply with Regulation FD by disclosing the information through another method or combination of methods that is reasonably designed to effect broad, non-exclusionary distribution of the information to the public.

[34] Release No. 33–7606A (December 4, 1998) [63 FR 67174].

[35] The proposed disclosure items included the following: (1) Timely disclosure of annual and quarterly earnings results of domestic companies; (2) material modifications to the rights of security holders; (3) departure of a chief executive officer, president, chief financial officer or chief operating officer; (4) material defaults on senior securities; (5) notice from an auditor that the company no longer may rely on a prior audit report; and (6) corporate name changes.

[36] We proposed a one business day deadline for reports concerning: (1) a material default on a senior security; (2) a notice that a company's independent accountant has resigned, declined to stand for reelection or been replaced; and (3) the resignation of a director. We proposed a five calendar day deadline for all other Form 8–K items.

[37] With respect to the proposed changes in filing deadlines, a number of commenters, including several issuers and law firms indicated that, at least for some of the items, filing in two business days may be workable. See, for example, letters in File No. S7–30–98 from the Financial Executives Institute and the Association of the Bar of the City of New York.

[38] The four disclosure items that we are re-proposing are: (1) Material modifications to the rights of security holders; (2) departure of a chief executive officer, president, chief financial officer, or chief operating officer (the item that we re-propose also includes the departure of a company's chief accounting officer and the departure of any person serving an equivalent function as any officer included in the listing); (3) material defaults on senior securities; and (4) withdrawal of, or notice of non-reliance on, a previously issued audit report. Although we are not re-proposing a disclosure item for material defaults on senior securities, such a requirement is subsumed by our proposed new item that would require disclosure of any event triggering a direct or contingent financial obligation that is material to the company. We are not re-proposing the item that would require timely disclosure of domestic companies' annual and quarterly earnings results. We also are not re-proposing a specific disclosure item regarding corporate name changes because we believe that a proposed new item that would require disclosure about changes to a company's articles of incorporation or bylaws generally would cover changes made to authorize a new corporate name.

[39] In identifying these events, we have considered the relative importance of different types of corporate events to investors. Specifically, we have considered various factors to gauge, among other things, the extent to which we believe investors would consider the event important in making an investment or voting decision, the frequency of occurrence of the event, the likely market reaction to the event, and the potential impact of the event on a company's operations and financial statements.

[40] Specifically, we encourage companies to file voluntary reports on Form 8–K pursuant to current Item 5, which we propose to renumber as Item 7.01 in this release.

[41] The proposed deadline change would not affect the timing requirements for Form 8–K disclosure made to satisfy the requirements under Regulation FD and also would not affect the timing requirement in Item 7(a)(3) of Form 8–K regarding the filing of financial statements when a company acquires a business. Form 8–K currently does not, and would not under the proposals, specify a deadline for companies' voluntary disclosure of events on the form. Finally, the proposed deadline changes would not affect the deadlines proposed by Release No. 33–8090 for reports disclosing transactions by a company's officers and directors in that company's securities.

[42] See Press Release No. 2002–75, dated May 30, 2002, available at our website at *http://www.sec.gov*.

[43] 15 U.S.C. 13(a).

[44] This release is the fourth in a series of initiatives designed to significantly improve the timeliness and quality of disclosures by companies to the public. In April, we issued two proposing

Continued

II. Discussion of Proposed Changes

A. Proposed Form 8–K Changes

We propose to add 11 new items to the list of events that require a company to file a current report on Form 8–K.[45] In addition, we propose to make significant changes to existing Form 8–K items and to move two items from other Exchange Act reports to Form 8–K. Through our extensive experience with, and reviews of, filings,[46] as well as comment letters from the public, we believe that these items represent events that presumptively have, or can have, such significance that timely disclosure is necessary for the market to perform properly and efficiently. The following is a list of the new disclosure items that we propose to add to Form 8–K:

- Entry into a material agreement not made in the ordinary course of business;
- Termination of a material agreement not made in the ordinary course of business;
- Termination or reduction of a business relationship with a customer that constitutes a specified amount of the company's revenues;
- Creation of a direct or contingent financial obligation that is material to the company;
- Events triggering a direct or contingent financial obligation that is material to the company, including any default or acceleration of an obligation;[47]
- Exit activities including material write-offs and restructuring charges;
- Any material impairment;
- A change in a rating agency decision, issuance of a credit watch or change in a company outlook;
- Movement of the company's securities from one exchange or quotation system to another, delisting of the company's securities from an exchange or quotation system, or a notice that a company does not comply with a listing standard;
- Conclusion or notice that security holders no longer should rely on the company's previously issued financial statements or a related audit report; and
- Any material limitation, restriction or prohibition, including the beginning and end of lock-out periods, regarding the company's employee benefit, retirement and stock ownership plans.

We also propose to move the following two items from other Exchange Act reports to Form 8–K:

- Unregistered sales of equity securities by the company;[48] and
- Material modifications to rights of holders of the company's securities.[49]

Finally, we propose to expand the current Form 8–K item that requires disclosure about the resignation of a director[50] to also require disclosure regarding the departure of a director for reasons other than a disagreement or removal for cause, the appointment or departure of a principal officer, and the election of new directors. We also would combine the current Form 8–K item regarding a change in a company's fiscal year with a new requirement to disclose any material amendment to a company's articles of incorporation or bylaws.

The substantive requirements included in two of the proposed disclosure items, Material Modifications to Rights of Security Holders and certain aspects of Events Triggering a Direct or Contingent Financial Obligation That Is Material to the Registrant, formerly had been included in Form 8–K.[51] In 1977, we moved those items into Form 10–Q.[52] In light of the importance of such information to investors, we believe that it is appropriate to move these items back into Form 8–K.

We expect to make these amendments prospective only if we decide to adopt them. Therefore, if any of the proposed disclosure events occurs before effectiveness of any final rule, then no report would be required for that event. We further expect that, if we decide to adopt these proposals, we would make the new requirements effective 60 days after adoption. We solicit comment as to whether 60 days would provide sufficient time for transition to the new requirements. Should the period be shorter, *e.g.,* 30 days, or longer, *e.g.,* 90 days?

1. Discussion of Proposed Revisions to Form 8–K Disclosure Items

We propose to reorganize the Form 8–K disclosure items. We address the proposal to reorganize those items in more detail later in this release. This section of the release presents a discussion of the proposed changes to the Form 8–K items in the order that we expect them to appear if we adopt the proposals.

Section 1—Registrant's Business and Operations

Item 1.01 Entry Into a Material Agreement

We propose to add a new Form 8–K item that would require disclosure whenever a company enters into an agreement that is material to the company and that is not made in the ordinary course of the company's business. The company also would have to disclose any material amendment to a material agreement.[53] Under the proposed item, companies would have

releases. The first would shorten the filing deadline of large issuers' annual reports on Form 10–K or 10–KSB from 90 to 60 days and the filing deadline of their quarterly reports on Form 10–Q or 10–QSB from 45 to 30 days, as well as require these issuers to disclose whether they make their annual, quarterly and current reports available to investors on their websites (Release No. 33–8089 (Apr. 12, 2002) [67 FR 19896]). The second set of proposals would require prompt disclosure by a company on Form 8–K of transactions by its officers and directors in the company's securities (Release No. 33–8090 (Apr. 12, 2002) [67 FR 19914]). In May, we issued a third release proposing disclosure regarding application of a company's critical accounting policies (Release No. 33–8098 (May 10, 2002) [67 FR 35620]).

[45] On February 13, 2002, we announced by press release our intention to consider several changes to our corporate disclosure rules as the first in a series of steps designed to improve the corporate disclosure and financial reporting system. One of the planned initiatives described in the press release was an expansion of the types of information that companies must report on Form 8–K. See Press Release 2002–22, dated Feb. 13, 2002, available at our website at *http://www.sec.gov*. The press release identified 15 disclosure items that we have evaluated for possible inclusion in Form 8–K reports. We already have proposed that a company report transactions by its executive officers and directors in the company's securities in Release No. 33–8090. We are deferring our consideration of a possible disclosure item about company waivers of corporate ethics and conduct rules until we have had the opportunity to fully review the changes proposed by the self-regulatory organizations to their corporate governance provisions. We also are deferring the possible addition of a new Form 8–K disclosure item regarding a material change in a company's accounting policy or estimate until we are able to evaluate public comment on our recently issued release that would require disclosure about a company's critical accounting policies. See Release No. 33–8098.

[46] In addition, in connection with this release, we reviewed the types of events currently being reported voluntarily on Form 8–K. Based on our review of over 200 voluntary Form 8–K filings, it appears that some companies already are voluntarily disclosing under Item 5 of Form 8–K many of the events that would be covered by the proposals and consider such information to be important to their investors.

[47] We concurrently propose to remove Item 3, Defaults Upon Senior Securities, from Part II of Forms 10–Q and 10–QSB. We believe that proposed Item 2.04 would subsume all events previously reported under this existing item.

[48] This event is currently reported under Item 2(c) of Part II of Forms 10–Q and 10–QSB and Item 5 of Part II of Forms 10–K and 10–KSB.

[49] This event is currently reported under Item 2(a) and (b) of Part II of Forms 10–Q and 10–QSB.

[50] Current Item 6 of Form 8–K.

[51] As stated elsewhere in this release, we expect that this proposed item would subsume the disclosure currently required by Item 3 of Form 10–Q, Defaults on Senior Securities.

[52] Release No. 34–13156 (Jan. 13, 1977) [42 FR 4424].

[53] An instruction to the proposed item would clarify that a company must disclose a material amendment to a material agreement even if the underlying agreement previously has not been disclosed because it was entered into prior to effectiveness of proposed Item 1.01, if it is adopted, and the company otherwise has not had to disclose it. In such a case, the company would have to file the underlying agreement, as well as the amendment to the agreement, as an exhibit to the report disclosing the amendment.

to disclose letters of intent and other non-binding agreements. Specifically, companies would have to file the agreement or letter as an exhibit to Form 8–K and disclose or provide the following information:

- The identity of the parties to the agreement and a description of any material relationship between any of the parties other than in respect of the agreement;
- A brief description of the agreement;
- The rights and obligations of each party to the agreement that are material to the company;
- Any material conditions to the agreement becoming binding or effective; and
- The duration of the agreement and any material termination provisions.

An instruction to the proposed item states that any material agreement not made in the ordinary course of the company's business must be disclosed under the proposed item. The proposed instruction also provides further guidance as to which agreements must be disclosed and filed under the item.[54] Another instruction to the proposed item states that a company must provide disclosure under the proposed item if the company succeeds as a party to the agreement by assumption or assignment.

We note that, although this proposed item would not require disclosure about agreements still under negotiation, there may be instances when a company is under some other duty to disclose contract negotiations.[55] We do not intend to change current law as to when disclosure about these negotiations is required. Therefore, this release does not address this issue.

We recognize that a company may need to report a given event under proposed Item 1.01 as well as other items, such as proposed Item 2.03. We note that General Instruction D to Form 8–K states that a company need only file one report listing all relevant item numbers. Therefore, the company could file a single Form 8–K and include the disclosure in a single place under the captions for both items.

Questions Regarding Proposed Item 1.01

- We seek comment as to whether the proposed disclosure only should be required with respect to definitive agreements which are unconditionally binding or binding subject only to conditions stated in the agreement.
- Should we require disclosure of letters of intent and other non-binding agreements? Would this cause any competitive harm or otherwise disrupt the ability of companies to negotiate agreements for the benefit of the company and its investors? Would this result in companies having to frequently file a Form 8–K? Are these types of non-binding agreements not yet ripe for disclosure? Should we limit or expand the proposed disclosures about material agreements in any way, and if so, how?
- Because we believe that agreements can be material for reasons other than the monetary amount involved, we propose to require disclosure under this item based on a ''materiality'' standard and do not propose to tie the disclosure to a financial measure. We seek comment as to whether we should instead use a threshold that is tied to a financial measure, either for all agreements subject to disclosure or for specified types of agreements subject to disclosure.
- We solicit additional comment as to whether companies should have to disclose all material agreements not made in the ordinary course of business as proposed. Are there some material agreements that companies should have to file even if Item 601(b)(10) would permit a material contract pertaining to the subject matter not to be filed as an exhibit? Should the proposed item exclude certain types of material agreements not made in the ordinary course of business pertaining to the same subject matter as material contracts that must be filed as exhibits under Item 601(b)(10)?
- Conversely, should companies have to disclose a material agreement that accompanies the ordinary course of the company's business if Item 601(b)(10) of Regulation S–K would deem it to not be made in the ordinary course of business and therefore would require the agreement to be filed as an exhibit? Are there additional types of agreements that accompany a company's ordinary business that are so significant that we should deem them not to be made in the ordinary course of business for purposes of the proposed item?
- Should we require companies to file the material agreements that are the subject of the Form 8–K disclosure as exhibits to the Form 8–K? Should we require companies to file letters of intent and other non-binding agreements as exhibits?
- Is the proposed two business day filing deadline workable with respect to the disclosure that this item would require? Would the proposed deadline for filing disclosure about a company's entry into a material agreement give rise to any competitive advantages or disadvantages?

Considerations Regarding Business Combinations

Proposed new Item 1.01 would require disclosure of business combination agreements and other agreements that relate to extraordinary corporate transactions. The filing of a Form 8–K for a business combination may require separate filings under Rule 165[56] under the Securities Act of 1933[57] and Rule 14d–2(b)[58] or Rule 14a–12[59] under the Exchange Act.[60] In some circumstances, the filing of the Form 8–K may constitute the first ''public announcement'' of the business combination for purposes of Rule 165 and Rule 14d–2(b) and would trigger a filing obligation under those rules.

Under the current rules, the Commission staff has taken the position that a Form 8–K filing to disclose a merger agreement does not eliminate the need to file pursuant to Rule 165, Rule 14d–2(b) and Rule 14a–12. Public information about the business combination should be located in the filings under Rule 165, Rule 14d–2(b) and Rule 14a–12 for ease of reference for investors. However, to avoid the duplicative filing of the merger agreement, the staff has said that the filing under Rules 165, 14d–2(b) and 14a–12 can incorporate the merger agreement by reference to the Form 8–K.[61] To simplify the filing obligations and avoid the need to make duplicative filings, should the Form 8–K include boxes on the cover page so that the filer

[54] In particular, the proposed instruction states that an agreement would be deemed to be not made in the ordinary course of a company's business, and therefore would have to be disclosed under the proposed item, if the agreement is such as ordinarily accompanies the kind of business conducted by the company, if it involves the subject matter identified in Item 601(b)(10)(ii)(A)–(D) of Regulation S–K. An agreement involving the subject matter identified in Item 601(b)(10)(iii)(A) or (B) also would have to be disclosed unless Item 601(b)(10)(iii)(C) would not require a company to file a material contract involving the same subject matter as an exhibit.

[55] See *In re Time Warner Securities Litigation,* 9 F.3d 259 (2d Cir. 1993) and *In re Healthcare Compare Corp. Securities Litigation,* 75 F.3d 276 (7th Cir. 1996).

[56] 17 CFR 230.165.

[57] 15 U.S.C. 77a *et seq.*

[58] 17 CFR 240.14d–2(b).

[59] 17 CFR 240.14a–12.

[60] Rule 165 provides an exemption from Section 5 of the Securities Act for communications relating to the business combination made before the filing of a registration statement for that business combination if all written communications are filed under Rule 425 [17 CFR 230.425]. Rule 14d–2(b) allows communications by the bidder before the commencement of the tender offer provided that all written communications are filed. Rule 14a–12 allows solicitations to be made before furnishing a proxy statement meeting the requirements of Rule 14a–3(a) [17 CFR 240.14a–3(a)] if the written solicitations are filed.

[61] See Q&A No. I.B.13, Manual of Publicly Available Telephone Interpretations, Third Supplement, July 2001.

can indicate that the filing of the Form 8–K will also satisfy the filing obligation under Rule 165, Rule 14d–2(b) and/or 14a–12? [62]

Item 1.02 Termination of a Material Agreement

The obvious converse to entry into a material agreement is the termination of a material agreement. If a material agreement not made in the ordinary course of business to which the company is a party is terminated, the company would have to furnish or provide the following: [63]

- The identity of the parties to the agreement and a description of any material relationship between any of the parties other than in respect of the agreement;
- A brief description of the agreement;
- A description of the material circumstances surrounding the termination;
- Any material early termination penalty incurred by the company; and
- A discussion of management's analysis of the effect of the termination on the company.

Although a company would be required to file a copy of the agreement being terminated as an exhibit to the Form 8–K, the company could satisfy this filing requirement by incorporating by reference a previous filing that includes the agreement. Under the proposed item, companies would not have to disclose negotiations or discussions regarding the termination of an agreement. If the company is not the terminating party, it would not have to disclose information until it receives a written termination notice from the terminating party, unless the agreement provides for notice in some other manner, and all material conditions to termination other than those within the control of the terminating party or the passage of time have been satisfied.[64]

Questions Regarding Proposed Item 1.02

- Are the standards for determining the point at which disclosure about termination of a material agreement would be required under the proposed item appropriate? The proposal states that no disclosure would be required until all material conditions to termination have occurred. Is this a workable standard? Would the standard cause difficulty when there is a legitimate dispute as to whether all material conditions to termination have occurred? Should the rules contain guidance as to when negotiations have ceased?
- Should we limit or expand the proposed disclosure in this item and, if so, how? For example, should we require the proposed disclosure for the expiration of a contract according to its terms?
- Does the proposal cover the proper scope of agreements and instruments?
- Would disclosure of the termination of a material agreement, the entry into which was not disclosed, impose an undue burden on a company? Would investors find such disclosure confusing or misleading?

Item 1.03 Termination or Reduction of a Business Relationship With a Customer

This proposed new item would require disclosure when a company becomes aware that a customer terminates or reduces the scope of a business relationship with the company and the loss of revenues to the company from such termination or reduction equals 10% or more of the company's consolidated revenues during the company's most recent fiscal year. For purposes of the proposed item, a group of customers under common control or customers that are affiliates of each other would be regarded as a single customer. This test is similar to the test in Item 101 of Regulation S–K.[65] An instruction to the proposed item states that no disclosure is required if the company is in negotiations or discussions with a customer, or a suspension or reduction of orders occurs, unless and until an executive officer of the company is aware that the termination or reduction has occurred or will occur.

Questions Regarding Proposed Item 1.03

- We solicit comment on the proposed 10% consolidated revenues threshold. Should the 10% test be higher or lower?
- Rather than the proposed 10% test, should we base the filing requirement on a materiality threshold?
- Should there be a different threshold for small business issuers than for larger companies?
- Should we use a measurement period other than the company's most recent fiscal year for determining whether the loss exceeds the 10% threshold? If so, please specify the period that would be more appropriate and explain why.

Question Regarding Proposed Section 1

We solicit comment as to whether there are other types of highly significant corporate events that should be included within the proposed Section 1 category of disclosure items (''Registrant's Business and Operations'').

Section 2—Financial Information

Item 2.01 Completion of Acquisition or Disposition of Assets

This proposed item would retain most of the substantive requirements included in Item 2 of existing Form 8–K. Item 2 currently requires disclosure if a company or any of its majority-owned subsidiaries has acquired or disposed of a significant amount of assets, otherwise than in the ordinary course of business. Under the proposed changes, a company would report its entry into a material agreement to acquire or dispose of assets under proposed new Item 1.01, Entry into a Material Agreement. However, we recognize that there may be a significant time lag between the entry into the acquisition or disposition agreement and the final closing of the transaction. During this period, substantial uncertainties may exist which could prevent or delay completion of the transaction. Such uncertainties are reflected in the market price of the parties' securities. Although termination of such agreements would be reported under proposed Item 1.02 of Form 8–K, Termination of a Material Agreement, we believe that investors would benefit from continued prompt reporting about the company's completion of its acquisition or disposition of a significant amount of assets.

Proposed Item 2.01 would continue to require the same basic disclosure as required by existing Item 2, except that disclosure in existing Item 2(b) no longer would be required about the nature of the business in which the acquired assets were used and whether the company acquiring the assets intends to continue such use. Furthermore, the proposed new item would revise the wording regarding disclosure of the source of funds to make the requirements clearer. The

[62] The Form 8–K filing would have to include the legends required by those rules. Also, the appropriate EDGAR tag (specifically, ''425'', ''TO–C'' or ''DEFA14A'') also would be necessary. The staff interpretation regarding incorporation by reference will not be necessary if we adopt the proposals and allow the Form 8–K to satisfy the filing obligation under Rules 165, 14d–2(b) and 14a–12.

