SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 230, 232, 239, 240, 249, 250, 259, 260, 269 and 274

[Release Nos. 33–8170, 34–47069, 35–27627, IC–25872; File No. S7–52–02]

RIN 3235–AI26

Mandated Electronic Filing and Web Site Posting for Forms 3, 4 and 5

AGENCY: Securities and Exchange Commission.

ACTION: Proposed rule.

SUMMARY: We are proposing rule and form amendments to mandate the electronic filing, and website posting by issuers with corporate websites, of beneficial ownership reports filed by officers, directors and principal security holders under Section 16(a) of the Securities Exchange Act of 1934, generally as required by Section 403 of the Sarbanes-Oxley Act of 2002. We intend to adopt the amendments to implement the statutory changes as soon as reasonably practicable before the July 30, 2003 date mandated by the statute. We are also implementing changes to the EDGAR system in order to facilitate electronic filing. In addition, we are proposing rule changes to eliminate magnetic cartridges as a means of electronic filing. The intended general effect of the proposals is to facilitate compliance with the will of Congress, as reflected in amended Section 16(a), and to facilitate the more efficient transmission, dissemination, analysis, storage and retrieval of insider ownership and transaction information in a manner that will benefit investors, filers and the Commission.

DATES: Please submit your comments on or before February 10, 2003.

ADDRESSES: To help us process and review your comments more efficiently, please send your comments by one method only.

Please submit three copies of your comments to Jonathan G. Katz, Secretary, U.S. Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. You also may submit your comments electronically at the following e-mail address: *rule-comments@sec.gov.* Please have your comment letter refer to File No. S7–52–02 and include this file number in the subject line if you use e-mail. We will make comment letters available for public inspection and copying in our Public Reference Room, 450 Fifth Street, NW., Washington, DC 20549–0102. We will post electronically submitted comments on our Internet website (*http://www.sec.gov*).[1]

FOR FURTHER INFORMATION CONTACT: Mark W. Green, Senior Special Counsel (Regulatory Policy), at (202) 942–1940, or Anne M. Krauskopf, Special Counsel, at (202) 942–2900, Division of Corporation Finance, U.S. Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20459–0301.

SUPPLEMENTARY INFORMATION: We propose to amend Rule 101[2] under Regulation S–T[3] and Rule 16a–3(h)[4] and Forms 3, 4 and 5[5] under the Securities Exchange Act of 1934 (''Exchange Act'').[6] We also propose to add new Rule 16a–3(k) under the Exchange Act. Finally, we propose to rescind Form ET[7] and amend Rule 12 of Regulation S–T,[8] Rule 110[9] under the Securities Act of 1933 (''Securities Act''),[10] Rule 0–2[11] under the Exchange Act, Rule 21[12] under the Public Utility Holding Company Act of 1935 (''Public Utility Act'')[13] and Rule 0–5[14] under the Trust Indenture Act of 1939 (''Trust Indenture Act'').[15]

I. Background

Section 16[16] applies to every person who is the beneficial owner of more than 10% of any class of equity security registered under Section 12 of the Exchange Act[17] and each officer and director (collectively, ''reporting persons'' or ''insiders'') of the issuer of the security. Upon becoming a reporting person, or upon the Section 12 registration of that class of securities, Section 16(a)[18] requires a reporting person to file an initial report[19] with the Commission disclosing the amount of his or her beneficial ownership of all equity securities of the issuer.[20] To keep this information current, Section 16(a) also requires reporting persons to report to the Commission[21] changes in this ownership, or the purchase or sale of a security-based swap agreement[22] involving these equity securities.[23]

Before the enactment of the Sarbanes-Oxley Act of 2002 (the ''Sarbanes-Oxley Act''),[24] Section 16(a) required insiders to file reports of these transactions within 10 days after the close of each calendar month in which the change in ownership or purchase or sale of a security-based swap agreement occurred. The Sarbanes-Oxley Act amended Section 16(a), effective for transactions on or after August 29, 2002, to require insiders to file reports of these transactions ''before the end of the second business day following the day on which the subject transaction has been executed, or at such other time as the Commission shall establish, by rule, in any case in which the Commission determines that such 2-day period is not feasible.''[25] On August 27, 2002, we adopted rule and form amendments to

[1] We do not edit personal, identifying information, such as names or electronic mail addresses, from electronic submissions. Submit only information that you wish to make publicly available.

[2] 17 CFR 232.101.

[3] 17 CFR 232.10 *et seq.*

[4] 17 CFR 240.16a–3(h).

[5] 17 CFR 249.103, 249.104 and 249.105. Forms 3 and 4 also are authorized under the Investment Company Act of 1940 [15 U.S.C. 80a–1 *et seq.*] under 17 CFR 274.202 and 274.203.

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

[7] 17 CFR 239.62, 249.445, 259.601, 269.6 and 274.401.

[8] 17 CFR 232.12.

[9] 17 CFR 230.110.

[10] 15 U.S.C. 77a *et seq.*

[11] 17 CFR 240.0–2.

[12] 17 CFR 250.21.

[13] 15 U.S.C. 79a *et seq.*

[14] 17 CFR 260.0–5.

[15] 15 U.S.C. 77aaa *et seq.*

[16] 15 U.S.C. 78p.

[17] 15 U.S.C. 78*l*.

[18] 15 U.S.C. 78p(a).

[19] Insiders file initial reports on Form 3.

[20] Rule 3a12–3 [17 CFR 240.3a12–3] provides that securities registered by a foreign private issuer, as defined in Rule 3b–4 [17 CFR 240.3b–4], are exempt from Section 16. The legislative and regulatory actions addressed in this release do not change this exemption.

[21] Section 16(a) also requires reporting persons to file their initial and transactional reports with each national securities exchange on which the issuer lists its equity securities. For classes of securities listed on the New York Stock Exchange, the American Stock Exchange and the Chicago Stock Exchange, filing Section 16(a) reports on EDGAR satisfies the requirements of Section 16(a)(1) (as amended) and Rule 16a–3(c) to file the reports with the exchange on which the securities are listed. See staff no-action letters to New York Stock Exchange (Jul. 22, 1998), American Stock Exchange (Jul. 22, 1998) and Chicago Stock Exchange (Jan. 18, 1998).

[22] As defined in Section 206B of the Gramm-Leach-Bliley Financial Modernization Act of 1999, as amended by H.R. 4577, Pub. L. 106–554, 114 Stat. 2763.

[23] Insiders file transaction reports on Forms 4 and 5.

[24] Pub. L. 107–204, 116 Stat. 745.

[25] Section 16(a)(2)(C) (15 U.S.C. 78p(a)(2)(C)), as amended by Section 403 of the Act. Section 30(h) of the Investment Company Act of 1940 (15 U.S.C. 80a–29(h)) provides that ''Every person who is directly or indirectly the beneficial owner of more than 10 per centum of any class of outstanding securities (other than short-term paper) of which a registered closed-end company is the issuer or who is an officer, director, member of an advisory board, investment adviser, or affiliated person of an investment adviser of such a company shall in respect of his transactions in any securities of such company (other than short-term paper) be subject to the same duties and liabilities as those imposed by section 16 of the Securities Exchange Act of 1934 upon certain beneficial owners, directors, and officers in respect of their transactions in certain equity securities.'' Accordingly, the Sarbanes-Oxley Act's amendments also accelerate the deadline for change of beneficial ownership reports required under Section 30(h).

implement the accelerated filing deadline.[26]

The Sarbanes-Oxley Act also amended Section 16(a) to require, not later than July 30, 2003, insiders to file electronically, and the Commission and issuers with corporate websites to post on their websites, change in beneficial ownership reports.[27] Today we propose rule and form amendments to implement the electronic filing and website posting requirements and make related changes.

Currently, insiders may file reports on Forms 3, 4 and 5 in paper or electronically on the Commission's Electronic Data Gathering, Analysis and Retrieval System (''EDGAR'').[28] We initially launched EDGAR as a pilot program in 1984, which enabled companies to participate voluntarily in the EDGAR system until 1993. At that time, we adopted rules, primarily Regulation S–T,[29] to implement the operational phase of EDGAR, which imposed electronic filing requirements only on domestic issuers.[30] Initially, the rules prohibited electronic filing of Forms 3, 4 and 5. The adopting release, however, stated that the Commission expected to address later the electronic filing of these forms.

Since the adoption of mandated EDGAR for domestic issuers, we have been moving toward requiring electronic filing of Forms 3, 4 and 5. In 1995, we revised Regulation S–T to permit voluntary electronic filing of Forms 3, 4 and 5.[31] In 1996, we asked for comment on whether to require EDGAR filing of any documents then allowed to be filed electronically on a voluntary basis.[32] Early in 2000, we announced that we intended to propose mandated electronic filing of Forms 3, 4 and 5 and asked for comments.[33] Later in 2000, we reiterated our expectation of proposing these requirements and stated that we would consider the comments received in connection with future rulemaking.[34]

In implementing Congress' directive to require Forms 3, 4 and 5 to be filed on EDGAR, we seek to achieve the same benefits for investors, filers and the Commission that we sought when we first mandated electronic filing for most documents. Since its inception, the primary goals of our EDGAR system have been to facilitate the rapid dissemination of financial and business information about companies and other parties participating in U.S. capital markets while making the transmission and the Commission's processing of filings more efficient.

Mandated electronic filing benefits members of the investing public and the financial community by making information contained in Commission filings available to them minutes after receipt by the Commission. Information concerning insiders' transactions in issuer equity securities will be publicly accessible substantially sooner than it was before. In addition, the electronic format of the information facilitates research and data analysis. The new accelerated Section 16(a) filing requirement described above makes electronic filing even more valuable. Finally, investors clearly want electronic access to these forms.[35] Many investors believe that reports of directors' and executive officers' transactions in company equity securities provide useful information as to management's views of the performance or prospects of the company and that more timely and transparent access to reports will be even more useful.

Filers will benefit from changes to the electronic filing system specifically designed to make electronic filing easier while continuing to provide speedy, secure and reliable transmission, as discussed below. We note that many companies help their insiders or make the insiders' filings for them. We encourage this practice to facilitate accurate and timely filing. Our intention, however, is to create a system that insiders can use relatively easily themselves, particularly as an insider is legally responsible for filing regardless of who submits a filing on the insider's behalf.[36]

The use of EDGAR also will facilitate more efficient storage, retrieval and analysis of ownership and transaction information than paper filing. Quicker access to ownership and transaction information should not only facilitate review of the information but also enhance the Commission's ability to study and address issues that relate to this information.

Website posting of Forms 3, 4 and 5 by issuers with corporate websites will provide a convenient, rapidly disseminated electronic source in addition to EDGAR that is conducive to research and data analysis. One of the objectives of the proposal is to encourage the availability of this information in a variety of locations so that it is broadly accessible.

II. The Proposed Rule Amendments

A. Required Electronic Filing of Forms 3, 4 and 5

We propose to amend Regulation S–T[37] to require insiders to file Forms 3,

[26] Release No. 34–46421 (September 3, 2002) [56 FR 56462].

[27] Section 16(a)(4), as amended by Section 403 of the Sarbanes-Oxley Act.

[28] Rule 101(b)(4) of Regulation S–T [17 CFR 232.101(b)(4)]. The percentage of Forms 3, 4 and 5 filed electronically on the current EDGAR system increased from approximately 8% in June 2002 (the last month before the Sarbanes-Oxley Act was enacted) to approximately 15% in August 2002 (the month the accelerated filing deadline took effect). The percentage held at approximately 15% in September 2002 but increased to approximately 25% in October 2002 and remained at that level in November 2002.

[29] Release No. 33–6977 (February 23, 1993) [58 FR 14628].

[30] In 2002, we adopted rules generally requiring foreign issuers to file electronically beginning in early November, 2002. Release No. 33–8099 (May 14, 2002).

[31] Release No. 33–7241 (November 13, 1995) [60 FR 57682].

[32] Release No. 33–7369 (Dec. 5, 1996) [61 FR 65440]. Only one commenter, an organization consisting of issuers, clearly responded as to Forms 3, 4, and 5. This commenter favored permitting the voluntary EDGAR filing of these forms and opposed their mandated EDGAR filing. The commenter claimed as reasons unnecessary additional hardship on insiders, disparate treatment between foreign insiders who would be required to file on EDGAR and foreign issuers who would not, the burden faced by insiders' companies who would be forced by the new mandate to file for their insiders, the Commission's uncertain capacity to process all the forms at peak time, and the lack of a compelling public interest in somewhat accelerating the dissemination of information that often is somewhat stale even if filed timely. As discussed below, technological advances and a user-friendly approach should minimize hardship on insiders. As noted above, rules recently took effect generally mandating foreign issuer EDGAR filing. The Commission plans to have the capacity to process all the forms at peak time. In addition to the Act's mandate, there is now a strong public interest in facilitating electronic access to the forms whose filing has been accelerated due to the new two-business day filing requirements described above.

[33] Release No. 33–7803 (Feb. 25, 2000) [65 FR 11507]. We received four comment letters on our anticipated EDGAR rulemaking for Forms 3, 4 and 5. Three commenters favored mandating EDGAR filing for all these forms. Reasons given for mandating included ease of filing using a template and ease of access to the underlying information. The commenter that provided its views on Release No. 33–7369, as described in the note above, favored permitting the voluntary EDGAR filing of the forms and opposed their mandated EDGAR filing. This commenter cited essentially the same reasons it raised in its prior comment letter.

[34] Release No. 33–7855 (Apr. 27, 2000) [65 FR 24788]. We generally have addressed the electronic filing of Form 144 [17 CFR 239.144] in the same releases as we have addressed the electronic filing of Forms 3, 4 and 5. Although the current proposals do not address Form 144, we may in the future propose to require that form to be filed electronically.

[35] A number of commenters on Release No. 33–8090 (Apr. 12, 2002) [67 FR 19914] (the ''Form 8–K Proposing Release'') regarding Form 8–K disclosure of management transactions as well as commenters on accelerated Section 16 filing addressed electronic filing of Section 16(a) reports. Many of the commenters supported mandated Section 16(a) report filing.

[36] *Cf.* In the Matter of Bettina Bancroft, Release No. 34–32033 (Mar. 23, 1993).

[37] Regulation S–T is the general regulation governing EDGAR filing. In addition to complying with Regulation S–T, filers must submit electronic

Continued

4 and 5 with us on EDGAR.[38] As noted above, Rule 101(b)(4) of Regulation S–T currently permits reporting persons to file Forms 3, 4 and 5 on EDGAR. The proposed amendments would revise Rule 101 by:

- Removing subparagraph (4) from subparagraph (b) (the voluntary EDGAR filing paragraph); and
- Adding a reference to forms filed under Section 16(a) to subparagraph (a)(1)(iii) (located in the mandated EDGAR filing paragraph).

B. Required Website Posting of Forms 3, 4 and 5

We propose to amend Rule 16a–3[39] to add a new paragraph (k) to require an issuer that maintains a corporate website to post on its website all Forms 3, 4 and 5 filed with respect to its equity securities by the end of the business day after filing.[40] An issuer could satisfy this requirement whether it provides access directly or by hyperlinking[41] to them via a third-party service[42] in lieu of maintaining the forms itself if the following conditions were met:

- The forms are made available in the appropriate time frame;
- Access to the reports is free of charge to the user;
- The display format allows retrieval of all information in the forms;[43]
- The medium to access the forms is not so burdensome that the intended users cannot effectively access the information provided;[44]
- The access includes any exhibits or attachments;
- The forms are accessible for at least a 12-month period;
- Access to the forms is through the issuer website address the issuer normally uses for disseminating information to investors;[45] and
- Any hyperlink is directly to the Section 16 forms (or to a list of the Section 16 forms) instead of just to the home page or general search page of the third-party service.[46]

It is our intent to make the website posting requirement become effective at the same time as the electronic filing requirement. However, we encourage issuers to post Section 16(a) reports on their websites before the implementation date.

C. Rule 16a–3(h)

We propose to delete as no longer necessary the deemed timely filed provision in Rule 16a–3(h) under the Exchange Act, effective at the same time the Forms 3, 4 and 5 electronic filing requirement becomes effective. Rule 16a–3(h) states that the date of filing generally is the date of receipt by the Commission. The proposed deletion would not affect this statement. However, the rule also has a provision that states, in general, that a Form 3, 4 or 5 will be deemed timely filed if the filing person establishes that the form was timely delivered to a third party entity providing delivery services in the ordinary course of business that guaranteed delivery of the filing to the Commission no later than the required filing date. This ''deemed timely filed'' provision was designed for and applies only to paper filings, and we believe it no longer will be needed once the electronic filing requirement is effective.[47]

The proposed amendments would not alter the provisions governing the availability of hardship exemptions under Regulation S–T. A filer that meets the requirements of Section 201 or 202 of Regulation S–T[48] may obtain a temporary or continuing hardship exemption from EDGAR filing requirements.[49] As is the case with forms currently required to be filed on EDGAR, we expect that hardship exemptions for Forms 3, 4 and 5 will be available infrequently.[50] A failure to obtain timely an identification number or access codes will not justify a hardship exemption.[51] Moreover, as is also the case with forms currently required to be filed on EDGAR, upon effectiveness of the rules we propose today, our filing desk will not accept in paper format any Form 3, 4 or 5 unless the filing satisfies the requirements for a temporary or continuing hardship exemption under Regulation S–T.[52]

D. Forms 3, 4 and 5

We propose some minor changes to Forms 3, 4 and 5 to facilitate the electronic filing provisions, as follows:

1. Amend the introductory section before the General Instructions of Forms

documents in accordance with the instructions in the EDGAR Filer Manual.