[63] Because we propose that these proposals would apply prospectively only, a company may not have filed, under proposed Item 1.01, a material agreement entered into before the adoption date of that item. Nevertheless, proposed Item 1.02 would require disclosure if such an agreement is terminated after the adoption date. See Instruction 2 to proposed Item 1.02.

[64] Instruction 1 to proposed Item 1.02.

[65] 17 CFR 229.101. See, in particular, Item 101(c)(1)(vii) of Regulation S–K [17 CFR 229.101(c)(1)(vii)].

proposed wording would more closely track Item 3 of Schedule 13D,[66] which presents the requirements in more detail. There are no substantive differences between the proposed disclosure requirements and the requirements in existing Item 2 of Form 8–K.

We propose to retain the existing test for determining whether an acquisition or disposition involves a ''significant amount of assets'' because of companies' familiarity with this test. Under this standard, companies must disclose only acquisitions or dispositions of assets whose value or cost exceeds 10% of the company's total assets.

Retention of the 10% test in this proposed item may, however, result in some incongruence between this item and proposed Item 1.01. Proposed Item 1.01 does not include a 10% threshold, but rather requires disclosure about any material agreement. This leaves open the possibility that a company could determine an agreement to acquire or dispose of assets whose value or cost is 10% or less of the company's total assets to be material.[67] In this circumstance, under the proposals, the company would file a Form 8–K when it enters into the agreement, but would not file a Form 8–K when it completes the acquisition or disposition.

Questions Regarding Proposed Item 2.01

- We solicit comment on whether we should modify Item 2 to existing Form 8–K in the manner proposed.
- Would investors benefit from disclosure about a company's completion of an acquisition or disposition if we require disclosure about the company's entry into the agreement underlying the transaction?
- Should we harmonize the thresholds for disclosure used in proposed Items 1.01, 1.02 and 2.01 with respect to agreements to acquire or dispose of assets? If so, should we extend the 10% test to proposed Items 1.01 and 1.02? Or should we tie proposed Item 2.01 to the more general ''materiality'' test used in proposed Items 1.01 and 1.02?

Item 2.02 Bankruptcy or Receivership

This proposed item would retain the basic substantive requirements included in Item 3 of existing Form 8–K. We propose only minor changes to make the item more readable, such as breaking out embedded lists from the text and moving some language currently included in the text into an instruction to the item.

Questions Regarding Proposed Item 2.02

- We solicit comment as to whether we should make any substantive changes to existing Item 3 of Form 8–K.
- Do the streamlining amendments make the item more understandable?

Item 2.03 Creation of a Direct or Contingent Financial Obligation That Is Material to the Registrant

This proposed new item would require a company to disclose information whenever it or a third party enters into a transaction or agreement that creates any material direct or contingent financial obligation to which the company is subject.[68] Disclosure would be required under this proposed item whether or not the company is a party to the agreement. For example, a loan agreement entered into by an affiliate of the company or third party that benefits from a pre-existing guarantee or keepwell agreement of the company would trigger a disclosure requirement whether or not the company is a party to the loan agreement. Disclosure would be required only when the company or a third party enters into a definitive agreement that is unconditional or subject only to customary closing conditions.

Proposed Item 2.03 would require a company to file the document, if any, subjecting the company to the direct or contingent financial obligation as an exhibit to Form 8–K and disclose or provide:

- A brief description of the transaction or agreement, including an identification of the parties to the agreement;
- The nature and amount of the company's material direct or contingent financial obligation, including a description of events that may cause the obligation to arise, increase or become accelerated;
- If applicable, the name of any underwriters or placement or other agents for the transaction or any persons performing a similar function in the case of a private transaction, and the amount of any fee or other compensation paid to them, or the name of any lenders or other persons who are the beneficiaries of the obligation; and
- A discussion of management's analysis of the effect of the direct or contingent financial obligation on the company.

This proposed item also is intended to require disclosure of the creation of other financial obligations, including direct obligations such as registered sales of debt securities, private placements and bank loans or credit facilities, and contingent obligations such as guarantees, keepwell agreements,[69] obligations to purchase assets that are unconditional or conditioned on certain events, and similar financial obligations.

Questions Regarding Proposed Item 2.03

- This proposed item would cover a broad scope of obligations. We solicit comment on whether the scope of obligations covered by this proposed item is appropriate. Is it too broad? If so, how should we narrow it?
- Conversely, are there any obligations not covered by this item that should be? Should the item cover any non-financial obligations?
- Should we limit disclosure to obligations with respect to which a specified level of probability exists that a contingency would occur? For example, should we require disclosure only if the contingency is likely to occur? If there is a significant possibility that the contingency would occur? Should we not require disclosure if the possibility that the contingency would occur is remote? How would we define ''remote contingencies'' if we were to exclude them?
- Would the proposed item require too much, or too little, disclosure about such obligations?
- Is the meaning of ''direct financial obligation'' sufficiently clear? Would a definition of this term be helpful?
- Is the proposed definition of ''contingent financial obligation'' appropriate? If not, how should we change it? Note that the proposed list of examples of contingent obligations included in the proposed definition is not exclusive. Is there any example that we should remove from the list? Should we define ''contingent financial obligation'' in more detail? Is the proposed definition of ''keepwell agreement'' appropriate?
- As in the case of proposed Items 1.01 and 1.02, the disclosure in this

[66] 17 CFR 240.13d–101.

[67] See, for example, *TSC Industries, Inc.* v. *Northway, Inc.,* 426 U.S. 438 (1976), *Basic, Inc.* v. *Levinson,* 485 U.S. 224 (1988), *SEC* v. *Texas Gulf Sulphur Co.,* 401 F.2d 833 (2d Cir. 1968), and *Ganino* v. *Citizens Utilities Co.,* 228 F.3d 154 (2d Cir. 2000).

[68] Instruction 4 to proposed Item 2.03 specifies that the term ''contingent financial obligation'' includes guarantees, co-obligor arrangements, obligations under keepwell agreements, obligations to purchase assets and any similar arrangements and all other obligations that exist or may arise under an agreement.

[69] Instruction 4 to proposed Item 2.03 defines a ''keepwell agreement'' as any agreement or undertaking under which the company is, or would be, obligated to provide or arrange for the provision of funds or property to an affiliate or third party.

proposed item is tied to a ''materiality'' standard rather than a specific financial threshold. Because this item addresses financial obligations, would it be more appropriate to tie the proposed disclosure to a financial standard, such as a percentage of assets, equity, revenues or net income? If so, what should the standard be? Should the standard be 1%, 5%, 10% of assets, equity, revenues or net income? Or should it be some different percentage any of these? Should we use a different financial measure? If so, what?

Item 2.04 Events Triggering a Direct or Contingent Financial Obligation That Is Material to the Registrant

This proposed new item would require a company to disclose events triggering a direct or contingent financial obligation that is material to the company. The proposed item would define a ''triggering event'' as an event, including an event of default, event of acceleration or similar event, that has occurred and as a consequence of which, either: (1) A material direct or contingent financial obligation of the company that is unconditional or subject to no condition other than the passage of time has arisen (including as a result of an increase in an obligation) or been accelerated; or (2) a party to the agreement obtains the unconditional right to cause such an obligation to arise or become accelerated, regardless of whether in either case the company is a defaulting party. The events requiring disclosure under this proposed item would include a default on a security that would subject the company to a material financial obligation.[70]

Under the proposed item, no triggering event would be deemed to have occurred while the company is negotiating or discussing with other relevant parties whether a triggering event has occurred, or whether such event could be cured by waiver, amendment or similar arrangement. Despite any ongoing negotiations, disclosure is required when a party to the agreement with the right to do so notifies the company or otherwise declares that the triggering event has occurred. Such notice must be in writing unless the agreement provides for notification in another manner.

Under the proposals, if a triggering event occurs, the company would have to:

- Describe the agreement or agreements under which the triggering event occurred;
- Describe the triggering event;
- Disclose the nature and amount of the material direct or contingent financial obligation of the company that may arise, increase or become accelerated as a result of the triggering event, including obligations under cross-default, cross-acceleration or similar arrangements; and
- Discuss management's analysis of the effect on the company of the triggering event and of the obligation that has arisen, increased or been accelerated.

Disclosure would be required under this proposed item regardless of whether the company is a party to the agreement under which the triggering event occurs. The company would be required to file as an exhibit to Form 8–K, by incorporation by reference or otherwise, a copy of the document under which the company is subject to the material direct or contingent financial obligation. For purposes of the proposed item, a contingent financial obligation includes: a guarantee, a co-obligor arrangement, an obligation under a keepwell agreement, an obligation to purchase assets and any similar arrangement or obligation that exists or may arise under an agreement.[71]

This proposed new item is intended to subsume all events that currently are reported under Item 3, Defaults Upon Senior Securities, in Part II of Forms 10–Q and 10–QSB. As discussed later in this release, we propose to delete Item 3 from Part II of Forms 10–Q and 10–QSB if we adopt this proposed item.

Questions Regarding Proposed Item 2.04

- We solicit comment on the proposed definitions of the terms ''triggering event,'' ''contingent financial obligation'' and ''keepwell agreement'' for purposes of proposed Item 2.04.
- We request additional comment on the specific disclosures that the proposed item would require. Are they sufficient? Would a company be able to provide the required disclosures within two business days?
- As in the case of proposed Items 1.01, 1.02 and 2.03, this proposed item would tie disclosure to a ''materiality'' standard rather than to a specific financial threshold. Would it be more appropriate to tie this proposed disclosure to a financial measure, such as a percentage of assets, equity, revenues or net income? If so, what should that measure be? Should the standard be 1%, 5%, 10% of assets, equity, revenues or net income? Or should it be some different percentage any of these? Should we use a different financial measure? If so, what?
- The proposed item would not require disclosure when the company is still negotiating waivers or amendments of triggering events. Should we require disclosure in such circumstances? If so, at what point in the negotiations? Is it important to investors to know that these negotiations are occurring? Would disclosure of such events frustrate the purpose of the negotiations or otherwise unduly harm the interests of the company?
- Should we delete Item 3 from Part II of Forms 10–Q and 10–QSB if we adopt this proposed item? Is there any situation with respect to which Item 3 currently requires disclosure that would not be covered by the proposed new item?

Item 2.05 Exit Activities Including Material Write-Offs and Restructuring Charges

This proposed new item would require disclosure when the board of directors or the company's officer or officers who are authorized to take such action, if board approval is not required, definitively commits the company to a course of action, including a plan to terminate or exit an activity, under which the company will incur a material write-off or restructuring charge under generally accepted accounting principles.[72] Under the proposed item, a company would have to disclose:

- The date on which such commitment was made;
- A description of the course of action and reasons for the write-off or restructuring charge;
- A description of the asset or assets subject to write-off;
- The estimated amount of the write-off or restructuring charge;
- The estimated amount of the write-off or restructuring charge that will result in future cash expenditures; and
- An analysis of the effect of the write-off or restructuring charge on the company, including the segment affected.

Questions Regarding Proposed Item 2.05

- Is the triggering event for this proposed item sufficiently clear? Is the

[70] This would include defaults that currently are required to be disclosed under existing Item 3 of Form 10–Q.

[71] Instruction 2 to proposed Item 2.04. This instruction also defines a ''keepwell agreement'' to mean any agreement or undertaking under which the registrant is, or would be, obligated to provide or arrange for the provision of funds or property to an affiliate or other third party.

[72] See Emerging Issues Task Force (EITF) Issue 94–3, Liability Recognition for Certain Employee Termination Benefits and Other Costs to Exit an Activity (including Certain Costs Incurred in a Restructuring), which requires that companies recognize certain restructuring charges at the date management commits to a plan.

point at which the board of directors or its authorized officer or officers commit a company to a course of action such as a plan to terminate or exit an activity a workable trigger for the proposed disclosure? Is there a better point from which to measure the deadline for a company's reporting obligation? As an alternative, should this event be triggered when an appropriate party takes action to execute the commitment, rather than when the commitment to action is made?

- Are there other individuals or groups that may have the responsibility of taking the action that would trigger the proposed disclosure? For example, do audit committees take these actions for companies?
- Should we require disclosure only if the expected charge would represent a certain percentage, such as 1%, 5%, or 10%, of the company's assets, equity, revenues or net income? Should it be another percentage of these items? If so, what?
- Is the scope of events covered by this proposed item appropriate? Should we require disclosure of other related events as well?
- Is the scope of disclosure appropriate? Should we require companies to disclose any other information in the Form 8–K report? For example, should we require companies to disclose the information required by EITF 94–3? Would a company have sufficient time to gather the information required to be disclosed, including calculation of an estimate of the amount of the write-off or restructuring charge that the company will incur? Are there situations where the accounting treatment is determined more than two business days after the business decision to terminate or exit an activity? If so, how should we deal with this situation?
- Should we require a company to update its report on Form 8–K if there is a material change in the amount or expected effect of the write-off or restructuring charge?

Item 2.06 Material Impairments

This proposed new item would require disclosure when a company's board of directors or the company's officer or officers authorized to make the relevant conclusion, if board approval is not required, concludes that the company is required to record a material charge for impairment to one or more of its assets, including an impairment of securities or goodwill, under generally accepted accounting principles. Specifically, the company would have to disclose:

- The date on which the conclusion was reached;
- A description of the asset or assets subject to impairment and the facts and circumstances leading to the impairment;
- The estimated amount of the impairment charge; and
- An analysis of the effect of the impairment charge on the company, including the segment affected.

Questions Regarding Proposed Item 2.06

- Is the triggering event for this proposed item sufficiently clear? Is the point at which the board of directors or the authorized officer or officers conclude that the company is required to record a material charge for an impairment of an asset a workable trigger for the disclosure that would be required by this proposed item? Is there a better point from which to measure the deadline for a company's reporting obligation? As an alternative, should this event be triggered when the appropriate party actually records the charge rather than when a conclusion is drawn that the company must record the charge?
- Are there other individuals or groups that may have the responsibility of making the conclusion that would trigger the proposed disclosure? For example, do audit committees make these conclusions for companies?
- Should we require disclosure only if the expected charge would represent a certain percentage, such as 1%, 5%, or 10%, of the company's assets, equity, revenues or net income? Should it be another percentage of these items? If so, what?
- Is the scope of events covered by this proposed item appropriate? Should we require disclosure of other related events as well?
- Is the scope of disclosure appropriate? Should we require companies to disclose any other information in the Form 8–K report? For example, should we require disclosure of the asset's carrying value after the impairment charge? Would a company have sufficient time to gather the information required to be disclosed, including calculation of an estimate of the amount of the impairment charge? Are there situations where the accounting treatment is determined more than two business days after the conclusion is made to take an impairment charge? If so, how should we deal with this situation?
- Should we require a company to update its report on Form 8–K if there is a material change in the expected effect of the event?

Question Regarding Proposed Section 2

We solicit comment as to whether there are other types of highly significant corporate events that should be included within the proposed Section 2 category of disclosure items (''Financial Information'').

Section 3—Securities and Trading Market

Item 3.01 Rating Agency Decisions

This proposed new item would require a company to file a report when it receives a notice or other communication from any rating agency to whom the company provides information to the effect that the organization has decided to:

- Change or withdraw the credit rating assigned to, or outlook on, the company or any class of debt or preferred security or other indebtedness of the company (including securities or obligations as to which the company is a guarantor or has a contingent financial obligation);
- Refuse to assign a credit rating to the company, to any class of its securities, or to any of its indebtedness after the company has requested the organization to do so;
- Place the company or any class of its securities or indebtedness on ''credit watch'' or similar status; or
- Take any similar action.

Under the proposed item, the company would have to disclose the date that the company received the rating agency's notice or communication, the name of the rating agency, and the nature of the rating agency's decision. The company also would have to discuss management's analysis of the effect of the change or other decision on the company. Disclosure under this item would not be required until the rating organization notifies the company that the rating organization has made a decision to take one of the enumerated actions. If the company is still in negotiations or appealing a preliminary indication that a rating agency intends an action covered by the proposed item, no disclosure would be required. However, once all good faith negotiations and appeals cease, disclosure would be required.

We note that there are many organizations that currently provide ratings of companies, their securities, and their indebtedness.[73] Some of these ratings are solicited by the company, and others are not. This proposed item

[73] We plan to engage in a thorough examination of the role of rating agencies in the U.S. securities markets.

does not distinguish between solicited and unsolicited ratings, except that a company only would have to disclose a rating agency's refusal to issue a rating if the company requested a rating. Because the proposed item would require disclosure only if the rating agency notifies or otherwise communicates with the company about its intended action and the company has provided information to the rating agency (other than annual reports or filings with the Commission), a company would not have to constantly monitor actions taken by all rating agencies to determine whether they are rating the company or its securities on an unsolicited basis. The issue of whether or not the company compensates the rating agency would be irrelevant under the proposed item. For purposes of the proposed item, a ''rating agency'' would mean an entity whose primary business is the issuance of credit ratings.[74]

Rating organizations typically disclose rating changes publicly via press release at the same time or shortly after they notify affected companies of the changes. Therefore, investors already can rapidly obtain access to information about rating changes if they know where to find the press releases and are willing to routinely monitor these releases to find information about particular companies and securities. However, some investors may not routinely monitor all press releases issued by ratings organizations and therefore likely would benefit from disclosure about ratings changes filed by companies on Form 8–K.

In 1994, we issued a proposal to require companies to disclose ratings changes in their Form 8–K reports.[75] Although we did not adopt the proposal, we recognize that such rating changes can have a material impact on a company and its publicly traded securities. Therefore, such information can be useful to an investor in making investment and voting decisions. Although the Commission does not endorse the validity or accuracy of securities ratings, we recognize that investors find rating changes ''newsworthy.''

Questions Regarding Proposed Item 3.01

- Is this proposed item necessary in view of the typical practice by rating organizations to promptly issue press releases about rating changes? Is current disclosure by rating agencies through press releases adequate? Would investors benefit from having companies disclose this information in a uniform place?
- Should we limit the disclosure to ratings by nationally recognized statistical rating organizations? Should we limit the disclosure to some other specified group of rating agencies? Is the definition of ''rating agency'' adequate?
- Should we require the proposed disclosure only if there is a contractual relationship between the rating agency and the company?
- Should we provide more guidance as to when a company has provided sufficient information to an agency to require disclosure?
- Do significant delays between a rating organization's decision to make a rating change and public announcement of the change frequently occur?
- We also solicit comment as to whether the types of actions that would trigger the proposed item are appropriate. Are there other actions by a rating organization that should trigger the proposed disclosure? For example, should we require disclosure when a rating agency changes an outlook on an entire industry group to which a company belongs?

Item 3.02 Notice of Delisting or Failure to Satisfy Listing Standards; Transfer of Listing

This proposed new item would require a company to report any notice from the national securities exchange or national securities association that is the principal trading market for a class of the company's common stock or similar equity securities that the company or a class of its securities no longer satisfies the listing requirements or standards of the exchange or association, or that a class of the company's securities has been delisted by the exchange or association.[76] Specifically, a company would have to file a copy of the notice, if in writing, and disclose or provide:

- The date that it received the notice;
- The listing requirement or standard that the company failed to satisfy or the reason for the delisting as indicated by the exchange or association; and
- A discussion of the company's planned response to the notice and management's analysis of the effect of the delisting or failure to satisfy a listing standard on the company.

This proposed item also would require a company to file a Form 8–K when the company has taken definitive action to terminate the listing of a class of its common stock or similar equity securities on the exchange or inter-dealer quotation system that is the principal trading market for those securities, including by reason of a transfer of the listing or quotation to another securities exchange or quotation system. In the Form 8–K, the company would have to describe the action taken and state the date of the action.

Questions Regarding Proposed Item 3.02

- Should the company have to file the notice as an exhibit to Form 8–K, as proposed, or is the required disclosure sufficient? Conversely, if the company has to file the actual notice, should we require less disclosure about the notice?
- Is the requirement to file a report upon receipt of a notice that the company no longer satisfies a listing requirement premature? Would such a filing adversely affect the liquidity of the company's securities so as to warrant removal of this requirement?
- Should we not require disclosure under this proposed item while the company is negotiating with or appealing a decision by an exchange or association regarding delisting or the company's failure to satisfy a listing standard following notice?
- Should we require disclosure only upon actual delisting, rather than when the company receives notice that its securities may be delisted? Should we require disclosure both when the company receives notice about a possible delisting and when the company's stock actually is delisted?