[38] Regulation S–T also requires the electronic filing of any related correspondence and supplemental information pertaining to a document that is the subject of mandated EDGAR. Regulation S–T Rule 101(a)(1) [17 CFR 232.101(a)(1)]]. These materials are not disseminated publicly but are available to the Commission staff. This requirement would apply to persons who file Forms 3, 4 and 5 upon adoption of the proposed amendments.

[39] 17 CFR 240.16a–3.

[40] Rule 16a–3(e) [17 CFR 240.16a–3(e)] requires insiders to send or deliver a copy of each form to the issuer not later than when the form is transmitted for filing with the Commission. This copy must go to the person designated to receive such communications, or in the absence of this designation, to the issuer's corporate secretary or person performing equivalent functions. Issuers will most likely want to designate a manner of receiving these communications electronically.

[41] In Release No. 33–7856 (Apr. 28, 2000) [65 FR 25843] (the ''2000 Release''), we provided interpretive guidance on the possible effects of hyperlinking to a third-party website. See the 2000 Release, at n. 48 and the accompanying text.

[42] Hyperlinking via EDGAR would satisfy the posting requirement if the conditions in this section otherwise are met. EDGAR currently displays Forms 3, 4 and 5 filed electronically and will do so under the contemplated on-line system, in both cases shortly after filing and within the period required by Section 16(a)(4)(B) (by the end of the business day after filing).

[43] In this regard, we note that some third-party service providers publish only Table I information, which would not satisfy this condition. The display format would need to publish all form information.

[44] See, for example, Release No. 33–7233 (Oct. 6, 1995) [60 FR 53458], at n. 24 and the accompanying text.

[45] If the issuer has a corporate website but does not normally disseminate information to investors through the website, it must provide access to the forms through a location on its website that it reasonably believes will facilitate user access to the forms.

[46] An issuer could present the viewer with an intermediate screen stating that the visitor is leaving the issuer's website. Also, a disclaimer of responsibility for the accuracy of the third-party service would not make the website posting ineffective for purposes of the posting requirement. See generally regarding issuer website posting Release No. 33–8128 (Sept. 16, 2002) [67 FR 58480], at n. 132 and accompanying text.

[47] Rule 13(b) under Regulation S–T [17 CFR 232.13(b)] addresses instances where an electronic filer attempts in good faith to file a document with the Commission in a timely manner but the filing is delayed due to technical difficulties beyond the filer's control. In those instances, the filer may request an adjustment of the document's filing date. We may grant the request if it appears that the adjustment is appropriate and consistent with the public interest and the protection of investors. A filing date adjustment will thus be available in what we expect to be rare appropriate circumstances.

[48] 17 CFR 232.201 or 232.202. An EDGAR filer may obtain a temporary hardship exemption if it experiences unanticipated technical difficulties that prevent the timely preparation and submission of an electronic filing. See 17 CFR 232.201(a). An EDGAR filer may apply for a continuing hardship exemption if it cannot file all or part of a filing without undue burden or expense. See 17 CFR 232.202(a).

[49] A filer obtains a temporary hardship exemption by filing a properly legended paper copy of the filing under cover of Form TH under Regulation S–T Rule 201. In contrast to this self-executing process, a filer can obtain a continuing hardship exemption only by submitting a written application under Regulation S–T Rule 202, upon which the Commission staff must then act under delegated authority. It is unlikely that a continuing hardship exemption would be granted with respect to Forms 3, 4 or 5, given the nature of the information that appears in these forms and the expected ease of electronic filing.

[50] In addition to pursuing a hardship exemption, a filer that has in good faith attempted to submit a filing in a timely manner but has experienced a delay due to technical conditions beyond its control may request a filing date adjustment under Regulation S–T Rule 13(b). See n. 47 above.

[51] See the note to Rule 10 of Regulation S–T [17 CFR 232.10] (''The Commission strongly urges any person or entity about to become subject to the disclosure and filing requirements of the federal securities laws to submit a Form ID [(through which an identification number and access codes are obtained)] well in advance of the first required [(electronic)] filing, * * *, in order to facilitate electronic filing on a timely basis'').

[52] Rule 14 of Regulation S–T [17 CFR 232.14].

3, 4 and 5 to delete the reference to IRS identification numbers. Consistent with that deletion, we propose to delete from each of the forms Item 3 (before Table I), which provides a space for a filer that is an entity, at its option, to include an IRS identification number.[53] We believe this information is unnecessary in this context. An IRS identification number is not useful for tracking because only some filers provide it. Only non-natural person filers may provide it and even they may choose whether to do so.

2. Amend the General Instructions to Forms 3, 4 and 5 to

- Delete the statement that electronic filing is optional;[54]
- Add a statement making it clear that electronic filing is mandatory absent a hardship exemption, referencing Regulation S–T, and describing how to obtain staff assistance in electronic filing;[55] and
- Add a note providing instructions for filing in paper pursuant to a hardship exemption.[56]

3. Amend Instruction 6 to Forms 3, 4, and 5 to indicate that if a filer runs out of space on the electronic form, the filer should put the additional information in a footnote, and if there is not enough room in the space provided for a footnote, the footnote should refer to an exhibit to the form that contains the additional information.[57]

4. Amend Items 4 and 5 of the items before Table I of Form 5 to require that, when addressing the date as to which the form is filed, a day be specified in addition to, as currently required, a month and year. Adding a day requirement will result in a full date that will ease processing and searches.

5. Amend the heading of column 9 of Table II of Form 5 to clarify that the reference to ''year'' is a reference to the issuer's fiscal year, which will make the heading consistent with the heading of column 5 of Table I of Form 5.

E. Form ET

Currently, electronic filers may make electronic submissions either as direct transmissions, via dial-up modem or Internet, or on magnetic cartridge.[58] However, the number of filers using magnetic cartridges is minimal. In the current calendar year, one filer has filed one magnetic cartridge containing a single form. The filer apparently used the magnetic cartridge approach solely to avoid a temporary problem with direct transmission. Therefore, we propose to eliminate magnetic cartridges as a transmission medium and to eliminate Form ET,[59] the transmittal form that must accompany all magnetic cartridge submissions.[60]

F. Comment Solicited

We request comment on the rule and form changes we propose in this release.

Question regarding facilitating statutory requirements in general:

- Would any other technical amendments help to implement Exchange Act Section 16(a)(4)?

Questions regarding electronic filing of Section 16 forms:

- Are there ways we can help introduce new electronic filers to the system?
- Are there any barriers to issuers' helping insiders to file or filing on insiders' behalf Section 16 forms and, if so, how can these barriers be eliminated or reduced?

Questions regarding website posting:

- In addition to proposed Rule 16a–3(k), are any rules needed to facilitate the statutory requirement that an issuer maintaining a corporate website post all filings of Forms 4 and 5 reporting transactions in its equity securities on that website by the end of the business day after the filing?
- Should we permit issuers that maintain corporate websites not to post Forms 3 or to post them later than the end of the business day after filing? If delayed posting of Forms 3 is appropriate, how great a delay should be permitted? Is posting Forms 3 necessary to provide a complete picture?
- Should issuers whose equity securities are subject to Section 16 but do not have a corporate website be required to disclose in their Forms 10–K or 10–KSB[61] why they are not subject to the posting requirement?
- Are there more conditions we should require if an issuer hyperlinks to a third-party site to satisfy its posting requirement? Are any of the conditions we would require not necessary? Are there any forms of hyperlinking that would not foster widespread dissemination and access?
- Should we condition satisfaction of the posting requirement on keeping the forms accessible for a period other than 12 months? The 12-month period would provide time to assess a group of transactions, including a purchase and sale or sale and purchase within six months of each other (''short-swing transactions'') that may raise issues under Section 16(b).[62] A shorter period, however, also could help to identify short-swing transactions. Should the period be longer to better fulfill the informational purposes of Section 16(a) or to accommodate the statute of limitations? Should the period be shorter because the information is available on the EDGAR database?
- We invite commenters considering the website posting issue to address the relative costs and benefits of each approach.

—For example, would establishing a hyperlink through a third-party service allow issuers to comply with the statutory requirement in a more timely and cost-efficient way than by maintaining the reports on their own website?

—Conversely, would maintaining the reports on the issuer's own website be more advantageous to users?

—In this regard, if a form were maintained through a hyperlink, would it remain equally portable, so that a user could download it and print it out in its original or other readily understood format?

—Should it be adequate to hyperlink to the Section 16 forms as a group or a list of them rather than to each form?

Question regarding the deemed timely filed provision of Rule 16a–3(h):

- Are there any instances in which use of the Rule 16a–3(h) deemed timely filed provision would remain appropriate when electronic filing is required?

Since the initial adoption of Regulation S–T in 1993,[63] filers who file in paper under the temporary hardship exemption have been required to submit an electronic format copy of the filed paper document within six business

[53] The following items will be renumbered.

[54] See current General Instruction 3(a) to Form 3, and current General Instruction 2(a) to Forms 4 and 5.

[55] See proposed General Instruction 3(a) to Form 3 and proposed General Instruction 2(a) to Forms 4 and 5.

[56] See proposed note to General Instruction 3 and General Instruction 2, respectively.

[57] Ownership and transaction information must be disclosed to the greatest extent possible in the forms' Tables I and II rather than in footnotes and attachments in order to maximize the value of EDGAR's tagging the data in the tables, and thus facilitate analysis.

[58] See Rules 12(b) and 12(c) of Regulation S–T [17 CFR 232.12(b) and 232.12(c)].

[59] 17 CFR 239.62, 249.445, 259.601, 269.6 and 274.401.

[60] See proposed related amendments to Securities Act Rule 110 [17 CFR 230.110], Rule 12 of Regulation S–T [17 CFR 232.12 and 232.103], Exchange Act Rule 0–2 [17b CFR 240.0–2], Public Utility Act Rule 21 [17 CFR 250.21], and Trust Indenture Act Rule 0–5 [17 CFR 260.0–5].

[61] 17 CFR 249.310 and 249.310b.

[62] 15 U.S.C. 78p(b). In Release No. 33–8128 (Sept. 16, 2002) [67 FR 58480], in the context of discussing Form 10–K disclosure of issuer website posting of periodic reports, we suggested that issuers provide website access to their reports for at least a 12-month period.

[63] Release No. 33–6977.

days of the filing of the paper format document.[64]

Questions regarding temporary hardship exemptions:

• In light of technological developments, decreased costs and the benefits of electronic availability, should we require a shorter period of as few as two or three business days? If so, should this shorter time period apply generally to all required filings, or solely to Forms 3, 4 and 5?

• Alternatively, given the expected ease of electronic filing and the limited utility to investors of paper filings, should we eliminate the ability to use the temporary hardship exemption for Section 16 filings? If so, should we provide a sunset provision that eliminates the ability after a specified time (*e.g.*, six months or a year after the electronic filing requirement is effective)?

Rule 13(a)(3) of Regulation S–T addresses electronic submission acceptance. Currently, persons can file by direct electronic transmission between the hours of 8 a.m. and 10 p.m., Washington, DC time on weekdays that are not federal holidays. An accepted filing that begins before 5:30 p.m. Washington, DC time is deemed filed on the same day. Generally, an accepted filing that begins after 5:30 p.m. is deemed filed on the next business day.[65] However, a post-effective amendment or registration statement filed to increase the number of securities registered as permitted by Securities Act Rule 462(b)[66] is deemed filed on the same business day (as long as it is received before 10 p.m.).[67] Questions regarding electronic submission acceptance:

• Should we amend Rule 13(a)(3) to treat an accepted Form 3, 4 or 5 filing in the same manner as a Rule 462(b) filing for purposes of the deemed filing date?

• Would this treatment be appropriate due to the rapid filing deadline applicable to Section 16 reports and the large proportion of insiders who are natural persons?

• On the other hand, does the importance of the information justify the requirement that these forms be filed by 5:30 p.m. on the due date, the same as almost all other Commission filings?

Question regarding elimination of electronic transmission alternative:

• Finally, we request comment on whether there is any category of filers who would be unduly burdened if we eliminate filers' ability to file on magnetic cartridge.

III. The Electronic Filing Procedure

By the time the provisions that require electronic filing of Forms 3, 4 and 5 become effective, a new on-line filing system will be effective as well.[68] In its initial version, insiders and those who act on their behalf will be able to access our web site to fill out and submit the forms. When the new system is implemented, EDGARLink filing no longer will be available for these forms.[69]

Some filers, either directly or through agents, may wish to create a customized form and file it as a reduced content filing. A reduced content filing is a filing that provides header information (*e.g.*, form type) and the data for mandatory fields that we specify and otherwise complies with specified technical filing requirements. We plan to announce the mandatory fields and technical filing requirements sufficiently before the new system's implementation to provide adequate preparation time. Reduced content filings will enable issuers and insiders to use third-party service providers for filings, if they wish to do so, just as they do today.

In order to file, persons will need the same codes that are required to file on EDGAR today.[70] Persons only can acquire the codes by submitting a Form ID.[71] Companies and other third party filing agents with the appropriate access codes will continue to be able to submit forms on behalf of insiders. We expect to introduce enhanced verification procedures in the future.

To access and file the forms through our web site, filers must begin by having valid EDGAR access codes and logging on to the site. A button on the menu will give filers the option to create on-line Forms 3, 4 or 5, or amendments to these forms. The filer should have all the necessary information available before going on-line to file. Due to cost and technical limitations, data entry must be performed quickly enough to avoid timeouts that end the session. The system will not be able to provide a way to save an incomplete form on-line from session to session. The system will validate for data type and required fields as many fields as possible while the filer fills in the form. Filers will have the chance to correct errors and verify the accuracy of the information. An on-line help function will be available.

The filer will be able to download and print the filing and add attachments before submission.[72] Once the filing is submitted, the system will display the accession number of the filing or a message that says the accession number will follow in a return notification.[73] A filer will be able to obtain a return copy of the form shortly after filing, and also will be able to see the filing on our website.

IV. General Request for Comments

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

• The proposed changes that are the subject of this release;

• Additional or different changes; or

• Other matters that may have an effect on the proposals contained in this release.

We request comment from the point of view of investors, insiders, issuers and others who use or otherwise are involved with electronic filing and website posting. With regard to any comments, we note that comments are of greatest assistance to our rulemaking initiative if accompanied by supporting data and analysis of the issues addressed in those comments.

V. Paperwork Reduction Act

The proposed rule amendments would affect seven forms that contain ''collection of information'' requirements within the meaning of the Paperwork Reduction Act of 1995.[74] The titles of the affected information collections are the EDGAR Forms ID, ET, SE[75] and TH,[76] and Exchange Act Forms 3, 4 and 5. Consistent with the

[64] Rule 201(b) of Regulation S–T [17 CFR 232.201(b)].

[65] Rule 13(a)(2) of Regulation S–T [17 CFR 232.13(a)(2)].

[66] 17 CFR 230.462(b).

[67] Rule 13(a)(3) of Regulation S–T [17 CFR 232.13(a)(3)].

[68] Commenters on both accelerated Section 16 filing and the Form 8–K Proposing Release encouraged the Commission to develop an on-line filing procedure for Section 16(a) reports.

[69] Unofficial PDF copies of these forms will not be permitted.

[70] If a filing is made on behalf of multiple insiders, each insider will be required to have a Central Index Key (CIK) and CIK Confirmation Code (CCC) for validation. Multiple insiders will be allowed on a single form if they all have an interest in the transaction(s) reported.

[71] 17 CFR 239.63, 249.446, 259.602, 269.7 and 274.402.

[72] Filers should reference attachments in the form as exhibits and number them for clarity. In the rare event that a filer files an exhibit alone in paper under a hardship exemption, the filer should place a Form SE [17 CFR 239.64, 249.444, 259.603, 269.8 and 274.403] cover on the exhibit. Use of Form SE for this purpose will help assure the exhibit is linked to the form.

[73] An ''accession number'' is a unique number generated by EDGAR for each electronic submission. Assignment of an accession number does not mean that EDGAR has accepted a submission.