Item 3.03 Unregistered Sales of Equity Securities

This proposed item would require a company to disclose the information in paragraphs (a) through (e) of Item 701 of Regulation S–K regarding the company's sale of equity securities in a transaction that is not registered under the Securities Act. This disclosure currently is required in Item 2(c) of Forms 10–Q and 10–QSB and Item 5(a) of Forms 10–K and 10–KSB.[77] We propose to move this disclosure from companies' annual and quarterly reports to Form 8–K. We believe that more timely disclosure of this information will benefit investors due to the fact that unregistered sales of equity securities can have a significant dilutive effect on existing investors' holdings.

[74] Instruction 3 to proposed Item 3.01. This term is used in the proposed item the same way that it is used in Rule 100(b)(2)(iii) of Regulation FD [17 CFR 243.100(b)(2)(iii)].

[75] Release No. 33–7086 (Aug. 31, 1994) [59 FR 46304].

[76] For example, Section 802.02 of the NYSE Listed Company Manual requires a domestic company to issue a press release stating that it has fallen below a continued listing standard of the exchange within 45 days after receiving notice from the NYSE.

[77] See 17 CFR 249.308a, 249.308b, 249.310 and 249.310a.

Questions Related to Proposed Item 3.03

• We solicit comment as to whether we should move this disclosure to Form 8–K. Would investors benefit from more prompt disclosure of unregistered sales of a company's equity securities?

• Do we need to define the term ''sells in a transaction'' for purposes of this proposed item?

• Should the proposed item permit companies to aggregate sales occurring within a short period of time? If so, during what period should we permit aggregation?

• Even if we move this disclosure to Form 8–K as proposed, should we continue to require it in a company's quarterly and annual reports? Is there value to requiring an aggregate listing of sales made during the periods covered by these reports, even though the Form 8–K would report each sale as it occurs?

• Should we limit Form 8–K disclosure to only large unregistered sales? How should we define ''large''? Should it be based on a percentage, such as 1%, 5% or 10%, of the company's outstanding shares? Should it be based on a percentage, such as 1%, 5% or 10%, of the market float?

Item 3.04 Material Modifications to Rights of Security Holders

This proposed item would require a company to disclose material modifications to the rights of holders of any class of the company's registered securities, and to briefly describe the general effect of such modifications on the company's security holders. In 1977, we moved this item from Form 8–K to Form 10–Q to lessen the burden on companies.[78] Under current requirements, a reporting company must disclose the general effects of those modifications in the Form 10–Q or Form 10–QSB for the quarter in which the modifications occur. That requirement allows reporting companies to delay filing this information for up to four and a half months after security holder rights have been modified. That timing is unnecessarily long given the significance of these matters to security holders and the possibility that modifications to their rights could dramatically affect the value of the securities they own. The substance of the disclosure would be the same as currently required by Items 2(a) and (b) of Forms 10–Q and 10–QSB.[79]

Questions Regarding Proposed Item 3.04

• We solicit comment as to whether we should move this disclosure to Form 8–K. Would investors benefit from more prompt disclosure of these events?

• Even if we move this disclosure to Form 8–K as proposed, should we continue to require it in a company's quarterly reports?

• Should we require disclosure of such modifications only if the class of securities modified is registered or, in the case of unregistered debt, constitutes a certain percentage, such as 5%, of the company's assets?

Question Regarding Proposed Section 3

We solicit comment as to whether there are other types of highly significant corporate events that should be included within the proposed Section 3 category of disclosure items (''Securities and Trading Market'').

Section 4—Matters Related to Accountants

Item 4.01 Changes in Registrant's Certifying Accountant

This proposed item is substantively the same as Item 4 of existing Form 8–K. The only revision that we propose to make to the existing item is deletion of the phrase ''and the related instructions to Item 304.'' We believe that it is implicit that a company will consider and comply with the instructions to our disclosure items. Therefore, we propose to delete this phrase as unnecessary.

Questions Regarding Proposed Item 4.01

• We solicit comment on whether we should make any changes to the substantive requirements imposed by Item 4 of existing Form 8–K.

• Should we require similar disclosure regarding a change in the auditor of a company's employment benefit plan if that auditor is different from the company's independent accountant?

Item 4.02 Non-Reliance on Previously Issued Financial Statements or a Related Audit Report

This proposed new item would require a company to file a Form 8–K if and when its audit committee, or the board of directors in the absence of an audit committee, or the company's officer or officers authorized to take such action, concludes that any of the company's previously issued financial statements no longer should be relied upon. A company similarly would be required to file a Form 8–K if and when it receives notice from its current or a previously engaged independent accountant that the company should take action to prevent future reliance on a previously issued report related to any such financial statements.[80] The financial statements and audit reports covered by this proposal are those required pursuant to Regulation S–X[81] or Regulation S–B. This proposed item would require the company to file the notice, if it is in writing, and disclose or provide:

• The date on which the conclusion was reached or the registrant received the notice;

• A description of the events giving rise to the conclusion or notice related to the reliability of the financial statements;

• A statement of whether the audit committee, or the board of directors in the absence of an audit committee, discussed with the independent accountant the subject matter giving rise to the conclusion or notice; and

• A description of management's plans to alleviate the reliance issue.

In addition, when the company files a Form 8–K in response to a notice from the independent accountant, the company would have to provide the independent accountant with the Form 8–K disclosure no later than the business day after it files and request that the accountant furnish a letter to the company as soon as possible stating whether the accountant agrees with the disclosure, and if not, the respects in which it disagrees. Within two business days after it receives a letter from the accountant, the company would have to file that letter as an exhibit by amendment to the relevant Form 8–K.

Questions Regarding Proposed Item 4.02

• Would the proposed item elicit disclosure about any events that do not relate to the validity of the financial statements or report itself?

• Are there other actions taken by an independent accountant with respect to a previously issued audit report that should be disclosed?

• Should we require disclosure of events relating to a company's quarterly financial statements?

• We request comment as to whether the company should have to describe

[78] See Release No. 34–13156 (Jan. 13, 1977) [42 FR 4424].

[79] See 17 CFR 249.308a and 249.308b.

[80] See Codification of Statements on Auditing Standards AU § 561.06. In 1998, we proposed a similar item that would have required disclosure in situations covered by proposed Item 4.02 but also when the independent auditor notifies the company that the auditor will not consent to the use of its prior audit report in a filing with the Commission. We received comments noting that if we required such disclosure, we could elicit disclosure about events that do not implicate a problem with the report itself, such as when a company's independent accountant refuses to give its consent due to a fee dispute with the company. Therefore, the proposed disclosure is not triggered by an independent accountant's unwillingness to grant its consent to the company's use of a previously issued audit report.

[81] 17 CFR 210.1–01 *et seq.*

the events giving rise to the company's conclusion or the independent accountant's notice and whether the proposed disclosure regarding any discussions between the company's audit committee or board and the independent accountant regarding the subject matter of the notice is appropriate.

• Should the company have to furnish the disclosure required by the proposed item to the independent accountant? If so, should the company have to send the required disclosure to the independent accountant before it files the Form 8–K with the Commission? On the same day as the company files the Form 8–K?

• Should the independent accountant be asked to respond to the company's request for a letter by a specific date rather than ''as soon as possible'' after the company makes the request? Finally, should the company have to file the independent accountant's letter as an exhibit to the Form 8–K? If yes, should the company have to file the letter within two business days after the company receives it, as proposed? Should the proposed two business day period be shorter or longer?

Question Regarding Proposed Section 4

We solicit comment as to whether there are other types of highly significant corporate events that should be included within the proposed Section 4 category of disclosure items (''Matters Related to Accountants'').

Section 5—Corporate Governance and Management

Item 5.01 Changes in Control of Registrant

This proposed item is substantively the same as Item 1 of existing Form 8–K. We propose only to streamline this existing disclosure by, for example, breaking out lists and rearranging the requirements set forth in the item. Although the proposed item would continue to require disclosure regarding the source of funds used to effect a change in control, the proposed item would revise the wording regarding disclosure of the source of funds to make the requirements clearer. The proposed wording would more closely track Item 3 of Schedule 13D,[82] which is more detailed. There are no substantive differences between the proposed disclosure requirements and the requirements in existing Item 1 of Form 8–K.

We also propose to add an instruction to the item to clarify that responses may be made by incorporation by reference of disclosure from an earlier filing. Hence, if the change of control occurs as a result of a previously reported merger agreement, any relevant details of the agreement could be furnished by the company's incorporation by reference of that earlier report.

Questions Regarding Proposed Item 5.01

• We solicit comment as to whether the proposed change to the source of funds disclosure is appropriate.

• Should we make any substantive amendments to Item 1 of existing Form 8–K?

• Should companies be allowed to respond to certain of the disclosure requirements by incorporation by reference to an earlier report? Would it be more appropriate to require companies to repeat prior disclosure in the report so that investors need not search for the previously filed report?

Item 5.02 Departure of Directors or Principal Officers; Election of Directors; Appointment of Principal Officers

a. Disclosure Under Proposed Item 5.02(a) When a Director Resigns or Declines to Stand for Re-Election Due to a Disagreement or Is Removed for Cause

This proposed item would be similar to Item 6 of existing Form 8–K in that both the proposed and existing items pertain to the resignation of a corporate director. However, the proposed item would add several new substantive requirements.

Currently, Item 6 requires disclosure only if a director departs as a result of a disagreement, provides a letter to the company describing the disagreement and requests that the company publicly disclose the matter. Thus, the burden of knowing what actions are necessary to trigger disclosure pursuant to the item is placed solely on the director. If the director desires the company to disclose information about the disagreement, but is not aware that he or she must formally request the company to make such disclosure, no disclosure is required.

Under the proposal, if a director has resigned or declined to stand for re-election to the board of directors since the date of the last annual meeting of shareholders because of a disagreement with the company, known to an executive officer of the company, on any matter relating to the company's operations, policies or practices, or if a director has been removed for cause from the board of directors, the company would have to disclose:

• The date of such resignation, declination to stand for re-election, or removal;

• Any positions held by the director on any committee of the board of directors before the director's resignation, declination to stand for re-election, or removal; and

• The circumstances of the director's resignation, declination to stand for re-election or removal.

If the director furnishes the company with any written correspondence concerning the circumstances surrounding his or her resignation, declination, or removal, the company would have to summarize the contents of that correspondence and file a copy of the correspondence as an exhibit to the report on Form 8–K regardless of whether the director requests disclosure of its contents. Furthermore, the company would have to provide the director with a copy of the disclosures it is making in response to this proposed item that the director would have to receive no later than the business day following the day that the company files the disclosures with the Commission. The company would have to request the director to furnish the company with a letter addressed to the Commission as soon as possible stating whether he or she agrees with the company's disclosures and, if not, stating the respects in which he or she does not agree. Finally, the company would have to file the director's letter with the Commission within two business days after receipt as an exhibit by amendment to the report on Form 8–K.

Questions Regarding Item 5.02(a)

• Is it appropriate to modify the existing disclosure requirements and disclosure trigger in the manner proposed when a director resigns or declines to stand for re-election or is removed for cause?

• Should the company have to file any written correspondence from a director regarding the director's resignation, declination or removal as a Form 8–K exhibit?

• Should the company have to describe the circumstances of the director's resignation, declination or removal? If so, should the company have to send the disclosure to the director? Should the company have to send the disclosure to the director before it files the Form 8–K with the Commission? Should the company have to ask the director to furnish the company with a response? On the same day as the company files the Form 8–K?

• Should the director be asked to respond to the company's request for a letter by a specific date rather than ''as soon as possible'' after the company makes the request?

[82] 17 CFR 240.13d–101.

• Should the company have to file the director's letter as a Form 8–K exhibit? If yes, should the company have to file the letter within two business days after the company receives it as proposed? Should the proposed two day period be shorter or longer?

• Also, would the proposals provide sufficient time for the company to make the required disclosures? If not, how much time would be required? Why?

b. Disclosure Under Proposed Item 5.02(b) When Certain Officers Resign or Are Terminated From a Position and Disclosure When a Director Resigns, Is Removed or Declines To Stand for Re-Election for Any Reason Other Than as a Result of a Disagreement or for Cause

Proposed Item 5.02(b) would require disclosure when the company's principal executive officer, president, principal financial officer, principal accounting officer, principal operating officer or any person serving in an equivalent position resigns or is terminated from that position. Therefore, if an officer is removed from one of the stated positions and reassigned elsewhere, disclosure would be required. The company would have to disclose the date that the event occurs and the reasons for the event. It also would require disclosure when a director resigns, is removed or declines to stand for re-election for any reason other than as a result of a disagreement or for cause.

One important difference between the proposed disclosure under this Item 5.02(b) and the proposed disclosure about a director's departure because of a disagreement under proposed Item 5.02(a) is that if an officer resigns, is terminated or reassigned, as the result of a disagreement with the company, the company would not be obligated to disclose the reasons for, or seek the officer's explanation of, the departure as it would be if a director departed under similar circumstances. We believe that the nature of the relationship between a director and the company's security holders, including the security holders that elect directors, is sufficiently different to justify the expanded procedures for directors. The function of directors is to oversee the company for the shareholders to whom they are directly answerable.

Questions Regarding Proposed Item 5.02(b)

• Should the item impose an obligation on the company to describe any disagreement between a departing officer and the company? If so, should this be the case only with respect to certain types of disagreements, *e.g.,* a disagreement over an accounting matter, or only with respect to certain types of officers, *e.g.,* financial officers? Should the item impose an obligation on the company to solicit an explanation from the departing officer of the reasons for his or her departure?

• Should we require disclosure of the reasons for an officer's or director's departure in instances where there is no dispute between the officer or director and the company?

• Is the list of officers covered by the proposed item appropriate? Should we require disclosure regarding the departure of other officers as well? If so, which officers?

• With respect to the resignation of one of the listed officers, is the timing appropriate? Should we delay the disclosure requirement until the officer or the company otherwise publicly announces a planned departure?

c. Disclosure Under Proposed Item 5.02(c) and (d) When the Company Appoints Certain New Officers or a New Director Is Elected

This proposed item also would require disclosure if the company appoints a new principal executive officer, president, principal financial officer, principal accounting officer, principal operating officer, or person serving an equivalent function. If such an event occurs, proposed Item 5.02(c) would require the company to disclose the officer's name, position, the date of the appointment, a brief description of any arrangement or understanding pursuant to which the officer was selected as an officer, the information required regarding the officer's background and certain related transactions with the company,[83] and a brief description of the material terms of any employment agreement between the company and that officer.

In addition, if a new director is elected to the board, except by a vote of security holders at an annual meeting, proposed Item 5.02(d) would require disclosure of the new director's name, the election date, a brief description of any arrangement or understanding pursuant to which the new director was selected as a director, any committees to which the new director has been, or at the time of the disclosure is expected to be, named, and information regarding certain related transactions between the new director and the company.[84]

Certain information required to be disclosed regarding new officers and directors would be permitted to be filed by amendment after the company determines this information.

Questions Regarding Proposed Items 5.02(c) and (d)

• Does this proposal require disclosure of an adequate amount of information about new officers and directors? Is there any other pertinent information regarding a new officer or director that should be disclosed when such a person joins a company? Does the proposal require too much disclosure?

• Is it necessary for all of the proposed information to be disclosed immediately? Can some of the disclosures be delayed until the company files its annual report? If so, which disclosure requirements could be delayed?

Item 5.03 Amendments to Articles of Incorporation or Bylaws; Change in Fiscal Year

This proposed item would require a company to disclose any amendment to its articles of incorporation or bylaws if the amendment was not disclosed in a proxy statement or information statement filed by the company. Proposed Item 5.03 would require the company to disclose the effective date of the amendment and a description of the provision adopted or changed by amendment and, if applicable, the previous provision. If the amendment changed the company's fiscal year from that used in its most recent filing with the Commission, the company would have to state the date of the new fiscal year end and the form on which the report covering the transition period will be filed. If the company determines to change the fiscal year from that used in its most recent filing with the Commission by means other than a submission to a vote of security holders through the solicitation of proxies or otherwise, or by an amendment to its articles of incorporation or bylaws, the proposal would require the company to state the date of that determination, the date of the new fiscal year end, and the form on which the report covering the transition period will be filed.

This would ensure that security holders are kept apprised of changes to these documents. Presumably, any amendment that is subject to security holder approval will be adequately disclosed in the company's proxy statement. We recognize that a company potentially would have to report changes to its articles of incorporation and bylaws that affect the rights of

[83] Specifically, proposed Item 5.02(c) would require disclosure of the information required by Items 401(d), 401(e) and 404(a) of Regulation S–K (17 CFR 229.401(d) and (e) and 229.404(a)).

[84] Specifically, proposed Item 5.02(d) would require disclosure of information required by Item 404(a) of Regulation S–K [17 CFR 229.404(a)].

security holders under both this proposed item and proposed Item 3.04, Material Modifications to Rights of Security Holders. However, General Instruction D to Form 8–K states that a company need only file one report listing all relevant item numbers. Therefore, the company could file a single Form 8–K and include the disclosure in a single place under the captions for both items.

Questions Regarding Proposed Items 5.03

- Should all amendments of the articles or bylaws require immediate disclosure?
- Should we limit the disclosure requirement to only particular types of amendments? If so, what should the criteria be?

Item 5.04 Material Events Regarding the Registrant's Employee Benefit, Retirement and Stock Ownership Plans

This proposed new item would require a company to disclose any known event that would have the effect of materially limiting, restricting or prohibiting participants in an employee benefit, retirement or stock ownership plan from acquiring, disposing or converting their holdings, other than a periodic or other limitation, restriction or prohibition based on presumed or actual knowledge of or access to material non-public information if that plan is broadly available to the company's employees. This item would require a company to disclose the period or expected period of the limitation, the nature of the limitation, and the circumstances surrounding, or reasons for, the limitation. Such notice is important to investors who are plan participants in making financial decisions and who are entitled to the benefits of the disclosure regime of the U.S. securities laws.

This proposed disclosure would not be necessary when a company imposes temporary trading ''black-outs'' on its senior officers and directors because they possess material non-public information, such as during the period surrounding the announcement of an earnings release or during negotiation of a merger agreement.

Questions Regarding Proposed Item 5.04

- Should we include this disclosure in Form 8–K? Is this information important to investors other than plan participants?
- Might investors who are not part of a relevant plan believe that the limitations apply to them, causing unjustified market reaction?
- If this information is only important to plan participants, is there a better means of ensuring that those plan participants get this information?
- Is it appropriate to carve-out trading black-outs applicable to those with presumed or actual knowledge of or access to material non-public information? Should we otherwise limit the item to events affecting ''all participants'' or ''a majority of the participants''? Would such a limitation exclude events that should be disclosed?
- We note that Congress currently is considering legislation that, among other things, would require companies to provide employees with 30 days notice prior to any lockout period.[85] Would this legislation, if enacted, preempt the need for this proposed item? Should we delay our determination on this item until we can determine whether one of these bills will be enacted?

Question Regarding Proposed Section 5

We solicit comment as to whether there are other types of highly significant corporate events that should be included within the proposed Section 5 category of disclosure items (''Corporate Governance and Management'').

2. Boilerplate Explanations

Throughout the proposed Form 8–K items, there are requirements that companies provide explanations on such issues as management's analysis of the expected effect of an event on the company. These proposals are designed to improve the disclosure made available to the public. General, boilerplate-type statements that an event may have a material adverse effect on the company, or similar statements, provide limited useful disclosure about a corporation.

Therefore, if the proposals are adopted, we would expect responses to these items to be as specific as possible, and we would encourage companies to provide quantitative information whenever possible. We also would urge companies choosing to avail themselves of the safe harbors for forward-looking statements under the Private Securities Litigation Reform Act[86] and the Commission's rules[87] to tailor the required cautionary language to the specific forward-looking statements being made.

3. Request for Comments Regarding Proposed Disclosure Items

- We solicit comment on whether we should add each of the proposed new items to Form 8–K. Are there any items that we should not adopt? Are there additional items about significant corporate events that we should add to Form 8–K? Are there any other disclosure items currently required to be disclosed in companies' annual and quarterly reports, such as disclosure of results of matters submitted to security holder vote, that would more appropriately be the subject of Form 8–K disclosure? If so, which items?
- Are any of the proposed disclosure items, or portions thereof, unnecessary? If so, why?
- Would adoption of the proposed Form 8–K disclosure items add value from an investor perspective? Do investors frequently review companies' Form 8–K reports?
- We are proposing to reorganize the items into sections based on subject matter of the item. Should we provide a general item under each of the proposed sections to solicit disclosure of other important events under that section? For example, under Section 1, Registrant's Business and Operations, should we include an item soliciting disclosure of other material events related to the company's business and operations? If so, should that item be voluntary or mandatory?
- Are the proposed new disclosure items sufficiently clear and detailed?
- Should we add any disclosure requirements to any of the proposed items? Should we modify or delete any of the proposed disclosure requirements within the proposed new items? If we should modify any, how?
- Does the cost of disclosure of any of the items listed above so outweigh the benefits to investors of such disclosure as to warrant exclusion of the item? If so, provide data to support this conclusion.
- Would any of the proposed disclosure requirements discourage a company from entering into transactions that would be beneficial to the company and its investors?
- Would the proposed addition of the new Form 8–K items make the form itself unwieldy or difficult to understand? How can we make the form itself more useful to investors?
- In lieu of, or in addition to, the current approach involving a list of specific disclosure items, should we adopt a broad principle requiring companies to report highly important corporate events, leaving the company to determine the trigger for and scope of

[85] See H.R. 3762 and S. 1969.