[74] 44 U.S.C. 3501 *et seq.*

[75] 17 CFR 239.64.

[76] 17 CFR 239.65.

will of Congress, the amendments that affect all of these information collections, except for Form ET, generally conform the amended rules and forms to the mandated electronic filing requirements provided by the amendments to Section 16(a) enacted in Section 403 of the Sarbanes-Oxley Act.

Compliance with the proposed amendments would be mandatory. The information required by the proposed amendments would not be kept confidential by the Commission except that the information required by Form ID would be kept confidential, subject to a request under the Freedom of Information Act.[77]

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. We have submitted the revisions to the collections of information to the Office of Management and Budget (''OMB'') for review under 44 U.S.C. 3507(d) and 5 CFR 1320.11.

Form ID (OMB Control Number 3235–0328) is used by registrants, individuals, third party filers or their agents to request the assignment of access codes that permit the filing of securities documents on EDGAR. This form enables the Commission to assign an identification number (''CIK''), confirmation code (''CCC''), password (''PW'') and password modification authorization code (''PMAC'') to each EDGAR filer, each of which is essential to the security of the EDGAR system.

Form ET (OMB Control Number 3235–0329) is used by an EDGAR filer when submitting filings on magnetic cartridge. The information provided on Form ET is technical information about the magnetic cartridge contents as well as information that identifies a contact person who can answer questions about the tape cartridge.

Form SE (OMB Control Number 3235–0327) is used by an EDGAR filer when submitting paper format exhibits either under a hardship exemption under Regulation S–T Rules 201 and 202 or as otherwise allowed by Regulation S–T. The information provided on a Form SE primarily identifies each paper format exhibit submitted. A Form SE filer must also submit the required number of copies of each paper format exhibit.

Form TH (OMB Control Number 3235–0425) is used by an EDGAR filer to give notice that it claims a temporary hardship exemption under Regulation S–T Rule 201. A filer must submit the Form TH along with the required number of copies of the paper format securities document. The information provided on Form TH enables the Commission to determine whether the filer's circumstances justify the grant of a temporary hardship exemption.

Form 3 (OMB Control No. 3235–0104) is used by an insider to disclose securities ownership information under Exchange Act Section 16(a).

Forms 4 (OMB Control No. 3235–0287) and 5 (OMB Control No. 3235–0362) are used by insiders to disclose securities transaction information under Exchange Act Section 16(a).

We estimate that approximately 8,000 respondents file Form ID each year at an estimated .15 hours per response for a total annual burden of 1200 hours.[78] We expect that, if adopted, the proposed rule amendments would cause an additional 216,000 respondents to file a Form ID as a result of initially being subject to the mandated filing rules and cause an additional 175,200 respondents to file a Form ID each year on a recurrent basis. We anticipate these additional entities would require 32,400 and 26,280 hours, respectively, in the aggregate to complete the Form ID, which would increase the total annual burden initially to 33,600 hours and, on a recurrent basis, to 27,480 hours.

We estimate that one entity files a Form ET each year at an estimated .25 hours per response for a total annual burden of .25 hours. We expect that the elimination of the Form ET cover sheet for magnetic cartridge filings in connection with the elimination of the magnetic cartridge transmission alternative will reduce the existing information collection requirements that are currently imposed on magnetic cartridge filers. We expect the annual burden would be reduced by the current annual burden imposed by Form ET. As noted above, we estimate this annual burden as .25 hours.

We estimate that 770 respondents file Form SE each year at an estimated .10 hours per response for a total annual burden of 77 hours. We expect that, if adopted, the proposed rule amendments would cause an additional 12 respondents to file a Form SE. We anticipate these additional respondents would require 1.2 hours in the aggregate to complete the Form SE, which would increase the total annual burden to 78.2 hours.

We estimate that 70 respondents file Form TH each year at an estimated .33 hours per response for a total annual burden of 23.1 hours. We expect that, if adopted, the proposed rule amendments would cause an additional 12 respondents to file a Form TH. We anticipate these additional respondents would require 4 hours in the aggregate to complete the Form TH, which would increase the total annual burden to 27.1 hours.

We expect that, if adopted, the proposed amendments would obligate reporting persons to disclose on Forms 3, 4 and 5 essentially the same information that they are required to disclose today.[79] We therefore believe that the overall information collection burden of these forms would remain approximately the same.

We are soliciting comment on the expected Paperwork Reduction Act effects of the proposed rule amendments. In particular, we solicit comment on the accuracy of our additional burden hour estimates expected to result from the proposed amendments. We further request comment on whether the proposed changes to the collection of information are necessary for the proper performance of the Commission's functions, including whether the additional information garnered will have practical utility. In addition, we solicit comment on whether there are ways to enhance the quality, utility, and clarity of the information to be collected. We further solicit comment on whether there are ways to minimize the burden of information collection on those insiders who file the above forms, including through the use of automated collection techniques or other forms of information technology. Finally, we solicit comment on whether the proposed amendments will have any effects on any other collection of information not previously identified in this section.

If you would like to submit comments on the collection of information requirements and expected effects, please direct them to the Office of Management and Budget, Attention: Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Washington, DC, 20503. You should also send a copy of the comments to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549,

[77] 5 U.S.C. 552. The Commission's regulations that implement the act are at 17 CFR 200.80 *et seq.*

[78] The fact that approximately 25% of the Forms 3, 4 and 5 filed in November 2002 were filed electronically indicates that some insiders already have filed Forms ID.

[79] The addition to Form 5 of a requirement to provide the day of the month and year disclosed where the month and year already are required to be disclosed creates an additional burden that is so small it is not quantifiable. The other proposed changes to Forms 3, 4 and 5 are minor and do not add any collection of information burden.

with reference to File No. S7–52–02. Requests for materials submitted to OMB by the Commission with regard to these collections of information should be in writing, refer to File No. S7–52–02, and be submitted to the Securities and Exchange Commission, Records Management, Office of Filings and Information Services. OMB must make a decision concerning the affected collections of information between 30 and 60 days after publication of the release. Consequently, in order to ensure that your comments achieve their fullest effect, you should submit comments to OMB within 30 days of this release's publication.

VI. Cost-Benefit Analysis

The proposed amendments relating to mandated electronic filing and website posting largely represent the implementation of a Congressional mandate. We expect that these amendments will achieve the same benefits for investors and filers that we sought when we first adopted mandated EDGAR rules for most filings.[80]

A. Expected Benefits

The proposed amendments regarding mandated electronic filing and website posting should benefit investors and filers.

Mandated electronic filing should benefit members of the investing public and financial community by making information contained in Commission filings easily available to them minutes after receipt by the Commission and, thereby, make them more likely to access and act quickly on the information. The electronic format of the information should facilitate research and data analysis. The new accelerated Section 16(a) filing requirement described above should make quick electronic access even more valuable.

Filers should benefit from changes to the electronic filing system specifically designed to make electronic filing easier while continuing to provide speedy, secure and reliable delivery.

The use of EDGAR also will facilitate more efficient storage, retrieval and analysis of ownership and transaction information than filing in paper. Quicker access to ownership and transaction information should not only facilitate review of the information but also enhance the Commission's ability to study and address issues that relate to this information.

Website posting by issuers with corporate websites will provide a convenient, rapidly disseminated electronic source in addition to EDGAR that is conducive to research and data analysis. In general, website posting will help to make ownership and transaction information more broadly accessible.

B. Expected Costs

We expect that the proposed amendments regarding mandated electronic filing and website posting will result in some costs to insiders and issuers. However, we expect that many insiders and issuers will not bear the full range of costs resulting from the adoption of these amendments for the reasons described below.

The expected costs of mandated electronic filing consist of both initial and ongoing costs. Initial costs are those associated with obtaining, completing and sending to the Commission a Form ID to obtain filing credentials, and the purchase of compatible computer equipment and software, including EDGAR software if obtained from a third-party vendor and not the Commission's website. Initial costs further include those associated with learning about the electronic filing system, placing the filing data in electronic format for the initial electronic filing and subscribing to an Internet service provider. Ongoing costs are those associated with maintaining the framework developed through the initial costs (for example, updating information required by Form ID) and any additional costs arising from each subsequent filing (for example, placing the new filing data in electronic format).[81]

We expect that many insiders will need to incur few, if any, additional costs from electronic filing. We understand that many issuers help their insiders or make the insiders' filings for them. To the extent insiders do not receive this help, we believe many already will have the computer equipment and Internet access to enable them to file using the templates that will appear on the Commission's website. Finally, some insiders already have filed Forms ID and gained experience in arranging electronic filing.[82]

Even issuers that help their insiders, whether to a greater or lesser extent, to file electronically are not likely to incur additional costs.[83] Issuers are required to file on EDGAR and generally have the needed computer equipment and Internet service provider access to enable them to facilitate filing using the templates that will appear on the Commission's website.

Issuers should incur relatively few direct costs from the website posting requirement. Because the requirement applies only to issuers that already have a corporate website, issuers will not need to incur the costs associated with creating or maintaining a website. In addition, issuers could limit their additional costs associated with posting by hyperlinking to a third-party website such as EDGAR.

C. Comment Solicited

We solicit comments on the costs and benefits of the proposed amendments for insiders. We request your views on the costs and benefits described above as well as on any other costs and benefits that could result from adoption of mandated electronic filing and website posting requirements. We also request data as to what percentage of filings are done by or with the help of the issuer.

VII. Effect on Efficiency, Competition and Capital Formation

Section 23(a)(2) of the Exchange Act[84] 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. Furthermore, Section 2(b) of the Securities Act[85] and Section 3(f) of the Exchange Act[86] 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 regarding mandated electronic filing and website posting are intended to facilitate the more efficient transmission, dissemination, analysis, storage and

[80] The expected benefits and costs to those outside the Commission from the proposed amendments relating to eliminating Form ET and magnetic cartridge transmission are expected to be *de minimis*. Magnetic cartridge transmission rarely is used.

[81] Other minor costs could include, for example, filling out and submitting a Form SE (a paper exhibit cover) or, in rare instances, a Form TH (a notice of claim of hardship exemption that serves as a cover for a paper filing).

[82] As previously noted, approximately 25% of the Forms 3, 4 and 5 filed in November 2002 were filed electronically.

[83] Costs that issuers incur helping insiders are incurred voluntarily because the legal obligation to file rests solely on the insiders.

[84] 15 U.S.C. 78w(a)(2).

[85] 15 U.S.C. 77b(b).

[86] 15 U.S.C. 78c(f).

retrieval of insider ownership and transaction information.[87] This should improve investors' ability to make informed investment and voting decisions. Informed investor decisions generally promote market efficiency and capital formation. We believe the proposed amendments would not impose a burden on competition.

We request comment on whether the proposed amendments, if adopted, would impose a burden on competition. We also request comment on whether the proposed amendments, if adopted, would promote efficiency, competition and capital formation. Finally, we request commenters to provide empirical data and other factual support for their views if possible.

VIII. Initial Regulatory Flexibility Analysis

This Initial Regulatory Flexibility Analysis has been prepared in accordance with 5 U.S.C. 603. It relates to proposed amendments regarding mandated electronic filing and website posting of Forms 3, 4 and 5.[88]

A. Reasons for the Proposed Action

An issuer's insiders use Forms 3, 4 and 5 to report beneficial ownership of and trading in equity securities of the issuer. Consistent with the will of Congress, the proposed mandated electronic filing and website posting amendments generally conform the amended rules and forms to the mandated electronic filing and website posting requirements provided by the amendments to Section 16(a) enacted in Section 403 of the Sarbanes-Oxley Act. In addition, we believe the proposed amendments will benefit investors, filers and the Commission.

B. Objectives

Our objectives in proposing the mandated electronic filing and website posting amendments are to facilitate compliance with the will of Congress as reflected in amended Section 16(a) and to facilitate the more efficient transmission, dissemination, analysis, storage and retrieval of insider ownership and transaction information in a manner that will benefit investors, filers and the Commission.

C. Legal Basis

We are proposing the mandated electronic filing and website posting amendments under the authority set forth in Section 19(a) of the Securities Act,[89] Sections 3(b),[90] 16, 23(a) [91] and 35A [92] of the Exchange Act, Section 17(a) [93] of the Public Utility Act, Section 319 [94] of the Trust Indenture Act, Section 30(h) of the Investment Company Act of 1940, and Section 3(a) of the Sarbanes-Oxley Act.

D. Small Entities Subject to the Proposed Revisions

The proposed mandated electronic filing and website posting amendments would affect small entities that either are insiders that are not natural persons or are issuers with a corporate website that have a class of equity securities registered under Exchange Act Section 12. Exchange Act Rule 0–10(a) [95] defines an entity, 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 September 30, 2002, we estimated that there were approximately 8,640 insiders [96] and fewer than 2,500 issuers that have a class of equity securities registered under Exchange Act Section 12, other than investment companies, that may be considered small entities. The proposed mandated electronic filing amendments would apply to all of these insiders. The proposed mandated website posting amendments would apply to all of these issuers with corporate websites.

E. Reporting, Recordkeeping and Other Compliance Requirements

Currently, insiders may file Forms 3, 4 and 5 in paper or electronically and issuers with corporate websites need not post Forms 3, 4 and 5 as to their equity securities on their websites. The amendments would require insiders to file these forms electronically and issuers with corporate websites to post these forms. Because insiders already file these forms in paper, the only additional professional skills insiders would need would be those required to file electronically. Because issuers with corporate websites already have websites, we believe these issuers would need no additional professional skills to post these forms on their websites. We expect that filing electronically and website posting would increase costs incurred by some small entities. However, we expect that many small entity insiders and small entity issuers will not bear the full range of costs resulting from the adoption of these amendments for the reasons described below.

The expected costs of mandated electronic filing consist of both initial and ongoing costs. Initial costs are those associated with obtaining, completing and sending to the Commission a Form ID to obtain filing credentials, and the purchase of compatible computer equipment and software, including EDGAR software if obtained from a third-party vendor and not the Commission's website. Initial costs further include those associated with learning about the electronic filing system, placing the filing data in electronic format for the initial electronic filing and subscribing to an Internet service provider. Ongoing costs are those associated with maintaining the framework developed through the initial costs (for example, updating information required by Form ID) and any additional costs arising from each subsequent filing (for example, placing the new filing data in electronic format).[97]

We expect that many small entity insiders will need to incur few, if any, additional costs from electronic filing. Some issuers may help their small entity insiders or make the small entity insiders' filings for them. To the extent small entity insiders do not receive this help, we believe many already will have the computer equipment and Internet access to enable them to file using the templates that will appear on the Commission's website. Finally, some small entity insiders already may have filed Forms ID and gained experience in arranging electronic filing.[98]

Even those small entity issuers that assist their insiders, whether to a greater or lesser extent, to file electronically are not likely to incur additional costs.[99] Small entity issuers are required to file on EDGAR and generally have the needed computer equipment and Internet service provider access to

[87] We believe there would be a *de minimis* impact from adoption of the proposed amendments regarding the elimination of magnetic cartridge transmission and Form ET.

[88] As previously noted, we believe there would be a *de minimis* impact from adoption of the proposed amendments regarding the elimination of magnetic cartridge transmission and Form ET.

[89] 15 U.S.C. 77s(a).

[90] 15 U.S.C. 78c(b).

[91] 15 U.S.C. 78w(a).

[92] 15 U.S.C. 78*ll*.

[93] 15 U.S.C. 78q(a).

[94] 15 U.S.C. 77sss.

[95] 17 CFR 240.0–10(a).

[96] We estimated the number of small entity insiders based on our estimates of the total number of insiders; the percentage of these insiders that are greater than ten percent holders; the percentage of these greater than ten percent holders that are non-natural persons; and the percentage of these non-natural persons that are small entities.

[97] Other minor costs could include, for example, filling out and submitting a Form SE (a paper exhibit cover) or, in rare instances, a Form TH (a notice of claim of hardship exemption that serves as a cover for a paper filing).

[98] Approximately 25% of the Forms 3, 4 and 5 filed in November 2002 were filed electronically.

[99] Costs that small entity issuers incur helping insiders are incurred voluntarily because the legal obligation to file rests solely on the insiders.

enable them to facilitate filing using the templates that will appear on the Commission's website.

Small entity issuers should incur relatively few direct costs from the website posting requirement. Because the requirement applies only to those small entity issuers that already have a corporate website, small entity issuers will not need to incur the costs associated with creating or maintaining a website. In addition, small entity issuers could limit their additional costs associated with posting by hyperlinking to a third-party website such as EDGAR.

F. Duplicative, Overlapping, or Conflicting Federal Rules

The proposed mandated electronic filing and website posting amendments would not duplicate, overlap, or conflict with other federal rules.

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 entities. In connection with the proposed mandated electronic filing and website posting amendments we considered the following alternatives:

- The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities;
- The clarification, consolidation, or simplification of filing or posting requirements;
- The use of performance rather than design standards; and
- An exemption from the electronic filing and website posting requirements, or any part of them, for small entities.