[86] 15 U.S.C. 78u–5.

[87] See, for example, Securities Act Rule 175 [17 CFR 230.175].

the necessary disclosure?[88] If so, how should we define the types of events requiring disclosure?

• Would investors find such a system useful? Would companies be able to identify and disclose events in a timely fashion without strict guidelines? Would the open-ended obligation give companies too much discretion in setting the timing and scope of disclosure? Would such a system be more or less costly for companies to administer?

• Should we retain the proposed disclosure items but also require companies to disclose in the Form 8–K other highly significant events that occur within the identified general disclosure categories? If so, how should the category of events requiring disclosure be defined and what should be the triggering event for such disclosure?

• Some of the proposed new items may call for disclosure of forward-looking information regarding the effect of the triggering event. Do we need to consider modifying the current liability standards if we adopt a more generalized requirement for disclosure of material information, including trend information? If so, please explain why and how we should modify the standards.

• Would the requirements imposed by the new items be particularly burdensome to small business issuers? Which items in particular would impose such a burden on small business issuers? Should small business issuers be subject to fewer reporting requirements than larger companies? Should we create a separate form on which small business issuers would be required to disclose such extraordinary events on a current basis?

In our February 13, 2002, press release, we indicated that we were considering adding several new Form 8–K items. As noted earlier in this release, we have not included two of these items in our proposals.[89] These items would require disclosure of waivers of corporate ethics and conduct rules and of a material change in a critical accounting policy. We are continuing to evaluate these items and solicit public comment on the following questions to assist us in our evaluation.

Questions Regarding Waivers of Corporate Codes of Conduct

• Regarding disclosure whenever a company waives one of its corporate ethics or conduct rules, we currently are reviewing possible changes by the self-regulatory organizations to their corporate governance provisions that would address similar issues. For example, the New York Stock Exchange is considering is a requirement that its listed companies adopt and disclose a code of business conduct and ethics for directors, officers and employees, and promptly disclose any waivers of the code for directors or executive officers.[90] Each company could adopt its own code, but waivers would require board approval, and must be promptly disclosed.[91] Should we propose a Form 8–K item requiring disclosure of waivers of corporate ethics or conduct rules if the self-regulatory organizations adopt similar requirements? Should we propose an item even if they do not adopt such requirements? Although such a filing may appear duplicative, if we adopt such a requirement, failure to file would subject the company to liability under the securities laws, including Section 13(a) of the Exchange Act. Would this provide for greater assurance that investors can access this information and companies would comply with the requirements?

• Should disclosure apply to a waiver for any officer or director, or a smaller group of individuals? Should disclosure apply to all waivers or are some more significant than others?

• If we propose a Form 8–K item to require disclosure regarding waivers, what should the triggering event be? Should it be the date on which the board of directors grants the waiver or some other point? Should we require disclosure only when the board approves a waiver request?

• If we propose waiver disclosure, should we require the company to describe the board's reasons for approving a waiver request?

• Should we limit disclosure to waivers of requirements regarding conflicts of interest between the company and one of its directors or executive officers?

Questions Regarding Critical Accounting Policies

• On May 10, 2002, we issued a release proposing disclosure about a company's application of its critical accounting policies.[92] We are considering whether a change in a company's critical accounting policy should be disclosed on Form 8–K. If so, what should the triggering event be? What information should we require about the change in policy?

4. Application to Foreign Private Issuers

Foreign private issuers that are subject to the periodic reporting requirements under the Exchange Act are not required to file current reports on Form 8–K. Instead, foreign private issuers furnish reports on From 6–K.[93] Form 6–K on its own does not require the disclosure of any specific information. Rather, Form 6–K requires a foreign private issuer to furnish publicly to the Commission any information:

• That the foreign private issuer makes or is required to make public pursuant to the foreign private issuer's home country law,

• That is filed or required to be filed with a stock exchange and which is made public by the stock exchange, or

• That is distributed or is required to be distributed to its security holders.

The information that is required to be furnished under Form 6–K is that information which is material with respect to an issuer and its subsidiaries. The form contains an illustrative list of matters that may be considered material. This list generally tracks the general subject matters that are contained in current Forms 8–K and 10–Q. We are not proposing to amend Form 6–K to require the disclosure of any specific information or to change the illustrative list of items.

• We solicit comment as to whether we should amend Form 6-K to require disclosure of specific information.

• Is there some information (such as, for example, a change of auditors or the filing of a bankruptcy petition) that, because of its high level of importance, should be required to be the subject of a filing on Form 6–K even if such disclosure is not required under the foreign private issuer's home country law or stock exchange rules?

• Would this type of mandatory requirement impose undue burdens on foreign companies that have chosen to

[88] For example, the Financial Executives Institute submitted a letter in response to our February 13, 2002 press release, suggesting that we adopt a rule containing a single broad principle with a few examples rather than a ''laundry list'' of items. Such a rule would require disclosure of any material event.

[89] See note 45.

[90] Recommendation No. 10 in the Draft Report of the New York Stock Exchange's Corporate Accountability and Listing Standards Committee.

[91] In a rule filing submitted to the Commission on June 11, 2002, Nasdaq proposed to expand its conflict of interest rule, Rule 4350(h). The rule currently provides that an issuer must conduct an appropriate review of all related party transactions on an ongoing basis and use its audit committee or comparable body of the board of directors to approve, rather than merely review, related party transactions (the term ''related party transactions'' has a meaning consistent with the meaning given it in Regulation S–K Item 404(a) [17 CFR 229.404(a)]). See SR–NASD–2002–75.

[92] See Release No. 33–8098 (May 10, 2002) [67 FR 35620].

[93] 17 CFR 249.306.

register their securities in the United States?

• Should we amend Form 6–K so that the list of illustrative matters which may be the subject of disclosure tracks the items proposed to be included in Form 8–K?

• Would this change provide better guidance to foreign private issuers on what information they should furnish under Form 6–K?

B. Shortened Filing Deadline for Form 8–K

The proposed amendments would require domestic issuers that are subject to the reporting requirements of Section 13(a) and Section 15(d) of the Exchange Act to file required current reports on Form 8–K within two business days of a triggering event.[94] These amendments would not affect the filing deadline for disclosures under Regulation FD, voluntary disclosures or the proposed deadlines under recently proposed Item 10 of Form 8–K.[95] This would shorten significantly the deadlines of five business days or 15 calendar days, depending on the nature of the event currently requiring a Form 8–K filing. Disclosure of all of the proposed new items also would have to be made within the two business day timeframe. We are proposing such changes given the significance of ''real time'' disclosure of these events to participants in the secondary markets.

In 1998, we solicited comment on shortening the Form 8–K deadline to five business days for most items and one business day for several key items.[96] As noted earlier, a number of commenters, including investor groups, issuers and law firms, indicated that two days may be workable at least for some items. A relatively equal number of commenters indicated that two business days would be insufficient. The proposals for which we sought comment were not exactly the same as those proposed in this release. Therefore, for many commenters, it is not possible to infer how they would have responded to a proposal of two business days for all items.

Questions Regarding Proposed Shortening of Filing Deadline

• We seek comment on the proposed two business day deadline. Is this shortened deadline reasonable? Can companies compile the required information and file a Form 8–K with regard to these items within the proposed timeframe?

• Should the deadline be longer or shorter for any or all of the existing and proposed disclosure items? Should the deadline be the same business day as the event or one business day after the event for some or all of the items? Should the deadline be longer, such as three or five business days after the event for some or all of the items? Which Form 8–K items should have a longer or shorter deadline? Why should those items have such deadlines?

• Are there particular existing or proposed Form 8–K items that are more significant than others so as to warrant a same day filing requirement? If so, which items?

• Would companies incur added costs as a result of the shorter time periods? If so, what types of costs would they incur?

• Would the quality of Form 8–K disclosure be negatively affected as a result of the shorter time period for preparing these filings?

• Should we use business or calendar days as a measure?

• We always are concerned about the effect that our rules have on small business issuers.[97] Would compliance with the two business day deadline be significantly more difficult for small business issuers? Why?

• Should the deadline for small business issuers be longer? If so, what should the deadline be? Would varying the deadlines for different issuers be confusing to the public?

• Should we exempt small business issuers from some or all of the proposed Form 8–K disclosure requirements?

C. Reorganization of Form 8–K Items

Due to the limited number of disclosure items in existing Form 8–K and the discrete nature of those items, to date, there has been no compelling need to organize them in any particular fashion. Because we propose to add a significant number of new items to the form, it seems appropriate to organize them into logical categories. Therefore, we propose to number and arrange the items under the following section headings:

Section 1—Registrant's Business and Operations
- Item 1.01—Entry into a Material Agreement
- Item 1.02 Termination of a Material Agreement
- Item 1.03 Termination or Reduction of a Business Relationship with a Customer

Section 2—Financial Information
- Item 2.01 Completion of Acquisition or Disposition of Assets
- Item 2.02 Bankruptcy or Receivership
- Item 2.03 Creation of a Direct or Contingent Financial Obligation That Is Material to the Registrant
- Item 2.04 Events Triggering a Direct or Contingent Financial Obligation That Is Material to the Registrant
- Item 2.05 Exit Activities Including Material Write-Offs and Restructuring Charges
- Item 2.06 Material Impairments

Section 3—Securities and Trading Market
- Item 3.01 Rating Agency Decisions
- Item 3.02 Notice of Delisting or Failure to Satisfy Listing Standards; Transfer of Listing
- Item 3.03 Unregistered Sales of Equity Securities
- Item 3.04 Material Modifications to Rights of Security Holders
- Item 3.05 [Currently reserved for reporting of insider transactions] [98]

Section 4—Matters Related to Accountants
- Item 4.01 Changes in Registrant's Certifying Accountant
- Item 4.02 Non-Reliance on Previously Issued Financial Statements or a Related Audit Report

Section 5—Corporate Governance and Management
- Item 5.01 Changes in Control of Registrant
- Item 5.02 Departure of Directors or Principal Officers; Election of Directors; Appointment of Principal Officers
- Item 5.03 Amendments to Articles of Incorporation or Bylaws; Change in Fiscal Year
- Item 5.04 Material Events Regarding the Registrant's Employee Benefit, Retirement and Stock Ownership Plans

Section 6—Regulation FD

[94] Proposed Instruction B.2 to Form 8–K.

[95] With respect to the Regulation FD disclosure, see current Item 9 and proposed Item 6.01 of Form 8–K. We recently proposed new Item 10 to Form 8–K in Release No. 33–8090 (Apr. 12, 2002) [67 FR 19914]. That release proposes different reporting deadlines for reports on Form 8–K related to transactions in a company's securities by its officers and directors. We do not propose to amend any aspect of the item proposed in Release No. 33–8090 in t his release, except to re-designate that item as Item 3.02 to conform to the Form 8–K numbering system proposed in this release.

[96] Release No. 33–7606A (Dec. 4, 1998) [63 FR 67174].

[97] A small business issuer is defined as a company that has revenues of less than $25,000,000, is a U.S. or Canadian issuer, is not an investment company, does not have a public float of $25,000,000 or more, and if a majority owned subsidiary, the parent corporation is also a small business issuer. See Item 10 of Regulation S–B [17 CFR 228.10].

[98] Release No. 33–8090 (Apr. 12, 2002) [67 FR 19914]. This item may be removed from Form 8–K if, as a result of the comment process, we determine to move the disclosures proposed by that release to a separate form.

Item 6.01 Regulation FD Disclosure
Section 7—Other Events
Item 7.01 Other Events
Section 8—Financial Statements and Exhibits
Item 8.01 Financial Statements and Exhibits

We propose to renumber the items in a way that avoids re-use of former item numbers to avoid confusion about the subject of particular item numbers. Rather than solely a single digit item number, each Form 8–K item will be designated a three digit number containing a decimal point. For example, under the proposed system, an acquisition or disposition of assets, currently Item 2, would become proposed Item 2.01. Therefore, anyone searching for such filings made before and after the change would search for Item 2 and Item 2.01. The designation ''Item 2'' would not be reassigned to a new item to avoid confusion.

Questions Regarding Proposed Reorganization of Form 8–K Items

- Should we reorganize the Form 8–K items in this way? Is there a better way to reorganize the Form 8–K items?
- Is it preferable not to change the numbering and order of the existing Form 8–K items and to simply designate each of the proposed new disclosure requirements as a separate Form 8–K item without grouping them into disclosure categories?
- Would such rearrangement and the corresponding re-numbering of items be confusing to investors who research these reports? If so, what would be a viable alternative for designating the items?
- On April 12, 2002, we proposed to add a new item to Form 8–K that would require disclosure by a company of transactions by its officers and directors in the company's securities.[99] We expect a substantial number of filings as a result of that proposed item on Form 8–K. Should we create a separate form to disclose those transactions?

D. Liability Issues and the Proposed Safe Harbors

Under the proposals, information on Form 8–K would continue to be considered ''filed'' under Section 18 of the Exchange Act, except for information provided pursuant to Regulation FD under proposed Item 6.01 (currently Item 9), which is not deemed ''filed'' for purposes of Section 18. We believe that because most of the disclosures in the proposed new items relate to specific events that have occurred, providing that the information not be ''filed'' would be inappropriate. The efficiency of the securities markets relies not only on the amount and timeliness of information, but also on the quality of that information. Form 8–K items, other than the Regulation FD requirement, historically have been subject to liability under all relevant sections of the Exchange Act. By subjecting Form 8–K disclosure to the appropriate level of liability, we ensure that our rules promote the dissemination of high-quality, balanced disclosure. We do not believe that quality should be sacrificed for the sake of speed. We note, however, that to the extent that companies provide forward-looking statements, safe harbors may be available under the Exchange Act [100] and the Commission's rules.[101]

Similarly, we do not intend for these proposals, if adopted, to affect existing law regarding a determination of the materiality of information for purposes of other provisions of the securities laws, including Rule 10b–5 under the Exchange Act. The courts and the Commission have developed an extensive body of law concerning materiality standards,[102] and these proposed amendments are not intended to change any aspect of that body of law.

To accommodate companies that do not file a report in a timely manner despite making a good faith effort to file such reports, we are proposing to create a safe harbor. The proposal would add a new paragraph to each of Rule 13a–11 [103] and Rule 15d–11 [104] under the Exchange Act. The proposed new paragraphs would provide a safe harbor for a company that fails to file a required Form 8–K in a timely manner if the company satisfies all of the safe harbor's conditions. Under the proposed safe harbor, a company would not be liable under Sections 13 and 15(d) of the Exchange Act for such a failure to file if:

- On the Form 8–K due date, the company maintained sufficient procedures to provide reasonable assurances that the company is able to collect, process and disclose, within the specified time period the information required to be disclosed by Form 8–K; [105] and
- No officer, employee or agent of the company knew, or was reckless in not knowing, that a report on Form 8–K was required to be filed and once an executive officer of the company became aware of its failure to file a required Form 8–K, the company promptly (and not later than two business days after becoming aware of its failure to file) filed a Form 8–K with the Commission containing the required information and stating the date, or approximate date, on which the report should have been filed.

A company that complies with these requirements would not be liable for a violation of Section 13(a) or 15(d). This safe harbor, however, would not provide protection for violations of other provisions of the securities laws. Accordingly, the obligation to disclose information on Form 8–K would not be affected by the safe harbor and thus would continue to exist for purposes of determining liability under Section 10 and Rule 10b–5 under the Exchange Act and Sections 11, 12 and 17 of the Securities Act. In addition, this safe harbor would not apply to a company's eligibility to use short form registration statements.[106]

Although compliance with the safe harbor would shield the company from liability under Section 13 and 15(d) for a late Form 8–K filing, that filing would not be considered timely unless filed within the time period required by Form 8–K. A company that fails to file a Form 8–K in a timely manner would not be eligible to use short form registration statements. In addition, a company could not use Form S–8 and its security holders could not rely on Rule 144 unless the company was current in its Exchange Act filings, including Form 8–K. As discussed later in this release, proposed amendments to Rule 12b–25 would afford relief with regard to the timeliness of filings and short form eligibility.

Questions Regarding the Proposed Safe Harbor

- Are the requirements of the proposed safe harbor appropriate?

[99] See Release No. 33–8090 (Apr. 12, 2002) [67 FR 19914].

[100] See Section 21E of the Exchange Act [15 U.S.C. § 78u–5].

[101] See, for example, Securities Act Rule 175 [17 CFR 230.175].

[102] See, for example, *TSC Industries, Inc.* v. *Northway, Inc.,* 426 U.S. 438 (1976), *Basic, Inc.* v. *Levinson,* 485 U.S. 224 (1988), *SEC* v. *Texas Gulf Sulphur Co.,* 401 F.2d 833 (2d Cir. 1968).

[103] 17 CFR 240.13a–11.

[104] 17 CFR 240.15d–11.

[105] In a separate release, we recently proposed to require a company's principal executive officer and principal financial officer to certify the information included in the company's quarterly and annual reports. The release also encourages companies to establish a committee to ensure that the company maintains adequate procedures to collect, process and disclose information required to be reported in the company's annual, quarterly and current reports. See Release No. 34–46079 (June 14, 2002).

[106] This safe harbor also would not apply to new Item 10 of Form 8–K proposed in Release No. 33–8090, that if adopted, would require disclosure by a company of transactions by its officers and directors in the company's securities. See Release No. 33–8090 (Apr. 12, 2002) [67 FR 19914]. That release provides for a separate safe harbor under that proposed item.

• Should there be additional conditions to the safe harbor that would encourage good faith compliance with the disclosure requirements? Are any of the conditions in the proposed safe harbor unnecessary?

• Is our recommendation regarding creation of a committee to ensure that the company maintains adequate disclosure procedures appropriate? Is the suggested composition of the committee appropriate? Are there better ways to ensure maintenance of adequate disclosure procedures?

• Is it appropriate to condition the availability of the safe harbor on no officer, employee or agent knowing or being reckless in not knowing that a report on Form 8–K is required? Should the safe harbor instead be based on a negligence standard?

• Should we subject all of the new Form 8–K disclosure requirements to all liability provisions? Conversely, should we extend the safe harbor to any other liability provisions, such as Rule 10b–5 under the Exchange Act or Section 11 of the Securities Act? What would the consequences be for the quality of disclosure if we expanded the safe harbor to provide more protection from liability?

• Should we permit companies to furnish, rather than file, Form 8–K for purposes of Section 18 of the Exchange Act? Are there particular items that should be furnished rather than filed?

• Should a company's short form eligibility continue to be conditioned on the company's timely filing of Form 8–K? Similarly, should we continue to condition a company's Form S–8 eligibility and resales of the company's securities under Rule 144 of the Securities Act on the currency of Exchange Act filings, including Form 8–K filings? Should companies have to file all required Forms 8–K, even if late, to effect a shelf takedown?

E. Amendments to Rule 12b–25 and Form 12b–25 Regarding Late Filing

We also propose amendments to Rule 12b–25 [107] and Form 12b–25 [108] to require a company to file a Form 12b–25 if the company will not be able to file a current report on Form 8–K in a timely manner. Currently, there is no means by which a company can file a Form 8–K late without affecting its eligibility to use short form registration statements. Under the proposal, a company would have to file the Form 12b–25 one business day after the Form 8–K is due and file the Form 8–K within two business days after the original due date. If the company makes the appropriate representations that it was not able to file in a timely manner without unreasonable effort or expense, then the report would be deemed to be filed on the prescribed due date. A company that provides proper notice on Form 12b–25 would not lose its eligibility to use short form registration statements as the result of its inability to timely file a Form 8–K unless the company fails to file within the extended period permitted by Rule 12b–25.