We believe that differing compliance or reporting requirements or timetables for small entities or a partial or complete exemption would be inconsistent with the will of Congress as reflected in amended Section 16(a) and the more efficient transmission, dissemination, analysis, storage and retrieval of insider ownership and transaction information in a manner that will benefit investors, filers and the Commission. We solicit comment, however, on whether differing compliance or reporting requirements or timetables for small entities would be consistent with the statutory mandate and described goals. We believe that the proposed electronic filing and website posting requirements are clear and straightforward. We are attempting to design an electronic filing system for these forms that will be simple for all filers to use. 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 electronic filing and website posting revisions because we want investors to know where to find the information and we want investors and the Commission to be able to analyze, store and retrieve the information involved. We also want the information disseminated to be in a form that is comparable between large and small issuers. 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 commenters to submit comments with respect to any aspect of this Initial Regulatory Flexibility Analysis. In particular, we request comments regarding

- The number of small entity insiders and issuers that may be affected by the proposed revisions;
- The existence or nature of the potential impact of the proposed revisions on small entity insiders and issuers as discussed in the analysis; and
- How to quantify the impact of the proposed revisions.

We ask commenters to describe the nature of any impact and provide empirical data supporting the extent of the impact. These 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.

IX. Small Business Regulatory Enforcement Fairness Act

For purposes of the Small Business Regulatory Enforcement Fairness Act of 1996 (''SBREFA''),[100] 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.

We request that commenters 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 also request comment on the reasonableness of this estimate.

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

X. Statutory Basis

We are proposing the amendments to Regulation S–T, Rule 16a–3, and Forms 3, 4 and 5, and the removal of Form ET under the authority in Section 19(a) of the Securities Act, Sections 3(b), 16, 23(a) and 35A of the Exchange Act, Section 17(a) of the Public Utility Act, Section 319 of the Trust Indenture Act, Section 30(h) of the Investment Company Act of 1940, and Section 3(a) of the Sarbanes-Oxley Act.

Text of Proposed Rule Amendments

List of Subjects in 17 CFR Parts 230, 232, 239, 240, 249, 250, 259, 260, 269 and 274

Reporting and Recordkeeping requirements, Securities.

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

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

1. The authority citation for Part 230 continues to read in part as follows:

Authority: 15 U.S.C. 77b, 77c, 77d, 77f, 77g, 77h, 77j, 77r, 77s, 77sss, 77z–3, 78c, 78d, 78*l*, 78m, 78n, 78o, 78t, 78w, 78*ll*(d), 78mm, 79t, 80a–8, 80a–24, 80a–28, 80a–29, 80a–30, and 80a–37, unless otherwise noted.

* * * * *

2. Amend § 230.110 by revising paragraph (b) to read as follows:

§ 230.110 Business hours of the Commission.

* * * * *

(b) *Submissions made in paper.* Paper documents filed with or otherwise furnished to the Commission may be submitted each day, except Saturdays, Sundays and federal holidays, from 8 a.m. to 5:30 p.m., Eastern Standard Time or Eastern Daylight Saving Time, whichever is currently in effect.

* * * * *

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

3. The authority citation for Part 232 continues to read, in part as follows:

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

* * * * *

4. Amend § 232.12 by revising paragraph (b) to read as follows:

§ 232.12 Business hours of the Commission.

* * * * *

(b) *Submissions made in paper.* Filers may submit paper documents filed with or otherwise furnished to the Commission each day, except Saturdays, Sundays and federal holidays, from 8 a.m. to 5:30 p.m., Eastern Standard Time or Eastern Daylight Saving Time, whichever is currently in effect.

* * * * *

5. Amend § 232.101 by:

a. Revising paragraph (a)(1)(iii);

b. Removing paragraph (b)(4); and

c. Redesignating paragraphs (b)(5) through (b)(10) as paragraphs (b)(4) through (b)(9).

The revision reads as follows:

§ 232.101 Mandated electronic submissions and exceptions.

(a) * * *

(1) * * *

(iii) Statements, reports and schedules filed with the Commission pursuant to sections 13, 14, 15(d) or 16(a) of the Exchange Act (15 U.S.C. 78m, 78n, 78o(d) and 78p(a)), and proxy materials required to be furnished for the information of the Commission in connection with annual reports on Form 10–K (§ 249.310 of this chapter), or Form 10–KSB (§ 249.310b of this chapter) filed pursuant to Section 15(d) of the Exchange Act.

* * * * *

PART 239—FORMS PRESCRIBED UNDER THE SECURITIES ACT OF 1933

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

Authority: 15 U.S.C. 77f, 77g, 77h, 77j, 77s, 77z–2, 77sss, 78c, 78*l*, 78m, 78n, 78o(d), 78u–5, 78w(a), 78*ll*(d), 79(e), 79f, 79g, 79j, 79*l*, 79m, 79n, 79q, 79t, 80a–8, 80a–24, 80a–29, 80a–30 and 80a–37, unless otherwise noted.

* * * * *

7. Remove and reserve § 239.62 and remove Form ET.

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

8. 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, 78f, 78g, 78i, 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.

9. Amend § 240.0–2 by revising paragraph (b) to read as follows:

§ 240.0–2 Business hours of the Commission.

* * * * *

(b) *Submissions made in paper.* Paper documents filed with or otherwise furnished to the Commission may be submitted to the Commission each day, except Saturdays, Sundays and federal holidays, from 8 a.m. to 5:30 p.m., Eastern Standard Time or Eastern Daylight Saving Time, whichever is currently in effect.

* * * * *

10. Amend § 240.16a–3 by revising paragraph (h) and adding paragraph (k) to read as follows:

§ 240.16a–3 Reporting transactions and holdings.

* * * * *

(h) The date of filing with the Commission shall be the date of receipt by the Commission.

* * * * *

(k) Any issuer that maintains a corporate website shall post on that website by the end of the business day after filing any Form 3, 4 or 5 filed under Section 16(a) of the Act as to the equity securities of that issuer.

PART 249—FORMS, SECURITIES EXCHANGE ACT OF 1934

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

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

* * * * *

§ 249.445 [Removed and Reserved]

12. Remove and reserve § 249.445 and Form ET.

PART 250—GENERAL RULES AND REGULATIONS, PUBLIC UTILITY HOLDING COMPANY ACT OF 1935

13. The authority citation for Part 250 continues to read as follows:

Authority: 15 U.S.C. 79c, 79f(b), 79i(c)(3), 79t, unless otherwise noted.

* * * * *

14. Amend § 250.21 by revising paragraph (b)(1) to read as follows:

§ 250.21 Filing of documents.

(a) * * *

(b) *Electronic filings.* (1) All documents required to be filed with the Commission under the Act or the rules and regulations thereunder must be filed at the principal office in Washington, DC via EDGAR by delivery to the Commission by direct transmission, via dial-up modem or Internet.

* * * * *

PART 259—FORMS PRESCRIBED UNDER THE PUBLIC UTILITY HOLDING COMPANY ACT OF 1935

15. The authority citation for Part 259 continues to read as follows:

Authority: 15 U.S.C. 79e, 79f, 79g, 79j, 79*l*, 79m, 79n, 79q, 79t.

* * * * *

§ 259.601 [Removed and Reserved]

16. Remove and reserve § 259.601 and Form ET.

PART 260—GENERAL RULES AND REGULATIONS, TRUST INDENTURE ACT OF 1939

17. The authority citation for Part 260 continues to read as follows:

Authority: 15 U.S.C. 77eee, 77ggg, 77nnn, 77sss, 78*ll*(d), 80b–3, 80b–4, and 80b–11.

* * * * *

18. Amend § 260.0–5 by revising paragraph (b) to read as follows:

§ 260.0–5 Business hours of the Commission.

* * * * *

(b) *Submissions made in paper.* Paper documents filed with or otherwise furnished to the Commission may be submitted to the Commission each day, except Saturdays, Sundays and federal holidays, from 8 a.m. to 5:30 p.m., Eastern Standard Time or Eastern Daylight Saving Time, whichever is currently in effect.

* * * * *

PART 269—FORMS PRESCRIBED UNDER THE TRUST INDENTURE ACT OF 1939

19. The authority citation for Part 269 continues to read as follows:

Authority: 15 U.S.C. 77ddd(c), 77eee, 77ggg, 77hhh, 77iii, 77jjj, 77sss, 78*ll*(d), unless otherwise noted.

* * * * *

§ 269.6 [Removed and Reserved]

20. Remove and reserve § 269.6 and Form ET.

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

21. The authority citation for Part 274 continues to read in part as follows:

Authority: 15 U.S.C. 77f, 77g, 77h, 77j, 77s, 78c(b), 78*l*, 78m, 78n, 78o(d), 80a–8, 80a–24, 80a–26, and 80a–29, unless otherwise noted.

* * * * *

22. Amend Form 3 (referenced in § 249.103 and § 274.202) by:

a. Revising General Instruction 3(a);

b. Adding a note following General Instruction 3;

c. Revising General Instruction 6; and

d. Removing Item 3 and redesignating Items 4, 5, 6 and 7 to the information preceding Table I as Items 3, 4, 5 and 6 to the information preceding Table I.

The revisions and addition read as follows:

Note: The text of Form 3 does not and this amendment will not appear in the Code of Federal Regulations.

Form 3 Initial Statement of Beneficial Ownership of Securities

* * * * *

General Instructions

* * * * *

3. Where Form Must be Filed

(a) A reporting person must file this Form in electronic format via the Commission's Electronic Data Gathering Analysis and Retrieval System (EDGAR) in accordance with EDGAR rules set forth in Regulation S–T (17 CFR Part 232), except that a filing person that has obtained a hardship exception under Regulation S–T Rule 201 or 202 (17 CFR 232.201 or 232.202) may file the Form in paper. For assistance with technical questions about EDGAR or to request an access code, call the EDGAR Filer Support Office at (202) 942–8900. For assistance with questions about the EDGAR rules, call the Office of EDGAR and Information Analysis at (202) 942–2940.

* * * * *

Note: If filing pursuant to a hardship exception under Regulation S–T Rule 201 or 202 (17 CFR 232.201 or 232.202), file three copies of this Form or any amendment with the Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549. (**Note:** Acknowledgement of receipt by the Commission may be obtained by enclosing a self-addressed stamped postcard identifying the Form or amendment filed.)

* * * * *

6. Additional Information

(a) If the space provided in the line items on the electronic Form is insufficient, use the space provided for footnotes. If the space provided for footnotes is insufficient, create a footnote that refers to an exhibit to the form that contains the additional information.

(b) If the space provided in the line items on the paper Form or space provided for additional comments is insufficient, attach another Form 3, copy of Form 3 or separate 8 ½ by 11 inch white paper to Form 3, completed as appropriate to include the additional comments. Each attached page must include information required in Items 1, 2 and 4 of the Form. The number of pages comprising the report (Form plus attachments) shall be indicated at the bottom of each report page (*e.g.*, 1 of 3, 2 of 3, 3 of 3).

(c) If additional information is not reported as provided in paragraph (a) or (b) of this instruction, whichever applies, it will be assumed that no additional information was provided.

* * * * *

23. Amend Form 4 (referenced in § 249.104 and § 274.203) by:

a. Revising General Instruction 2(a);

b. Adding a note following General Instruction 2;

c. Revising General Instruction 6;

d. Revising the form heading; and

e. Removing Item 3 and redesignating Items 4, 5, 6 and 7 to the information preceding Table I as Items 3, 4, 5 and 6 to the information preceding Table I.

The revisions and addition read as follows:

Note: The text of Form 4 does not and this amendment will not appear in the Code of Federal Regulations.

Form 4 Statement of Changes in Beneficial Ownership of Securities

* * * * *

General Instructions

* * * * *

2. Where Form Must Be Filed

(a) A reporting person must file this Form in electronic format via the Commission's Electronic Data Gathering Analysis and Retrieval System (EDGAR) in accordance with EDGAR rules set forth in Regulation S–T (17 CFR Part 232), except that a filing person that has obtained a hardship exception under Regulation S–T Rule 201 or 202 (17 CFR 232.201 or 232.202) may file the Form in paper. For assistance with technical questions about EDGAR or to request an access code, call the EDGAR Filer Support Office at (202) 942–8900. For assistance with questions about the EDGAR rules, call the Office of EDGAR and Information Analysis at (202) 942–2940.

* * * * *

Note: If filing pursuant to a hardship exception under Regulation S–T Rule 201 or 202 (17 CFR 232.201 or 232.202), file three copies of this Form or any amendment with the Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549. (**Note:** Acknowledgement of receipt by the Commission may be obtained by enclosing a self-addressed stamped postcard identifying the Form or amendment filed.)

* * * * *

6. Additional Information

(a) If the space provided in the line items on the electronic Form is insufficient, use the space provided for footnotes. If the space provided for footnotes is insufficient, create a footnote that refers to an exhibit to the form that contains the additional information.

(b) If the space provided in the line items on the paper Form or space provided for additional comments is insufficient, attach another Form 4, copy of Form 4 or separate 8½ by 11 inch white paper to Form 4, completed as appropriate to include the additional comments. Each attached page must include information required in Items 1, 2 and 4 of the Form. The number of pages comprising the report (Form plus attachments) shall be indicated at the bottom of each report page (*e.g.,* 1 of 3, 2 of 3, 3 of 3).

(c) If additional information is not reported as provided in paragraph (a) or (b) of this instruction, whichever applies, it will be assumed that no additional information was provided.

* * * * *

Form 4 Statement of Changes in Beneficial Ownership of Securities

* * * * *

24. Amend Form 5 (referenced in § 249.105) by:

a. Revising General Instruction 2(a);

b. Adding a note following General Instruction 2;

c. Revising General Instruction 6;

d. Removing Item 3 and redesignating Items 4, 5, 6 and 7 to the information preceding Table I as Items 3, 4, 5 and 6;

e. Revising newly redesignated Items 3 and 4 to the information preceding Table I; and

f. Revising the heading for Table II and column 9 in Table II.

The revisions and addition read as follows:

Note: The text of Form 5 does not and this amendment will not appear in the Code of Federal Regulations.

Form 5 Annual Statement of Beneficial Ownership of Securities

* * * * *

General Instructions

* * * * *

2. Where Form Must Be Filed

(a) A reporting person must file this Form in electronic format via the Commission's Electronic Data Gathering Analysis and Retrieval System (EDGAR) in accordance with EDGAR rules set forth in Regulation S–T (17 CFR Part

232), except that a filing person that has obtained a hardship exception under Regulation S–T Rule 201 or 202 (17 CFR 232.201 or 232.202) may file the Form in paper. For assistance with technical questions about EDGAR or to request an access code, call the EDGAR Filer Support Office at (202) 942–8900. For assistance with questions about the EDGAR rules, call the Office of EDGAR and Information Analysis at (202) 942–2940.

* * * * *

Note: If filing pursuant to a hardship exception under Regulation S–T Rule 201 or 202 (17 CFR 232.201 or 232.202), file three copies of this Form or any amendment with the Securities and Exchange Commission, 450 5th Street, NW, Washington, DC 20549. (**Note:** Acknowledgement of receipt by the Commission may be obtained by enclosing a self-addressed stamped postcard identifying the Form or amendment filed.)

* * * * *

6. Additional Information

(a) If the space provided in the line items on the electronic Form is insufficient, use the space provided for footnotes. If the space provided for footnotes is insufficient, create a footnote that refers to an exhibit to the form that contains the additional information.

(b) If the space provided in the line items on the paper Form or space provided for additional comments is insufficient, attach another Form 5, copy of Form 5 or separate 8½ by 11 inch white paper to Form 5, completed as appropriate to include the additional comments. Each attached page must include information required in Items 1, 2 and 4 of the Form. The number of pages comprising the report (Form plus attachments) shall be indicated at the bottom of each report page (*e.g.,* 1 of 3, 2 of 3, 3 of 3).

(c) If additional information is not reported as provided in paragraph (a) or (b) of this instruction, whichever applies, it will be assumed that no additional information was provided.

* * * * *

Form 5

* * * * *

3. Statement for Month/Day/Year

4. If Amendment, Date of Original Month/Day/Year

* * * * *

Table II—Derivative Securities Acquired, Disposed of, or Beneficially Owned (*e.g.,* puts, calls, warrants, options, convertible securities)

* * * * *

9. Number of Derivative Securities Beneficially Owned at End of Issuer's Fiscal Year (Instr. 4)

* * * * *

§ 274.401 [Removed and Reserved]

24. Remove and reserve § 274.401 and Form ET.

By the Commission.

Dated: December 20, 2002.

J. Lynn Taylor,

Assistant Secretary.

[FR Doc. 02–32731 Filed 12–26–02; 8:45 am]

BILLING CODE 8010–01–P