Questions regarding proposed Amendments to Rule 12b–25 and Form 12b–25

• Should we require companies to file a Form 12b–25 whenever they are unable to timely file a Form 8–K? Is this provision practical in light of the short timeframes involved? Instead of requiring companies to file a Form 12b–25 whenever they are unable to timely file a Form 8–K, should we permit companies to file the Form 12b–25 only when they need a two business day filing extension and reasonably expect that they will be able to file within the extended period?

• Should companies have to disclose in Form 12b–25 the reasons for their inability to timely file a Form 8–K?

• This amendment would effectively double the Form 8–K filing deadline to four business days. Should the extension period be longer or shorter than two business days? If so, what would an appropriate timeframe be?

• Should the proposed availability of Form 12b–25 apply with respect to Item 10 of Form 8–K that we proposed separately regarding disclosure of transactions by a company's officers and directors in the company's securities? [109]

• In light of our intent to make the required disclosures available to the public in a timely manner, should we provide such an extension at all?

F. Conforming Amendments

1. Amendments to Item 601 of Regulation S–B and Item 601 of Regulation S–K

In connection with the proposed new Form 8–K disclosure items, we would require companies to file some documents as exhibits that previously have not been required to be filed under Item 601 of either Regulation S–B or Regulation S–K. Therefore, we propose to add entries describing these exhibits to the Item 601 exhibit table. These new exhibit entries would include: ''letters on departure of principal officers,'' ''notice of delisting or failure to satisfy listing standards,'' and ''notice from auditor regarding validity of audit or consent.'' We also would amend the existing entry captioned, ''letters on departure of director'' to incorporate the changes proposed in this release.

We also propose amendments to Item 601 to footnote the ''8–K'' column in the Exhibit Table to clarify that a company need only file the exhibits marked in the ''8–K'' column of the table that are relevant to a particular report on Form 8–K. If a company previously has submitted an exhibit with another filing, it may incorporate that exhibit by reference into the Form 8–K report.

Finally, we propose to make a corrective amendment to eliminate the reference in Item 601 to submission of Financial Data Schedules.[110] We eliminated the requirement to file a Financial Data Schedule on May 30, 2000.[111]

2. Elimination of Items in Forms 10–Q, 10–QSB, 10–K and 10–KSB

We propose to eliminate several items in Forms 10–Q, 10–QSB, 10–K and 10–KSB. The disclosures called for in these items no longer would be required in quarterly and annual reports because they already would have been more promptly reported on Form 8–K. We propose to eliminate the following items in Part II of Forms 10–Q and 10–QSB:

(a) Paragraphs (a) through (c) of Item 2, Changes in Securities and Use of Proceeds;

(b) Item 3, Defaults upon Senior Securities;

(c) Item 5, Other Information; and

(d) Paragraph (b) of Item 6, Exhibits and Reports on Form 8–K.

We are also proposing to make the following changes to Form 10–K:

(a) Revise paragraph (a) of Item 5, Market for Registrant's Common Equity and Related Stockholder Matters;

(b) Delete Item 9, Changes in and Disagreements With Accountants on Accounting and Financial Disclosure; and

(c) Delete paragraph (b) of Item 14, Exhibits, Financial Statement Schedules, and Reports on Form 8–K.

We propose to make the following changes to Form 10–KSB:

(a) Revise paragraph (a) of Item 5, Market for Registrant's Common Equity and Related Stockholder Matters;

(b) Delete Item 8, Changes in and Disagreements With Accountants on

[107] 17 CFR 240.12b–25.

[108] 17 CFR 249.322.

[109] See Release No. 33–8090 (Apr. 12, 2002) [67 FR 19914].

[110] See current Item 601(a)(1) of Regulation S–B and S–K [17 CFR 228.601(a)(1) and 229.601(a)(1)].

[111] Release No. 33–7855 (Apr. 24, 2002) [65 FR 24788].

Accounting and Financial Disclosure; and

(c) Delete paragraph (b) of Item 14, Exhibits and Reports on Form 8–K.

Questions Regarding the Proposed Elimination of Items From Annual and Quarterly Reports

- Is there any reason to keep any of these items in Forms 10–Q, 10–QSB, 10–K and 10–KSB?
- Would it be helpful for investors to have companies provide a list of the current reports on Form 8–K that it filed during the reported quarter or fiscal year?

3. Other Proposed Conforming Amendments

We also propose amendments to Item 10 of Regulation S–B and Regulation S–K.[112] This item currently encourages companies to report material changes in credit ratings on Form 8–K. The proposals would make such disclosure mandatory. Therefore, if we adopt the proposals, this provision no longer would be necessary.

In addition, we propose to amend Item 701 of Regulation S–B and Regulation S–K.[113] These items currently refer to disclosure of unregistered sales of securities in current reports, as well as annual and quarterly reports. We propose to move this disclosure out of the annual and quarterly reports. If we adopt these proposals, the references to Forms 10–QSB, 10–Q, 10–KSB and 10–K in this item no longer would be necessary.

Finally, we propose to amend the note at the end of Rule 15d–10 regarding transition reports.[114] The current note refers to Item 8 of Form 8–K. If the proposals are adopted, this item would be re-designated as Item 5.03. Therefore, we propose to conform this reference accordingly.

G. General Request for Comment

We request and encourage any interested person to submit comments regarding:

(1) The proposed changes that are the subject of this release,

(2) Additional or different changes, or

(3) Other matters that may have an effect on the proposals contained in this release.

We request comment from the point of view of registrants, investors and other users of information about the resale of restricted securities and securities owned by affiliates of the issuer. With regard to any comments, we note that such comments are of greatest assistance to our rulemaking initiative if accompanied by supporting data and analysis of the issues addressed in those comments.

III. Paperwork Reduction Act

Exchange Act Form 8–K, Form 12b–25, Form 10–K, Form 10–KSB, Form 10–Q, Form 10–QSB and Regulations S–K and Regulation S–B contain ''collection of information'' requirements within the meaning of the Paperwork Reduction Act of 1995.[115] We are submitting a request for approval of the proposed revisions to these requirements to the Office of Management and Budget (''OMB'') for review in accordance with 44 U.S.C. 3507(d) and 5 CFR 1320.11. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

Form 8–K

Form 8–K (OMB Control No. 3235–0060) prescribes information, such as material events or corporate changes, that a registrant must disclose. Form 8–K also may be used, at a registrant's option, to report any events that the registrant deems to be of importance to shareholders. Companies also may use the form to disclose the nonpublic information required to be disclosed by Regulation FD.[116]

We currently estimate that Form 8–K results in a total annual compliance burden of 528,300 hours and an annual cost of $71,477,000. We estimate the number of Form 8–K filers to be 13,200, based on the actual number of Form 10–K and 10–KSB filers during the 2001 fiscal year. For purposes of this analysis, we estimate that the number of reports on Form 8–K filed is 250,600.[117] We estimate that each entity spends, on average, approximately 5 hours completing the form. We estimate that 75% of the burden is prepared by the company and that 25% of the burden is prepared by outside counsel retained by the company at an average cost of $300 per hour. The staff estimated the average number of hours each entity spends completing the form, and the average hourly rate for outside securities counsel, by contacting a number of law firms and other persons regularly involved in completing the forms.

Under the proposals, 11 new disclosure items would be added to Form 8–K, two disclosure items would be moved from annual and quarterly reports to Form 8–K, two existing disclosure items would be substantially expanded, and all Form 8–K reports would be due no later than the second business day following the occurrence of events requiring disclosure. We believe that the proposed revisions are necessary to provide ''real time'' disclosure of significant corporate events to participants in the secondary trading markets and to bolster investor confidence in the securities markets.

We estimate that, on average, completing and filing a Form 8–K if the proposed new disclosure items are adopted would require the same amount of time currently spent by entities completing the form—approximately 5 hours. To determine the expected increase in the number of current reports on Form 8–K if the proposals are adopted, we reviewed two of the new proposed items: (1) Unregistered sales of equity securities and (2) movement or delisting of a company's securities. These were the only two proposed items for which we were able to obtain reliable data regarding both the number of events reported on Form 8–K as well as the number of events that actually occurred.

First, we obtained a sample of 85 unregistered sales of equity securities by publicly traded companies. Fifty-three, or 62%, of these were reported voluntarily on Form 8–K. Next, we obtained a sample of 333 companies that changed their primary trading markets or were delisted from an exchange or quotation system.[118] Ninety, or 27%, of these reported the event voluntarily on Form 8–K.

Then, we examined the extent to which the proposed events already are being filed under Item 5 of Form 8–K. In fiscal year 2001, companies filed 22,332 current reports on Form 8–K under Item 5, Other Events. We surveyed 220 of these reports and determined that 96 of them, or 43.6%, would be required, rather than voluntary, disclosures if the proposals are adopted. Based on this survey, we estimate that 43.6%, or 9737, of the voluntary Form 8–Ks filed in 2001 would become mandatory filings under the proposals.

Using the percentages of voluntarily reported unregistered sales of equity

[112] 17 CFR 228.10 and 229.10.

[113] 17 CFR 228.701 and 229.701.

[114] 17 CFR 240.15d–10.

[115] 44 U.S.C. 3501 *et seq.*

[116] 17 CFR 243.100–103.

[117] This number assumes adoption of the proposals in Release No. 33–8090 (April 12, 2002) [67 FR 19914]. If adopted, those proposals would cause companies to file estimated additional 215,500 Form 8–K reports each year.

[118] Data regarding voluntary changes of trading markets was obtained from a search of Dow Jones New Retrieval. Data regarding delisting of companies was obtained from CRSP, Center for Research in Securities Prices, data published by the University of Chicago.

securities and movements or delisting from exchanges and quotation systems, we assume that between 27% and 62% of events covered by the proposed disclosure items already are being voluntarily disclosed.

To obtain the total expected increase in filings, we first divide the number of reports on Form 8–K currently being filed voluntarily that would be required reporting events under our proposal by the rate at which companies currently are reporting these events on a voluntary basis.

Based on unregistered sales: 9,737/0.62 = 15,705

Based on movements/delistings: 9,737/0.27 = 36,063

We then subtract the number of events under the proposal that currently are being reported voluntarily from the total number filings expected to be required under the proposal.

Based on unregistered sales: 15,705 − 9,737 = 5,968

Based on movements/delistings: 36,063 − 9,737 = 26,326

This is the number of additional filings that we expect as a result of the proposed items. Choosing the higher estimate of roughly 26,400 additional filings per year, we estimate that, on average, we expect a company to file two additional reports on Form 8–K per year. Based on 26,400 additional filings per year, we estimate that the total number of annual Form 8–K filings would be 277,000. The additional filings would result in an added annual burden of 99,000 hours (26,400 × 5 × .75 = 99,000) and a total annual burden of 627,300 hours (528,300 + 99,000 = 627,300). We estimate that, if the proposals are adopted, the additional filings would result in an added annual cost of $9,900,000 (26,400 × 5 × .25 × $300 = $9,900,000) and a total annual cost to issuers of $81,377,000 ($71,477,000 + $9,900,000 = $81,377,000).

Form 12b–25.

Form 12b–25 (OMB Control No. 3235–0058) was adopted pursuant to Sections 13, 15, and 23 of the Exchange Act. Form 12b–25 provides notice to the Commission and the marketplace that a public company will be unable to file a required report in a timely manner. If certain conditions are met, the company will be granted an automatic filing extension.

We currently estimate that Form 12b–25 results in a total annual compliance burden of 15,000 hours and an annual cost of $0.[119] We estimate the number of Form 12b–25 filers to be 6,000, based on the fact that we received approximately 6,000 Form 12b–25 filings in the last fiscal year. We estimate that each entity spends, on average, approximately 2.5 hours completing the form. We estimate that 100% of the burden is prepared by the company. The staff estimated the average number of hours each entity spends completing the form, and the average hourly rate for outside securities counsel, by contacting a number of law firms and other persons regularly involved in completing the forms.

The proposed rules would require a company that is not able to timely file a Form 8–K to report this late filing on Form 12b–25. Based on a review of 271 Form 8–K filings, we determined that 31, or 11%, of those were filed late. Based on this percentage, we estimate that of the expected 61,500[120] filings for which Form 12b–25 would be available, 6,700 would be late, resulting in an added burden of 16,750 hours and a total burden of 31,750 hours. This number is based on the current rate of late filings. We have no basis for estimating the number of additional filings that may be late as a result of the shortened deadline. However, we believe that companies that implement the procedures necessary to qualify for the proposed safe harbors would be file Form 8–K in a timely manner. In fact, based on a review of Form 8–K reports, 25,500 out of 35,500 filings, or 72%, were filed in two calendar days or less. We believe a greater emphasis on these reports and the improved procedures may cause a decrease in late Form 8–K filings.

Forms 10–K, 10–KSB, 10–Q, 10–QSB

Form 10–K (OMB Control No. 3235–0063) prescribes information that a registrant must disclose annually to the market about its business. Form 10–KSB (OMB Control No. 3235–0420) prescribes information that a registrant that is a ''small business issuer'' as defined under our rules must disclose annually to the market about its business.

Form 10–Q (OMB Control No. 3235–0070) prescribes information that a registrant must disclose quarterly to the market about its business. Form 10–QSB (OMB Control No. 3235–0416) prescribes information that a registrant that is a ''small business issuer'' as defined under our rules must disclose quarterly to the market about its business.

We are proposing to eliminate several disclosure requirements from these forms and move those requirements to Form 8–K. Because these items are extraordinary events, companies are not always required to make disclosure about these events in their annual and quarterly reports. Therefore, we expect the decrease in overall burden to be minimal. We estimate that these changes would result in a decrease of one burden hour per company per filing in connection with preparing and filing each quarterly report on Form 10–Q and 10–QSB and the annual report on Form 10–K or 10–KSB.

Based on a burden hour estimate of four hours per respondent per year,[121] we estimate that, in the aggregate, the changes would result in a savings of 52,800 burden hours[122] to comply with the proposed rules. The total burden hours of complying with Form 10–Q and Form 10–QSB, revised to include the burden hours expected to be eliminated as a result of the proposed rules, is estimated to be 3,134,563 hours for Form 10–Q, a decrease of 28,152 hours[123] from the current annual burden of 3,162,715 hours, and 1,291,631 hours for Form 10–QSB, a decrease of 11,367 hours[124] from the current annual burden of 1,302,998 hours. The total burden hours of complying with Form 10–K and Form 10–KSB, revised to include the burden hours expected to be eliminated as a result of the proposed rules, is estimated to be 12,346,998 hours for Form 10–K, a decrease of 9,384 hours[125] from the current annual burden of 12,356,382 hours, and 3,420,520 hours for Form 10–KSB, a decrease of 3,789 hours[126] from the current annual burden of 3,443,254 hours.

Item 601 of Regulation S–K and Item 601 of Regulation S–B

Item 601 of Regulation S–K (OMB Control No. 3235–0071) prescribes the exhibits that a registrant must provide in filings under the Securities Act and the Exchange Act. Item 601 of Regulation S–B (OMB Control No. 3235–0417) prescribes the exhibits that a registrant that is a ''small business

[119] We do not estimate a separate annual cost for Form 12b–125 because we estimate that the company prepares the disclosure itself without the assistance of outside counsel.

[120] 250,600 current estimate of Form 8–K filings—215,500 to which these provisions will not apply (proposed Item 10 (or Item 3.05) reports) + 26,400 expected increase due to these proposals = 61,500 reports.

[121] Three quarterly reports and one annual report × one hour each = 4 hours.

[122] 13,200 companies × four hours = 52,800 hours.

[123] 26,746 quarterly reports × one hour = 28,152 hours.

[124] 11,367 quarterly reports × one hour = 11,367 hours.

[125] 9,384 annual reports × one hour = 9,384 hours.

[126] 3,789 annual reports × one hours = 3,789 hours.

issuer'' as defined under our rules must provide in filings under the Securities Act and the Exchange Act.

The proposed changes to these items would amend the exhibit tables to identify exhibits that must be filed with Form 8–K. We have incorporated the burden of actual submitting those exhibits in the estimate of the burden to file Form 8–K. These items do not, separate from the form, require any additional filing and therefore do not add to the burden on companies. Therefore, we do not expect any change in the total annual burden of reporting under these items. We assign one burden hour and no cost to Regulations S–B and S–K for administrative convenience to reflect the fact that these regulations do not impose any direct burden on companies.

Compliance with the revised disclosure requirements would be mandatory. There would be no mandatory retention period for the information disclosed, and responses to the disclosure requirements would not be kept confidential.

Pursuant to 44 U.S.C. 3506(c)(2)(B), we solicit comments to: (i) evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (ii) evaluate the accuracy of our estimate of the burden of the proposed collection of information; (iii) determine whether there are ways to enhance the quality, utility, and clarity of the information to be collected; and (iv) evaluate whether there are ways to minimize the burden of the collection of information on those who are to respond, including through the use of automated collection techniques or other forms of information technology.

Persons submitting comments on the collection of information requirements should direct the comments to the Office of Management and Budget, Attention: Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Washington, DC 20503, and should send a copy to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609, with reference to File No. S7–22–02. Requests for materials submitted to OMB by the Commission with regard to these collections of information should be in writing, refer to File No. S7–22–02, and be submitted to the Securities and Exchange Commission, Records Management, Office of Filings and Information Services. OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication of this release. Consequently, a comment to OMB is assured of having its full effect if OMB receives it within 30 days of publication.

IV. Costs and Benefits

Recent developments in the securities markets have highlighted the need for companies to provide more timely disclosure of material events that affect them. The amendments proposed in this release seek to increase the amount of timely information that companies disclose publicly. Currently, Form 8–K requires that registrants disclose six enumerated events within five business days or 15 calendar days, depending on the event. We are proposing to decrease this filing deadline to two business days after the event occurs for all events, other than proposed Item 7.01 which has no deadline and proposed Item 6.01 (current Item 9) relating to Regulation FD disclosures. We are also proposing to add 11 new events that would trigger a Form 8–K filing requirement, move two items in Forms 10–Q, 10–QSB, 10–K, and 10–KSB to Form 8–K, and expand two existing items in Form 8–K. Finally, we are proposing to reorganize the Form 8–K items, create a safe harbor for unintentional violations of the Form 8–K filing requirements and create an automatic two business day extension of the filing deadline to companies providing proper notification. These changes will affect all companies reporting under Section 13(a) and 15(d) of the Exchange Act.

A. Benefits

In combination, the proposed shortening of the Form 8–K filing deadline and increase in Form 8–K disclosure items would provide the securities markets with more information about companies in a more timely manner. By increasing the timeliness and the amount of information available, we expect the amendments to Form 8–K to enable the market to more accurately and quickly price securities.

B. Costs

Although we expect that the proposed shortening of the filing deadline from five business days or 15 calendar days to two business days would increase to some extent the cost of filing a Form 8–K, we do not have data regarding the amount of that incremental cost increase. However, we did review approximately 35,500 Form 8–K filings. Of these, approximately 25,500 reports, or 72%, were filed within two calendar days of the reported event date. Similarly, of approximately 23,500 filings made under current Item 5 of Form 8–K, approximately 11,500 reports, or 49%, were filed within two calendar days of the reported event date. Although this review did not investigate whether filers reported the correct event date for each filing, it appears that many, if not most, companies are already filing their Form 8–K reports well before the current deadlines. Therefore, the reduction in the Form 8–K deadline should add little extra burden on these filers.

Similarly, we expect that the addition of new Form 8–K items would increase the number of Forms 8–K that a company would make. Based on our estimates for purposes of the Paperwork Reduction Act, we expect approximately two additional filings per year per company if the proposals are adopted. This will cause a corresponding increase in filing costs.

We are proposing a safe harbor for unintentional violations and a mechanism for obtaining an automatic two business day extension to help alleviate these costs. We are also eliminating any duplicative reporting requirements in annual and quarterly reports. In addition, developments such as EDGARLink that enable a company to file reports easily and directly, without the added costs of using third parties to submit filings, with the Commission over the Internet,[127] and the industry's increased experience over the past several years using the EDGAR system should minimize companies' cost of filing more Form 8–K reports in a shorter timeframe.

We request comment on issues related to this cost-benefit analysis. In particular, are there any other costs that would be associated with either the shortening of the Form 8–K filing deadline or the increase in Form 8–K items? What would be the incremental added cost associated with filing Form 8–K reports within two business days instead of the current five business days or 15 calendar days? What would be the increase in cost as a result of the increased number of Form 8–K items? Are some new items more costly to report than others? How many more Form 8–K reports would a registrant expect to file within the course of a year if we adopt the proposed new Form 8–K items? Are companies in particular industries or of particular size likely to file more reports than others? Please provide any quantitative data on which you rely in formulating your comments.

[127] EDGARLink is downloadable free of charge to filers from our website at *http://www.edgarfiling.sec.gov*.

Would maintaining the current level of liability to which Form 8–K is subject add to companies' costs in light of the new disclosures that they would have to make? What data is available to support any predicted increase in costs? To the extent that a reduction in the level of liability would mitigate the cost of providing more information in a more timely manner, should we consider reducing liability for Form 8–K disclosures? Would a reduction in liability negatively affect the quality of the information reported?

V. Effect on Efficiency, Competition and Capital Formation

Section 23(a)(2) [128] of the Exchange Act requires us, when adopting rules under the Exchange Act, to consider the impact that any new rule would have on competition. In addition, Section 23(a)(2) prohibits us from adopting any rule that would impose a burden on competition not necessary or appropriate in furtherance of the purposes of the Exchange Act.

The proposed amendments are intended to improve the amount and timeliness of current information available to investors and the financial markets. We anticipate that these proposals would enhance the proper functioning of the capital markets. This increases the competitiveness of companies participating in the U.S. capital markets. However, because only companies subject to the reporting requirements of Sections 13 and 15 of the Exchange Act would be required to make the disclosures in this proposal, competitors not subject to those reporting requirements potentially could gain an informational advantage. If the proposal to shorten filing deadlines increases the number of companies who file their reports late, this could reduce the number of companies eligible for short-form and delayed shelf registration.

We request comment on whether the proposed amendments, if adopted, would impose a burden on competition. Commenters are requested to provide empirical data and other factual support for their views if possible.

Section 2(b) [129] of the Securities Act and Section 3(f) [130] of the Exchange Act require us, when engaging in rulemaking where we are required to consider or determine whether an action is necessary or appropriate in the public interest, to consider, in addition to the protection of investors, whether the action will promote efficiency, competition, and capital formation. The proposed amendments would enhance our reporting requirements. The purpose of the amendments is to increase the amount and the timeliness of important information disclosed to investors. This should improve investors' ability to make informed investment and voting decisions. Informed investor decisions generally promote market efficiency and capital formation. As noted above, however, the proposals could have certain indirect consequences, such as precluding some companies from using short-form registration if they fail to comply with the abbreviated filing deadlines, which could adversely impact their ability to raise capital. The possibility of these effects and their magnitude if they were to occur are difficult to quantify.

We request comment on whether the proposed amendments, if adopted, would promote efficiency, competition, and capital formation. Commenters are requested to provide empirical data and other factual support for their views if possible.

VI. Initial Regulatory Flexibility Analysis

This Initial Regulatory Flexibility Analysis has been prepared in accordance with 5 U.S.C. 603. It relates to proposed revisions to Exchange Act Form 8–K.

A. Reasons for the Proposed Action

Exchange Act Form 8–K is used by companies for current reports under Section 13 or 15(d) of the Exchange Act that are filed pursuant to Exchange Act Rule 13a–11 or 15d–11, and for reports of nonpublic information required to be disclosed by Regulation FD. Currently, a company subject to these requirements must file a Form 8–K upon the occurrence of one or more of the following events:

- Change in control of the company
- Company's acquisition or disposition of a significant amount of assets, not in the ordinary course of business
- Bankruptcy or receivership
- Change in the company's certifying accountant
- Resignation of a director
- Change in the company's fiscal year

Most Form 8–K reports must be filed within 15 calendar days after occurrence of the event to which the report relates, although reports concerning changes in the company's certifying accountant and resignation of directors are due within five business days after their occurrence. Companies also may use Form 8–K, at their option, to report events that the company deems important to shareholders. Additionally, a company may use the form to satisfy its Regulation FD disclosure requirements.[131] We believe that investors and the securities markets need more timely access to a greater range of information concerning significant corporate events than currently required by Form 8–K. The proposed revisions to Form 8–K would: (1) significantly increase the list of events that trigger a Form 8–K filing requirement; and (2) require most Form 8–K reports to be filed no later than the second business day following occurrence of the event to which the report relates.[132]

B. Objectives

The proposals would enhance investor confidence in the fairness and integrity of the securities markets by requiring companies to provide more current disclosure about several significant corporate events. In addition to accelerating the filing deadlines for events that already trigger the Form 8–K filing requirements, the proposals would expand the types of information covered by Form 8–K to include:

- Entry into a material agreement not made in the ordinary course of business;
- Termination of a material agreement not made in the ordinary course of business;
- Termination or reduction of business relationship with a customer;
- Creation of any direct or contingent financial obligation that is material to the company;
- Events triggering a direct or contingent financial obligation that is material to the company;
- Exit activities including material write-offs and restructuring charges;
- Any material impairment;
- A change in a rating agency decision, issuance of a credit watch or change in a company outlook;
- Movement of the company's securities from one exchange or quotation system to another, delisting of the company's securities from an exchange or quotation system, or a notice that a company does not comply with a listing standard;
- Conclusion or notice that security holders no longer should rely on the

[128] 15 U.S.C. 78w(a)(2).

[129] 15 U.S.C. 77b(b).

[130] 15 U.S.C. 78c(f).

[132] Form 8–K is not the exclusive means by which a company can comply with the requirements of Regulation FD. Alternatively, a company may comply with Regulation FD by disclosing the information through another method or combination of methods that is reasonably designed to effect broad, non-exclusionary distribution of the information to the public.

[133] Filings under current Item 5 for volunatary reporting have no deadline, while submissions under current Item 9 for Regulation FD disclosures are filed based on the requirements of Regulation FD.

company's previously issued financial statements or a related audit report; and

• Any material limitation, restriction, or prohibition, including the beginning and end of lock-out periods, regarding the company's employee benefit, retirement and stock ownership plans.

We also are proposing to move the following items from other Exchange Act reports to Form 8–K:

• Unregistered sales of equity securities by the company; and

• Material modifications to rights of the company's security holders.

Finally, we are proposing to expand the current Form 8–K item that requires disclosure about the resignation of a director to also require disclosure regarding the appointment or departure of a company's principal officers and newly elected directors. We would also combine the current Form 8–K item regarding changes in fiscal years with a requirement to disclose material amendments in a corporation's articles or bylaws. We believe that these proposals would provide for faster and more effective disclosure of important information by issuers to the investing public.

C. Legal Basis

We are proposing the amendments to Form 8–K under the authority set forth in Sections 7, 10 and 19 of the Securities Act and Sections 12, 13, 15, 23, and 36 of the Exchange Act.

D. Small Entities Subject to the Proposed Revisions

The proposed changes to Form 8–K would affect issuers that are small entities. Exchange Act Rule 0–10(a)[133] defines an issuer, other than an investment company, to be a ''small business'' or ''small organization'' if it had total assets of $5 million or less on the last day of its most recent fiscal year. As of February 20, 2002, we estimated that there were approximately 2,500 issuers, other than investment companies, that may be considered small entities. The proposed revisions to Form 8–K would apply to any small entity that is subject to Exchange Act reporting requirements.

E. Reporting, Recordkeeping, And Other Compliance Requirements

Form 8–K currently consists of nine disclosure items. The amendments would add 13 new disclosure items, including those being moved from annual and quarterly reports, and substantially expand two existing items. All small entities that are subject to the reporting requirements of 13(a) or 15(d) of the Exchange Act would be subject to these amendments. Because reporting companies already file Form 8–K for some events, no additional professional skills beyond those currently possessed by these filers would be necessary to prepare the form for the proposed new types of events. We expect that reporting of these new disclosure items would increase costs incurred by small entities because they would have to file Form 8–K more frequently. We have calculated for purposes of the Paperwork Reduction Act that each filer, including small entities, would be subject to an added annual reporting burden of approximately 3.75 hours and an estimated annual average cost of $3,375 for disclosure assistance from outside counsel as a result of the amendments.

F. Duplicative, Overlapping, or Conflicting Federal Rules

The proposed Form 8–K disclosure would not duplicate, overlap, or conflict with other federal rules. Companies file Form 8–K to report significant events that occur between other required Exchange Act filings. Although limited Form 8–K disclosure and some exhibits attached to Form 8–K may have to be included as part of subsequent annual or quarterly reports filed by the company, most Form 8–K disclosure does not have to be repeated in another filing. We are proposing to eliminate from the annual and quarterly reports the items that we are proposing to move to Form 8–K. There are no other requirements that companies file or provide similar information at the time the events triggering Form 8–K occur.

G. Significant Alternatives

The Regulatory Flexibility Act directs the Commission to consider significant alternatives that would accomplish the stated objective, while minimizing any significant adverse impact on small entity issuers. In connection with the proposed revisions to Form 8–K, we considered the following alternatives: (a) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (b) the clarification, consolidation, or simplification of Form 8–K reporting requirements for small entities; (c) the use of performance rather than design standards; and (d) an exemption from coverage of the Form 8–K requirements, or any part thereof, for small entities.

We believe that different compliance or reporting requirements or timetables for small entities would interfere with achieving the primary goal of making information about significant corporate events promptly available to investors and the public securities markets. We do, however, solicit comment on whether small business issuers, which is a broader category of issuers than small entities,[134] should be subject to fewer Form 8–K disclosure requirements than other issuers. We also solicit comment as to whether small business issuers should be subject to longer Form 8–K filing deadlines. Although we generally believe that an exemption for small entities from coverage of the proposed revisions is not appropriate, we solicit comment on the propriety of a complete exemption from the requirements for small business issuers. We also think that the current and proposed Form 8–K disclosure requirements are clear and straightforward. They generally require brief disclosure indicating that a specific significant corporate event has occurred. Therefore, it does not seem necessary to develop separate requirements for small entities. We have used design rather than performance standards in connection with the proposed Form 8–K revisions because we want this disclosure to appear in a specific type of disclosure filing so that investors will know where to find information about specific significant corporate events and that the form is comparable between large and small issuers. We also want the information to be filed electronically with us using the EDGAR filing system. We do not believe that performance standards for small entities would be consistent with the purpose of the proposed revisions.

H. Solicitation of Comments

We encourage the submission of comments with respect to any aspect of this Initial Regulatory Flexibility Analysis. In particular, we request comments regarding: (i) The number of small entity issuers that may be affected by the proposed revisions; (ii) the existence or nature of the potential impact of the proposed revisions on small entity issuers discussed in the analysis; and (iii) how to quantify the impact of the proposed revisions. Commenters are asked to describe the nature of any impact and provide empirical data supporting the extent of

[133] 17 CFR 240.0–10(a).

[134] Item 10 of Regulation S–B (17 CFR 228.10) defines a small business issuer as a company that has revenues of less than $25 million, is a U.S. or Canadian issuer, is not an investment company, and has a public float of less than $25 million. Also, if it is a majority owned subsidiary, the parent corporation also must be a small business issuer. Rule 0–10 of the Exchange Act (17 CFR 240.10) defines a small entity for purposes of the Regulatory Flexibility Act as a company that, on the last day of its most recent fiscal year, had total assets of $5 million or less.

the impact. Such comments will be considered in the preparation of the Final Regulatory Flexibility Analysis, if the proposed revisions are adopted, and will be placed in the same public file as comments on the proposed amendments themselves.

VII. Small Business Regulatory Enforcement Fairness Act

For purposes of the Small Business Regulatory Enforcement Fairness Act of 1996 (''SBREFA''),[135] a rule is ''major'' if it has resulted, or is 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.

Commenters should provide empirical data on (a) the annual effect on the economy; (b) any increase in costs or prices for consumers or individual industries; and (c) any effect on competition, investment or innovation. We request your comments on the reasonableness of this estimate.

VIII. Statutory Basis

We are proposing the amendments to Securities Exchange Act Form 8–K pursuant to Sections 7, 10 and 19 of the Securities Act, as amended, and Sections 12, 13, 15 and 23 of the Securities Exchange Act, as amended.

Text of the Proposed Amendments

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

Brokers, Reporting and recordkeeping requirements, Securities.

For the reasons set out above, we propose to amend title 17, chapter II of the Code of Federal Regulations as follows:

PART 228—INTEGRATED DISCLOSURE SYSTEM FOR SMALL BUSINESS ISSUERS

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

Authority: 15 U.S.C. 77e, 77f, 77g, 77h, 77j, 77k, 77s, 77z–2, 77z–3, 77aa(25), 77aa(26), 77ddd, 77eee, 77ggg, 77hhh, 77jjj, 77nnn, 77sss, 78l, 78m, 78n, 78o, 78u–5, 78w, 78*ll*, 78mm, 80a–8, 80a–29, 80a–30, 80a–37 and 80b–11.

§ 228.10 [Amended]

2. Amend § 228.10 by removing paragraph (e)(1)(iii).

3. Amend § 228.601 by:

a. Revising paragraph (a)(1);

b. Adding new footnote ''*****'' to the caption ''Exchange Act Forms'' ''8–K'' in the Exhibit Table;

c. Revising exhibit titles (6), (7) and (17) in the Exhibit Table;

d. Removing ''N/A'' corresponding to exhibit titles (6) and (7) under all captions in the Exhibit Table;

e. Adding an ''X'' corresponding to exhibit items (3), (6), (7) and (10), under the caption ''Exchange Act Forms'' ''8–K'' in the Exhibit Table; and

f. Revising paragraphs (b)(6), (b)(7), and (b)(17).

The revisions and additions read as follows:

§ 228.601 (Item 601) Exhibits.

(a) *Exhibits and index of exhibits.* (1) The exhibits required by the exhibit table generally must be filed or incorporated by reference.

* * * * *

Exhibit Table

* * * * *

(6) Notice of delisting or failure to satisfy listing standards

(7) Notice or letter on validity of audit or consent

* * * * *

(17) Letter on departure of director

* * * * *

* * *A Form 8–K (§ 249.308 of this chapter) exhibit is required only if relevant to the subject matter of the Form 8–K. For example, if the Form 8–K pertains to the departure of a director, only the exhibit described in paragraph (b)(17) of this section need be filed. A required exhibit may be incorporated by reference from a previous filing.

(b) *Description of exhibits.* * * *

(6) *Notice of delisting or failure to satisfy listing standards.* Any written notice from a national securities exchange or national securities association that a class of securities of the small business issuer which is listed on the exchange or quoted in an inter-dealer quotation system of the national securities association does not satisfy a listing standard of, or has been delisted from, the exchange or association.

(7) *Notice or letter on validity of audit or consent.* Any written notice from the small business issuer's current or previously engaged independent accountant that the independent accountant is withdrawing a previously issued audit report or that the small business issuer no longer may rely on a previously issued audit report covering one or more years for which the small business issuer is required to provide audited financial statements under Regulation S–X (part 210 of this chapter), and any letter from the independent accountant to the Commission stating whether the independent accountant agrees with the statements made by the small business issuer describing the events giving rise to the notice.

* * * * *

(17) *Letter on departure of director.* Any written correspondence from a former director concerning the circumstances surrounding the former director's resignation, declination to stand for re-election, or removal, including a letter from the former director to the Commission stating whether the former director agrees with statements made by the small business issuer describing the former director's departure.

* * * * *

4. Amend § 228.701 to revise paragraph (e) to read as follows:

§ 228.701 (Item 701) Recent sales of unregistered securities; use of proceeds from registered securities.

* * * * *

(e) If the information called for by this paragraph (e) is being presented on Form 8–K (§ 249.308 of this chapter) under the Exchange Act, and where the securities sold by the registrant are convertible or exchangeable into equity securities, or are warrants or options representing equity securities, disclose the terms of conversion or exercise of the securities.

* * * * *

PART 229—Standard Instructions for Filing Forms Under Securities Act of 1933, Securities Exchange Act of 1934 and Energy Policy and Conservation Act of 1975—Regulation S–K

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

Authority: 15 U.S.C. 77e, 77f, 77g, 77h, 77j, 77k, 77s, 77z–2, 77z–3, 77aa(25), 77aa(26), 77ddd, 77eee, 77ggg, 77hhh, 77iii, 77jjj, 77nnn, 77sss, 78c, 78i, 78j, 78l, 78m, 78n, 78o, 78u–5, 78w, 78*ll*(d), 78mm, 79e, 79n, 79t, 80a–8, 80a–29, 80a–30, 80a–31(c), 80a–37, 80a–38(a) and 80b–11, unless otherwise noted.

* * * * *

§ 229.10 [Amended]

6. Amend § 229.10 by redesignating paragraph (c)(2)(i) as paragraph (c)(2) and by removing paragraph (c)(2)(ii).

7. Amend § 229.601 by:

a. Revising paragraph (a)(1);

b. Adding new footnote 5 to the caption ''Exchange Act Forms'' ''8–K'' in the Exhibit Table;

d. Removing the ''reserved'' designation for exhibits (6) and (7) and adding titles to exhibits (6) and (7) in the Exhibit Table;

[135] Pub. L. No. 104–121, Title II, 110 Stat. 857 (1996).

e. Removing ''N/A'' corresponding to exhibit titles (6) and (7) under all captions in the table;

f. Adding an ''X'' corresponding to exhibit items (3), (6), (7) and (10) under the caption ''Exchange Act Forms'' ''8–K'' in the Exhibit Table;

g. Revising exhibit title (17) in the Exhibit Table;

h. Adding the text of paragraphs (b)(6) and (b)(7); and

h. Revising paragraph (b)(17).

The revisions and additions read as follows:

§ 229.601 (Item 601) Exhibits.

(a) *Exhibits and index required.* (1) Subject to Rule 411(c) (§ 230.411(c) of this chapter) under the Securities Act and Rule 12b–32 (§ 240.12b–32 of this chapter) under the Exchange Act regarding incorporation of exhibits by reference, the exhibits required in the exhibit table shall be filed as indicated, as part of the registration statement or report.

* * * * *

Exhibit Table

* * * * *

(6) Notice of delisting or failure to satisfy listing standards

(7) Notice or letter on validity of audit or consent

* * * * *

(17) Letter on departure of director

* * * * *

5. *Form 8–K Exhibits.* A Form 8–K (§ 249.308 of this chapter) exhibit is required only if relevant to the subject matter of the Form 8–K. For example, if the Form 8–K pertains to the departure of a director, only the exhibit described in paragraph (b)(17) of this section need be filed. A required exhibit may be incorporated by reference from a previous filing.

(b) *Description of exhibits.* * * *

(6) *Notice of delisting or failure to satisfy listing standards.* Any written notice from a national securities exchange or national securities association that a class of securities of the registrant which is listed on the exchange or quoted in an inter-dealer quotation system of the national securities association does not satisfy a listing standard of, or has been delisted from, the exchange or association.

(7) *Notice or letter on validity of audit or consent.* Any written notice from the registrant's current or previously engaged independent accountant that the independent accountant is withdrawing a previously issued audit report or that the registrant no longer may rely on a previously issued audit report covering one or more years for which the registrant is required to provide audited financial statements under Regulation S–X (part 210 of this chapter), including any letter from the independent accountant to the Commission stating whether the independent accountant agrees with the statements made by the registrant describing the events giving rise to the notice.

* * * * *

(17) *Letter on departure of director.* Any written correspondence from a former director concerning the circumstances surrounding the former director's resignation, declination to stand for re-election, or removal, including a letter from the former director to the Commission stating whether the former director agrees with statements made by the registrant describing the former director's departure.

* * * * *

8. Amend § 229.701 to revise paragraph (e) to read as follows:

§ 229.701 (Item 701) Recent sales of unregistered securities; use of proceeds from registered securities.

* * * * *

(e) *Terms of conversion or exercise.* If the information called for by this paragraph (e) is being presented on Form 8–K (§ 249.308 of this chapter) under the Exchange Act, and where the securities sold by the registrant are convertible or exchangeable into equity securities, or are warrants or options representing equity securities, disclose the terms of conversion or exercise of the securities.

* * * * *

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

9. 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, 77z–3, 77eee, 77ggg, 77nnn, 77sss, 77ttt, 78c, 78d, 78e, 78f, 78g, 78i, 78j, 78j–1, 78k, 78k–1, 78*l*, 78m, 78n, 78o, 78p, 78q, 78s, 78u–5, 78w, 78x, 78*ll*, 78mm, 79q, 79t, 80a–20, 80a–23, 80a–29, 80a–37, 80b–3, 80b–4 and 80b–11, unless otherwise noted.

* * * * *

10. Amend § 240.12b–25 by revising the heading and paragraphs (a) and (b)(2)(ii) to read as follows:

§ 240.12b–25 Notification of inability to timely file all or any required portion of a Form 10–K, 10–KSB, 20–F, 11–K, N–SAR, Form 10–Q, Form 10–QSB or Form 8–K.

(a) If all or any required portion of an annual or transition report on Form 10–K, 10–KSB, 20–F, 11–K, or a quarterly or transition report on Form 10–Q or 10–QSB, or a current report on Form 8–K required to be filed pursuant to sections 13 or 15(d) of the Act and rules thereunder, or if all or any portion of a semi-annual, annual or transition report on Form N–SAR required to be filed pursuant to section 30 of the Investment Company Act of 1940 and the rules thereunder is not filed within the time period prescribed for such report, the registrant, no later than one business day after the due date for such report, shall file a Form 12b–25 (17 CFR 249.322) with the Commission which shall contain disclosure of its inability to file the report timely and the reasons therefor in reasonable detail.

(b) * * *

(1) * * *

(2) * * *

(i) * * *

(ii) The subject annual report, semi-annual report or transition report on Form 10–K, 10–KSB, 20–F, 11–K or N–SAR, or portion thereof, will be filed no later than the fifteenth calendar day following the prescribed due date; or the subject quarterly report or transition report on Form 10–Q or 10–QSB, or portion thereof, will be filed no later than the fifth calendar day following the prescribed due date; or the subject current report on Form 8–K, or portion thereof, will be filed no later than the second business day following the prescribed due date and, in the case of Form 8–K, specifying the Item number or numbers to be included in the filing; and

* * * * *

11. Amend § 240.13a–11 by adding new paragraph (c) and a new note to read as follows:

§ 240.13a–11 Current reports on Form 8–K (§ 249.308 of this chapter).

* * * * *

(c) A registrant that fails to file a Form 8–K that is required to be filed shall not be liable under Sections 13 and 15(d) of the Exchange Act for the failure to file in a timely manner if all of the following conditions are satisfied:

(1) On the Form 8–K due date, the company maintained sufficient procedures to provide reasonable assurances that the registrant is able to collect process and disclose, within the specified time period, the information required to be disclosed by Form 8–K; and

(2) No officer, employee or agent of the registrant knew, or was reckless in not knowing, that a report on Form 8–K was required to be filed and once an executive officer of the registrant became aware of its failure to file a required Form 8–K, it promptly (and not later than two business days after

becoming aware of its failure to file) filed a Form 8–K with the Commission containing the required information and stating the date, or approximate date, on which the report should have been filed.

Note: This rule does not have any effect on a registrant's liability under any other provision of the securities laws, including without limitation Rule 10b–5 (§ 240.10b–5 of this chapter) under the Exchange Act and Section 11 of the Securities Act. This rule does not apply to Item 3.05 of Form 8–K.

12. Amend § 240.15d–10 by revising the note after paragraph (i) to read as follows:

§ 240.15d–10 Transition Reports.

* * * * *

(i) * * *

Note: In addition to the report or reports required to be filed pursuant to this section, every issuer, except a foreign private issuer or an investment company required to file reports pursuant to Rule 30b1–1 under the Investment Company Act of 1940, that changes its fiscal closing date is required to file a report on Form 8–K responding to Item 5.03 thereof within the period specified in General Instruction B.1. to that form.

13. By amending § 240.15d–11 by adding new paragraph (c) and a new note to read as follows:

§ 240.15d–11 Current reports on Form 8–K (§ 249.308 of this chapter).

* * * * *

(c) A registrant that fails to file a Form 8–K that is required to be filed shall not be liable under Sections 13 and 15(d) of the Exchange Act for the failure to file in a timely manner if all of the following conditions are satisfied:

(i) On the Form 8–K due date, the company maintained sufficient procedures to provide reasonable assurances that the registrant is able to collect, process and disclose, within the specified time period, the information required to be disclosed by Form 8–K; and

(ii) No officer, employee or agent of the registrant knew, or was reckless in not knowing, that a report on Form 8–K was required to be filed and once an executive officer of the registrant became aware of its failure to file a required Form 8–K, it promptly (and not later than two business days after becoming aware of its failure to file) filed a Form 8–K with the Commission containing the required information and stating the date, or approximate date, on which the report should have been filed.

Note: This rule does not have any effect on a registrant's liability under any other provision of the securities laws, including without limitation Rule 10b–5 (§ 240.10b–5 of this chapter) under the Exchange Act and Section 11 of the Securities Act. This rule does not apply to Item 3.05 of Form 8–K.

PART 249—FORMS, SECURITIES EXCHANGE ACT OF 1934

14. The authority citation for part 249 continues to read in part as follows:

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

* * * * *

15. By amending Form 8–K (referenced in § 249.308) by revising General Instructions B.1, B.2, B.3, B.4 and B.5, and by revising all of the items appearing under the caption ''Information to Be Included in the Report'' after the General Instructions to read as follows:

Note: The text of Form 8–K does not, and this amendment will not, appear in the Code of Federal Regulations.

Form 8–K

Current Report

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

* * * * *

General Instructions

* * * * *

B. Events To Be Reported and Time for Filing of Reports

1. A report on this form is required to be filed upon the occurrence of any one or more of the events specified in the items in Sections 1–5 of this form. A report is to be filed within two business days after occurrence of the event. If the event occurs on a Saturday, Sunday, or holiday on which the Commission is not open for business, then the two business day period shall begin to run on and include the first business day thereafter. A registrant either furnishing a report on this form under Item 6.01 (Regulation FD Disclosure) or electing to file a report on this form under Item 7.01 (Other Events) solely to satisfy its obligations under Regulation FD (§ 243.100 and § 243.101 of this chapter) must furnish such report or make such filing in accordance with the requirements of Rule 100(a) of Regulation FD (§ 243.100(a) of this chapter).

2. The information in a report furnished pursuant to Item 6.01 (Regulation FD Disclosure) shall not be deemed to be ''filed'' for purposes of Section 18 of the Exchange Act or otherwise subject to the liabilities of that section, unless the registrant specifically states that the information is to be considered ''filed'' under the Exchange Act or incorporates it by reference into a filing under the Securities Act or the Exchange Act.

3. If the registrant previously has reported substantially the same information as required by this form, the registrant need not make an additional report of the information on this form. To the extent that an item calls for disclosure of subsequent developments concerning a previously reported event or transaction, any information required in the new report about the previously reported event or transaction may be provided by incorporation by reference to the previously filed report. The term ''previously reported'' is defined in Rule 12b–2 (§ 240.12b–2 of this chapter).

4. When considering current reporting on this form, particularly of other events of material importance pursuant to Item 6.01 (Regulation FD Disclosure) and Item 7.01 (Other Events), registrants should have due regard for the accuracy, completeness and currency of the information in registration statements filed under the Securities Act which incorporate by reference information in reports filed pursuant to the Exchange Act, including reports on this form.

5. A registrant's report under Item 6.01 (Regulation FD Disclosure) or Item 7.01 (Other Events) will not be deemed an admission as to the materiality of any information in the report that is required to be disclosed solely by Regulation FD.

* * * * *

Information To Be Included in the Report

Section 1—Registrant's Business and Operations

Item 1.01 Entry into a Material Agreement

If the registrant has entered into an agreement that is material to the registrant and not made in the ordinary course of the registrant's business, or into any material amendment of such agreement, furnish the following information:

(a) The identity of the parties to the agreement and a description of any material relationship between any of the parties other than in respect of the agreement;

(b) A brief description of the agreement;

(c) The rights and obligations of each party to the agreement that are material to the registrant;

(d) Any material conditions to the agreement becoming binding or effective; and

(e) The duration of the agreement and any material termination provisions.

Instructions.

1. For purposes of this Item 1.01, an ''agreement'' means any definitive agreement, whether unconditionally

binding or binding subject to stated conditions, any letter of intent or other non-binding agreement or any similar document.

2. Any material agreement not made in the ordinary course of the registrant's business must be disclosed under this Item 1.01. An agreement is deemed to be not made in the ordinary course of a registrant's business, and therefore must be disclosed under this item, even if the agreement is such as ordinarily accompanies the kind of business conducted by the registrant, if it involves the subject matter identified in Item 601(b)(10)(ii)(A)–(D) of Regulation S–K. An agreement involving the subject matter identified in Item 601(b)(10)(iii)(A) or (B) also must be disclosed unless Item 601(b)(10)(iii)(C) would not require the registrant to file a material contract involving the same subject matter as an exhibit.

3. A registrant must provide disclosure under this Item 1.01 if the registrant succeeds as a party to the agreement by assumption or assignment.

4. Disclosure of a material amendment is required under this item even if the underlying agreement previously has not been disclosed because the agreement was entered into prior to the effective date of this Item 1.01. In such a case, the amendment and the underlying agreement must be filed as exhibits to the report disclosing the amendment.

Item 1.02 Termination of a Material Agreement

If a definitive material agreement, or other material agreement or instrument, which was not made in the ordinary course of the registrant's business and to which the registrant is a party, is terminated and termination of the agreement is material to the registrant, provide the following:

(a) the identity of the parties to the agreement and a description of any material relationship between any of the parties other than in respect of the agreement;

(b) a brief description of the agreement;

(c) a description of the material circumstances surrounding the termination;

(d) any material early termination penalties incurred by the registrant; and

(e) a discussion of management's analysis of the effect of the termination on the registrant.

Instructions.

1. No disclosure is required under this Item 1.02 during negotiations or discussions regarding termination of an agreement unless and until the agreement has been terminated or the registrant decides to terminate the agreement. If the registrant is not the terminating party, no disclosure is required until the terminating party has notified the registrant of the termination in writing, unless the agreement provides for notification in another manner, and all material conditions to termination other than those within the control of the terminating party or the passage of time have been satisfied.

2. Disclosure of the termination of a material agreement is required under this item even if the agreement previously was not disclosed because the agreement was entered into prior to effectiveness of Item 1.01. In such a case, the terminated material agreement must be filed as an exhibit to the report disclosing the termination.

Item 1.03 Termination or Reduction of Business Relationship with Customer

If the registrant becomes aware that a customer has terminated or reduced the scope of a business relationship with the registrant and the amount of loss of revenues to the registrant from such termination or reduction represents an amount equal to 10% or more of the registrant's consolidated revenues during the registrant's most recent fiscal year, identify the customer and discuss management's analysis of the effect of the loss or reduction on the registrant. For purposes of this item, a group of customers under common control or customers that are affiliates of each other would be regarded as a single customer.

Instruction. No disclosure is required under this Item 1.03 during negotiations or discussions with a customer or group of related customers unless and until an executive officer of the registrant is aware that the termination or reduction required to be disclosed has occurred or will occur. A reduction or suspension of orders will not trigger a disclosure requirement unless and until an executive officer of the registrant is aware that a termination of reduction of a business relationship requiring disclosure has occurred.

Section 2—Financial Information

Item 2.01 Completion of Acquisition or Disposition of Assets

If the registrant or any of its majority-owned subsidiaries has completed the acquisition or disposition of a significant amount of assets, otherwise than in the ordinary course of business, furnish the following information:

(a) The date of completion of the transaction;

(b) A brief description of the assets involved;

(c) The nature and amount of consideration given or received for the assets and, if applicable, the formula or principle followed in determining the amount of such consideration;

(d) The identity of the person(s) from whom the assets were acquired or to whom they were sold and the nature of any material relationship, other than in respect of the transaction, between such person(s) and the registrant or any of its affiliates, or any director or officer of the registrant, or any associate of any such director or officer; and

(e) If the transaction being reported is an acquisition, the source and the amount of funds or other consideration used in making the purchases, and if any part of the purchase price is represented by funds or other consideration borrowed or otherwise obtained for the purpose of acquiring, holding, trading or voting the securities, a description of the transaction and the names of the parties to the transaction, except that if the source of all or any part of the funds is a loan made in the ordinary course of business by a bank, as defined in Section 3(a)(6) of the Exchange Act, the name of the bank shall not be made available to the public if the person at the time of filing the report so requests in writing and files such request, naming such bank, with the Secretary of the Commission.

Instructions.

1. No information need be given as to (i) any transaction between any person and any wholly-owned subsidiary of such person; (ii) any transaction between two or more wholly-owned subsidiaries of any person; or (iii) the redemption or other acquisition of securities from the public, or the sale or other disposition of securities to the public, by the issuer of such securities.

2. The term ''acquisition'' includes every purchase, acquisition by lease, exchange, merger, consolidation, succession or other acquisition, except that the term does not include the construction or development of property by or for the registrant or its subsidiaries or the acquisition of materials for such purpose. The term ''disposition'' includes every sale, disposition by lease, exchange, merger, consolidation, mortgage, assignment or hypothecation of assets, whether for the benefit of creditors or otherwise, abandonment, destruction, or other disposition.

3. The information called for by this item is to be given as to each transaction or series of related transactions of the size indicated. The acquisition or disposition of securities is deemed the indirect acquisition or disposition of the assets represented by such securities if

it results in the acquisition or disposition of control of such assets.

4. An acquisition or disposition shall be deemed to involve a significant amount of assets:

(i) If the registrant's and its other subsidiaries' equity in the net book value of such assets or the amount paid or received for the assets upon such acquisition or disposition exceeded 10% of the total assets of the registrant and its consolidated subsidiaries; or

(ii) If it involved a business (see § 210.11–01(d) of this chapter) that is significant (see § 210.11–01(b) of this chapter).

Acquisitions of individually insignificant businesses are not required to be reported pursuant to this Item 2.01 unless they are related businesses (see § 210.3–05(a)(3) of this chapter) and are significant in the aggregate.

5. Attention is directed to the requirements in Item 8.01 (Financial Statements and Exhibits) with respect to the filing of:

(i) Financial statements of businesses acquired;

(ii) Pro forma financial information; and

(iii) Copies of the plans of acquisition or disposition as exhibits to the report.

Item 2.02 Bankruptcy or Receivership

(a) If a receiver, fiscal agent or similar officer has been appointed for a registrant or its parent, in a proceeding under the Bankruptcy Act or in any other proceeding under State or Federal law in which a court or governmental authority has assumed jurisdiction over substantially all of the assets or business of the registrant or its parent, or if such jurisdiction has been assumed by leaving the existing directors and officers in possession but subject to the supervision and orders of a court or governmental authority, disclose the following:

(1) The name or other identification of the proceeding;

(2) The identity of the court or governmental authority;

(3) The date that jurisdiction was assumed; and

(4) The identity of the receiver, fiscal agent or similar officer and the date of his or her appointment.

(b) If an order confirming a plan of reorganization, arrangement or liquidation has been entered by a court or governmental authority having supervision or jurisdiction over substantially all of the assets or business of the registrant or its parent, disclose the following;

(1) The identity of the court or governmental authority;

(2) The date that the order confirming the plan was entered by the court or governmental authority;

(3) A summary of the material features of the plan and, pursuant to Item 8.01 (Financial Statements and Exhibits), a copy of the plan as confirmed;

(4) The number of shares or other units of the registrant or its parent issued and outstanding, the number reserved for future issuance in respect of claims and interests filed and allowed under the plan, and the aggregate total of such numbers; and

(5) Information as to the assets and liabilities of the registrant or its parent as of the date that the order confirming the plan was entered, or a date as close thereto as practicable.

Instruction. The information called for in paragraph (b)(5) of this Item 2.02 may be presented in the form in which it was furnished to the court or governmental authority.

Item 2.03 Creation of a Direct or Contingent Financial Obligation That Is Material to the Registrant

If the registrant or any third party enters into a transaction or agreement that creates any material direct or contingent financial obligation to which the registrant is subject, furnish the following information:

(a) A brief description of the transaction or agreement, including an identification of the parties to the agreement;

(b) The nature and amount of the material direct or contingent financial obligation created by the transaction or agreement, including a description of the events that may cause the obligation to arise, increase, or become accelerated;

(c) If applicable, the names of any underwriters or placement or other agents for the transaction, or any persons performing a similar function in the case of a private transaction, and the amount of any fees or other compensation paid to them;

(d) In the case of a transaction or agreement without underwriters or placement or other agents or persons performing a similar function, the names of any lenders or other persons who are the beneficiaries of the obligation described in paragraph (b) of this Item 2.03; and

(e) A discussion of management's analysis of the effect of the direct or contingent financial obligation on the registrant.

Instructions.

1. Disclosure is required if the registrant becomes subject to the direct or contingent financial obligation, whether or not the registrant is a party to the agreement.

2. No obligation to make disclosure under this Item 2.03 shall arise until a definitive agreement that is unconditional or subject only to customary closing conditions exists or, if there is no such agreement, when settlement of the transaction occurs.

3. If the transaction or agreement has been or will be disclosed in a prospectus related to a registrant statement of the registrant filed in the required time period under Securities Act Rule 424 (§ 230.424 of this chapter), disclosure may be made by reference to that prospectus to the extent the prospectus contains the required information.

4. No disclosure is required with respect to the issuance of notes, drafts, acceptances, bills of exchange or other commercial instruments with a maturity of one year or less issued in the ordinary course of the registrant's business.

5. For purposes of this item, the term ''contingent financial obligation'' includes guarantees, co-obligor arrangements, obligations under keepwell agreements, obligations to purchase assets and any similar arrangements and all other obligations that exist or may arise under an agreement. For purposes of this instruction, a ''keepwell agreement'' means any agreement or undertaking under which the registrant is, or would be, obligated to provide or arrange for the provision of funds or property to an affiliate or third party.

Item 2.04 Events Triggering a Direct or Contingent Financial Obligation That Is Material to the Registrant

(a) If a triggering event as defined in paragraph (b) occurs, furnish the following information:

(1) A description of the agreement or agreements under which the triggering event occurred;

(2) A description of the triggering event;

(3) The nature and amount of the material direct or contingent financial obligation of the registrant that may arise, increase or become accelerated as a result of the triggering event, including obligations under cross-default, cross-acceleration or similar arrangements; and

(4) A discussion of management's analysis of the effect on the registrant of the triggering event and of the obligations that have arisen, increased or been accelerated.

(b) For purposes of this Item 2.04, a ''triggering event'' shall be an event, including an event of default, event of acceleration or similar event, that has occurred and as a consequence of which, either (i) unconditionally, or

subject to no condition other than the passage of time, a material direct or contingent financial obligation of the registrant has arisen (including as a result of an increase in an obligation) or been accelerated, or (ii) a party to the agreement shall have the unconditional right to cause such an obligation to arise or be accelerated, in either case whether or not the registrant is a defaulting party; *provided, however,* that no triggering event shall be deemed to have occurred during negotiations or discussions to which the registrant is a party regarding a determination of whether a triggering event has occurred, a waiver of the triggering event, an amendment that would cure the triggering event or a similar arrangement, unless a party to the agreement with the right to do so notifies to the registrant or otherwise declares that the triggering event has occurred. Such notice or declaration must be in writing unless the agreement provides for notification in another manner.

Instructions.

1. So long as the registrant becomes, or will become, subject to a direct or contingent financial obligation as the result of the occurrence of a triggering event, a report under this item is required. The registrant need not be a party to the agreement under which the triggering event occurs.

2. For purposes of this item, ''contingent financial obligations'' includes guarantees, co-obligor arrangements, obligations under keepwell agreements, obligations to purchase assets and any similar arrangements and all other obligations that exist or may arise under an agreement. For purposes of this instruction, a ''keepwell agreement'' means any agreement or undertaking under which the registrant is, or would be, obligated to provide or arrange for the provision of funds or property to an affiliate or other third party.

Item 2.05 Exit Activities Including Material Write-Offs and Restructuring Charges

If the Board of Directors or the registrant's officer or officers authorized to take such action, if board approval is not required, definitively commits the registrant to a course of action, including, without limitation, a plan of termination or plan to exit an activity, under which material write-offs or restructuring charges will be incurred under generally accepted accounting principles applicable to the registrant, furnish the following information:

(a) The date on which such commitment was made;

(b) A description of the course of action and the reasons for the write-off or restructuring charge;

(c) A description of the asset or assets subject to write-off;

(d) The estimated amount of the write-off or restructuring charge;

(e) The estimated amount of the write-off or restructuring charge that will result in future cash expenditures; and

(f) An analysis of the effect of the write-off or restructuring charge on the company, including the segment affected.

Item 2.06 Material Impairments

If the Board of Directors or the registrant's officer or officers authorized to make the relevant conclusion, if board approval is not required, concludes that the registrant is required to record a material charge for impairment to one or more of its assets, including, without limitation, impairments of securities or goodwill, under generally accepted accounting principles applicable to the registrant, furnish the following information:

(a) The date on which the conclusion was reached;

(b) A description of the asset or assets subject to impairment and the facts and circumstances leading to the impairment;

(c) The estimated amount of the impairment charge; and

(d) An analysis of the effect of the impairment charge on the registrant, including the segment affected.

Section 3—Securities and Trading Markets

Item 3.01 Rating Agency Decisions

(a) Furnish the information required by paragraph (b) of this Item 3.01 if the registrant is notified by, or receives any communication from, any rating agency to whom the registrant provides information (other than its annual report or reports filed with the Commission) to the effect that the organization has decided to:

(1) Change or withdraw the credit rating assigned to, or outlook on, the registrant or any class of debt or preferred security or other indebtedness of the registrant (including securities or obligations as to which the registrant is a guarantor or has a contingent financial obligation);

(2) Refuse to assign a credit rating to the registrant, to any class of the registrant's securities, or to any of the registrant's indebtedness after being requested to do so by the registrant;

(3) Place the registrant or any class of the registrant's securities or indebtedness on ''credit watch'' or similar status; or

(4) Take any similar action.

(b) If the registrant has received any notification or other communication as described in paragraph (a) of this Item 3.01, file the notice as an exhibit to the report on Form 8–K and furnish the following information:

(1) The date of the registrant received the notification or communication;

(2) The name of the rating agency;

(3) The nature of the rating agency's decision; and

(4) A discussion of management's analysis of the effect of the change or other decision on the registrant.

Instructions.

1. No disclosure need be made under this Item 3.01 during any discussions between the registrant and any rating organization regarding any decision required to be disclosed unless and until the rating organization notifies the registrant that the rating organization has made a final decision to take such action.

2. For purposes of this Item 3.01, the term ''rating agency'' means an entity whose primary business is the issuance of credit ratings.

3. The term ''contingent financial obligation'' as used in this Item 3.01 has the same meaning as in the definition included in Instruction 4 to Item 2.03 of this Form.

Item 3.02 Notice of Delisting or Failure To Satisfy Listing Standards; Transfer of Listing

(a) If the registrant has received notice from the national securities exchange or national securities association that is the principal trading market for a class of the registrant's common stock or similar equity securities to the effect that the registrant or a class of the registrant's securities does not satisfy the listing requirements or standards of the exchange or association, or that a class of the registrant's securities has been delisted from or by the exchange or association, furnish the following information:

(1) The date that the registrant received the notice;

(2) The listing requirement or standard that the registrant failed to satisfy or the reason for the delisting as indicated by the exchange or association; and

(3) A discussion of the planned response of the registrant to the notice and management's analysis of the effect of the delisting or the failure to satisfy a listing standard on the registrant.

(b) If the registrant has taken definitive action to cause the listing or quotation of a class of its common stock or similar equity securities to be terminated from the national securities

exchange or inter-dealer quotation system of a registered national securities association that is the principal trading market for that class of securities, including by reason of a transfer of the listing or quotation to another securities exchange or quotation system, furnish a description of the action taken and date of the action.

Item 3.03 Unregistered Sales of Equity Securities

If the registrant sells equity securities in a transaction that is not registered under the Securities Act, furnish the information set forth in paragraphs (a) through (e) of Item 701 of Regulation S–K (§ 229.701(a) through (e) of this chapter). The registrant has no obligation to disclose the information required by this Item 3.03 until a definitive agreement for the sale of equity securities that is unconditional or subject only to customary closing conditions exists, or if there is no such agreement, when settlement of the sale occurs.

Item 3.04 Material Modification to Rights of Security Holders

(a) If the constituent instruments defining the rights of the holders of any class of registered securities have been materially modified and such modification was not reported in a publicly filed definitive proxy statement or information statement under Section 14 of the Exchange Act, state the title of the class of securities involved and describe briefly the general effect of such modification upon the rights of holders of such securities.

(b) If the rights evidenced by any class of registered securities have been materially limited or qualified by the issuance or modification of any other class of securities, state briefly the general effect of the issuance or modification of such other class of securities upon the rights of the holders of the registered securities.

Section 4—Matters Related to Accountants

Item 4.01 Changes in Registrant's Certifying Accountant

(a) If an independent accountant who was previously engaged as the principal accountant to audit the registrant's financial statements, or an independent accountant upon whom the principal accountant expressed reliance in its report regarding a significant subsidiary, resigns (or indicates that it declines to stand for re-appointment after completion of the current audit) or is dismissed, provide the information required by Item 304(a)(1) of Regulation S–K, including compliance with Item 304(a)(3) of Regulation S–K (§ 229.304(a)(1) and (a)(3) of this chapter).

(b) If a new independent accountant has been engaged as either the principal accountant to audit the registrant's financial statements or as an independent accountant on whom the principal accountant is expected to express reliance in its report regarding a significant subsidiary, then provide the information required by Item 304(a)(2) of Regulation S–K (§ 229.304(a)(2) of this chapter).

Instruction. The resignation or dismissal of an independent accountant, or its declination to stand for re-appointment, is a reportable event separate from the engagement of a new independent accountant. On some occasions, two reports on Form 8–K are required for a single change in accountants, the first on the resignation (or declination to stand for re-appointment) or dismissal of the former accountant and the second when the new accountant is engaged. Information required in the second Form 8–K in such situations need not be provided to the extent that it has been reported previously in the first Form 8–K.

Item 4.02 Non-Reliance on Previously Issued Financial Statements or a Related Audit Report

(a) If the audit committee, or the board of directors in the absence of an audit committee, or the company's officer or officers authorized to make such a conclusion, conclude that any previously issued financial statements, covering one or more years for which the registrant is required to provide audited financial statements under Regulation S–X or Regulation S–B, should no longer be relied upon, or if the registrant receives notice from its current or a previously engaged independent accountant that action should be taken to prevent future reliance on a previously issued report related to any such financial statements, furnish the following information:

(1) The date on which the conclusion was reached or the registrant received the notice;

(2) A description of the events giving rise to the conclusion or notice related to the reliability of the financial statements;

(3) A statement of whether the audit committee, or the board of directors in the absence of an audit committee, discussed with the independent accountant the subject matter giving rise to the conclusion or notice; and

(4) A description of management's plans to alleviate the issue.

(b) In addition, the registrant must:

(1) Provide the independent accountant with a copy of the disclosures it is making in response to this Item 4.02 that the independent accountant shall receive no later than the business day following the day that the registrant files the disclosures with the Commission;

(2) Request the independent accountant to furnish the registrant as promptly as possible with a letter addressed to the Commission stating whether the independent accountant agrees with the statements made by the registrant in response to this Item 4.02 and, if not, stating the respects in which it does not agree; and

(3) File the independent accountant's letter with the Commission within two business days after receipt as an exhibit by amendment to the report on Form 8–K.

Section 5—Corporate Governance and Management

Item 5.01 Changes in Control of Registrant

(a) If, to the knowledge of management, a change in control of the registrant has occurred, furnish the following information:

(1) The identity of the person(s) who acquired such control;

(2) The date and a description of the transaction(s) which resulted in the change in control;

(3) The basis of the control, including the percentage of voting securities of the registrant now beneficially owned directly or indirectly by the person(s) who acquired control;

(4) The amount of the consideration used by such person(s);

(5) The source and the amount of funds or other consideration used in making the purchases, and if any part of the purchase price is represented by funds or other consideration borrowed or otherwise obtained for the purpose of acquiring, holding, trading or voting the securities, a description of the transaction and the names of the parties to the transaction, except that if the source of all or any part of the funds is a loan made in the ordinary course of business by a bank, as defined in Section 3(a)(6) of the Exchange Act, the name of the bank shall not be made available to the public if the person at the time of filing the report so requests in writing and files such request, naming such bank, with the Secretary of the Commission;

(6) The identity of the person(s) from whom control was assumed; and

(7) Any arrangements or understandings among members of both

the former and new control groups and their associates with respect to election of directors or other matters.

(b) Furnish the information required by Item 403(c) of Regulation S–K.

Instructions. Responses to this Item 5.01 may be given by reference to any earlier filing with the Commission pursuant to its rules under the Exchange Act.

Item 5.02 Departure of Directors or Principal Officers; Election of Directors; Appointment of Principal Officers

(a)(1) If a director has resigned or declined to stand for re-election to the board of directors since the date of the last annual meeting of shareholders because of a disagreement with the registrant, known to an executive officer of the registrant, on any matter relating to the registrant's operations, policies or practices, or if a director has been removed for cause from the board of directors, the registrant must:

(i) State the date of such resignation, declination to stand for re-election, or removal;

(ii) State any positions held by the director on any committee of the board of directors before the director's resignation, declination to stand for re-election, or removal; and

(iii) Briefly describe the circumstances of the director's resignation, declination to stand for re-election or removal.

(2) If the director has furnished the registrant with any written document concerning the circumstances surrounding his or her resignation, declination, or removal, the registrant shall summarize the contents of that document and file a copy of the document as an exhibit to the report on Form 8–K.

(3) The registrant also must:

(i) Provide the director with a copy of the disclosures it is making in response to this Item 5.02, which the director shall receive no later than the business day following the day that the registrant files the disclosures with the Commission;

(ii) Request the director to furnish the registrant as promptly as possible with a letter addressed to the Commission stating whether he or she agrees with the statements made by the registrant in response to this Item 5.02 and, if not, stating the respects in which he or she does not agree; and

(iii) File the director's letter with the Commission within two business days after receipt as an exhibit by amendment to the report on Form 8–K.

(b) If the registrant's chief executive officer, president, chief financial officer, chief accounting officer, chief operating officer, or any person serving an equivalent function, has resigned or been terminated from that position, or if a director has resigned, been removed, or declined to stand for re-election (except in circumstances described in paragraph (a) of this Item 5.02), furnish the following information:

(1) The date when the event occurred; and

(2) A description of the reasons for the event.

(c) If the registrant appoints a new principal executive officer, president, principal financial officer, principal accounting officer, principal operating officer, or person serving an equivalent function, furnish the following information:

(1) The name and position of the newly appointed officer and the date of the appointment;

(2) A brief description of any arrangement or understanding between the newly appointed officer and any other persons, naming such persons, pursuant to which such officer was selected as an officer;

(3) The information required by Items 401(d), 401(e) and 404(a) of Regulation S–K (§§ 229.401(d) and (e) and § 229.404(a) of this chapter); and

(4) A brief description of the material terms of any employment agreement between the registrant and that officer.

(d) If the registrant elects a new director, except by a vote of security holders at an annual meeting, furnish the following information:

(1) The name of the newly elected director and the date of election;

(2) A brief description of any arrangement or understanding between the new director and any other persons, naming such persons, pursuant to which such director was selected as a director;

(3) The committees of the board of directors to which the new director has been, or at the time of this disclosure is expected to be, named; and

(4) the information required by Item 404(a) of Regulation S–K (§ 229.404(a) of this chapter).

Instruction. To the extent that any information called for in clauses (3) and (4) of paragraph (c) or clauses (3) and (4) of paragraph (d) of this Item 5.02 is undetermined at the time of the required filing, that fact shall be stated in the filing and the registrant shall make an amended filing under this Item 5.02 containing such information within two business days after the information is determined.

Item 5.03 Amendments to Articles of Incorporation or Bylaws; Change in Fiscal Year

(a) If the registrant amends its articles of incorporation or bylaws and the amendment was not disclosed in a proxy statement or information statement filed by the registrant, furnish the following information:

(1) The effective date of the amendment;

(2) A description of the provision adopted or changed by amendment and, if applicable, the previous provision; and

(3) In the event of an amendment to change the fiscal year of the registrant from that used in its most recent filing with the Commission, state the date of the new fiscal year end and the form (for example, Form 10–K, Form 10–KSB, Form 10–Q or Form 10–QSB) on which the report covering the transition period will be filed.

(b) If the registrant determines to change the fiscal year from that used in its most recent filing with the Commission other than by means of:

(1) A submission to a vote of security holders through the solicitation of proxies or otherwise; or

(2) An amendment to its articles of incorporation or bylaws, state the date of such determination, the date of the new fiscal year end, and the form (for example, Form 10–K, Form 10–KSB, Form 10–Q or Form 10–QSB) on which the report covering the transition period will be filed.

Item 5.04 Material Events Regarding the Registrant's Employee Benefit, Retirement and Stock Ownership Plans

If the registrant becomes aware that an event will occur that will materially limit, restrict, or prohibit the ability of participants to acquire, dispose or convert assets in any employee benefit, retirement or stock ownership plan of the registrant, other than a periodic or other limitation, restriction or prohibition based on presumed or actual knowledge of, or access to, material non-public information, and that plan is broadly available to the registrant's employees, furnish the following information:

(a) The period or expected period of the limitation;

(b) A description of the nature of the limitation; and

(c) A description of the circumstances surrounding, or reasons for, the limitation.

Section 6—Regulation FD

Item 6.01 Regulation FD Disclosure

Unless filed under Item 7.01, report under this item only information that

the registrant elects to disclose through Form 8–K pursuant to Regulation FD (§§ 243.100–243.103 of this chapter).

Section 7—Other Events

Item 7.01 Other Events

The registrant may, at its option, report under this item any events, with respect to which information is not otherwise called for by this form, that the registrant deems of importance to security holders. The registrant may, at its option, file a report under this item disclosing the nonpublic information required to be disclosed by Regulation FD (§§ 243.100–243.103 of this chapter).

Section 8—Financial Statements and Exhibits

Item 8.01 Financial Statements and Exhibits.

List below the financial statements, pro forma financial information and exhibits, if any, filed as a part of this report.

(a) Financial statements of businesses acquired.

(1) For any business acquisition required to be described in answer to Item 2.01, financial statements of the business acquired shall be filed for the periods specified in Rule 3–05(b) of Regulation S–X (§ 210.3–05(b) of this chapter).

(2) The financial statements shall be prepared pursuant to Regulation S–X except that supporting schedules need not be filed. A manually signed accountants' report should be provided pursuant to Rule 2–02 of Regulation S–X [§ 210.2–02 of this chapter].

(3) With regard to the acquisition of one or more real estate properties, the financial statements and any additional information specified by Rule 3–14 of Regulation S–X (§ 210.3–14 of this chapter) shall be filed.

(4) Financial statements required by this item may be filed with the initial report, or by amendment not later than 60 days after the date that the initial report on Form 8–K must be filed. If the financial statements are not included in the initial report, the registrant should so indicate in the Form 8–K report and state when the required financial statements will be filed. The registrant may, at its option, include unaudited financial statements in the initial report on Form 8–K.

(b) Pro forma financial information.

(1) For any transaction required to be described in answer to Item 2.01 above, furnish any pro forma financial information that would be required pursuant to Article 11 of Regulation S–X.

(2) The provisions of (a)(4) above shall also apply to pro forma financial information relative to the acquired business.

(c) Exhibits. The exhibits shall be furnished in accordance with the provisions of Item 601 of Regulation S–K (§ 229.601 of this chapter).

Instructions. During the period after a registrant has reported a business combination pursuant to Item 2.01, until the date on which the financial statements specified by this Item 8.01 must be filed, the registrant will be deemed current for purposes of its reporting obligations under Section 13(a) or 15(d) of the Securities Exchange Act of 1934. With respect to filings under the Securities Act of 1933, however, registration statements will not be declared effective and post-effective amendments to registrations statements will not be declared effective unless financial statements meeting the requirements of Rule 3–05 of Regulation S–X (§ 210.3–05 of this chapter) are provided. In addition, offerings should not be made pursuant to effective registration statements or pursuant to Rules 505 and 506 of Regulation D (§§ 230.501 through 506 of this chapter), where any purchasers are not accredited investors under Rule 501(a) of that Regulation, until the audited financial statements required by Rule 3–05 of Regulation S–X (§ 210.3–05 of this chapter) are filed. Provided, however, that the following offerings or sales of securities may proceed notwithstanding that financial statements of the acquired business have not been filed:

(a) Offerings or sales of securities upon the conversion of outstanding convertible securities or upon the exercise of outstanding warrants or rights;

(b) Dividend or interest reinvestment plans;

(c) Employee benefit plans;

(d) Transactions involving secondary offerings; or

(e) Sales of securities pursuant to Rule 144 (§ 230.144 of this chapter).

* * * * *

16. Amend Form 10–Q (referenced in § 249.308a) by:

a. Deleting Items 2(a), 2(b), 2(c), 3, 4, 5 and 6(b) in Part II—Other Information;

b. Removing the paragraph (d) designation in Item 2;

c. Re-designating Item 6 as Item 3;

d. Deleting the words ''and Reports on Form 8–K (§ 249.308 of this chapter)'' from the caption to newly re-designated Item 3; and

e. Removing the paragraph (a) designation in newly re-designated Item 3.

17. Amend Form 10–QSB (referenced in § 249.308b) by:

a. Deleting Items 2(a), 2(b), 2(c), 3, 4, 5 and 6(b) in Part II—Other Information;

b. Removing the paragraph (d) designation in Item 2;

c. Re-designating Item 6 as Item 3;

d. Deleting the words ''and Reports on Form 8–K'' from the caption to newly re-designated Item 3; and

e. Removing the paragraph (a) designation in newly re-designated Item 3.

18. Amend Form 10–K (referenced in § 249.310) by:

a. Revising Items 5 and 9;

b. Deleting paragraph (b) of Item 14;

c. Revising the caption to Item 14 to read ''Exhibits and Financial Statement Schedules''; and

d. Re-designating Items 14(c) and (d) as Items 14(b) and (c).

The revisions and additions read as follows:

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

Form 10–K

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

* * * * *

Part II

Item 5 Market for Registrant's Common Equity and Related Stockholder Matters

(a) Furnish the information required by Item 201 of Regulation S–K (§ 229.201 of this chapter).

* * * * *

Item 9 [Reserved]

* * * * *

19. Amend Form 10–KSB (referenced in § 249.310a) by:

a. Revising Items 5 and 8;

b. Deleting paragraph (b) of Item 13;

c. Deleting the words ''and Reports on Form 8–K'' from the caption to Item 13;

d. Removing the paragraph (a) designation in Item 13;

e. Deleting Items 3, 4 and 6 in Part II of ''Information Required in Annual Report of Transitional Small Business Issuers''; and

f. re-designating Item 5 in Part II of ''Information Required in Annual Report of Transitional Small Business Issuers'' as Item 3.

The revisions and additions read as follows:

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

Form 10–KSB

(Check one)

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

* * * * *

Part II

Item 5 Market for Registrant's Common Equity and Related Stockholder Matters

(a) Furnish the information required by Item 201 of Regulation S–B (§ 228.201 of this chapter).

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Item 8 [Reserved]

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20. Amend § 249.322 by revising paragraph (a) to read as follows:

§ 249.322 Form 12b–25—Notification of late filing.

(a) This form shall be filed pursuant to § 240.12b–25 of this chapter by issuers who are unable to file timely all or any required portion of an annual or transition report on Form 10–K and Form 10–KSB, 20–F, or 11–K or a quarterly or transition report on Form 10–Q and Form 10–QSB or a current report on Form 8–K pursuant to section 13 or 15(d) of the Act or a semi-annual, annual or transition report on Form N–SAR pursuant to section 30 of the Investment Company Act of 1940. The filing shall consist of a signed original and three conformed copies, and shall be filed with the Commission at Washington, DC 20549, no later than one business day after the due date for the periodic report in question. Copies of this form may be obtained from ''Publications'', Securities and Exchange Commission, 450 5th Street, NW, Washington, DC 20549 and at our website at http://www.sec.gov.

* * * * *

21. Amend Form 12b–25 (referenced in § 249.322) by:

a. Revising the preamble;

b. Revising paragraph (b) of Part II; and

c. Revising Part III to read as follows:

Note: The text of Form 12b–25 does not, and this amendment will not, appear in the Code of Federal Regulations.

Form 12b–25

Notification of Late Filing

(Check One): __ Form 10–K __ Form 20–F __ Form 11–K __ Form 10–Q __ Form 8–K __ Form N–SAR

* * * * *

Part II—Rules 12B–25(b) and (c)

* * * * *

(b) The subject annual report, semi-annual report, transition report on Form 10–K, Form 20–F, Form 11–K or Form N–SAR, or portion thereof, will be filed on or before the fifteenth calendar day following the prescribed due date; or the subject quarterly report or transition report on Form 10–Q, or portion thereof, will be filed on or before the fifth calendar day following the prescribed due date; or the subject current report on Form 8–K will be filed on or before the second business day following the prescribed due date; and

* * * * *

Part III—Narrative

State below in reasonable detail why forms 10–K, 20–F, 11–K, 10–Q, 8–K, N–SAR, or the transition report or portion thereof, could not be filed within the prescribed time period.

* * * * *

Dated: June 17, 2002.

By the Commission.

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 02–15706 Filed 6–24–02; 8:45 am]

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