



Federal Register

**Friday,
August 10, 2007**

Part III

Securities and Exchange Commission

**17 CFR Parts 239, 240, 249, and 274
Deletion of References to IRS
Identification Numbers; Final Rule**

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 239, 240, 249 and 274

[Release Nos. 33–8830, 34–56205, IC–27923]

Deletion of References to IRS Identification Numbers

AGENCY: Securities and Exchange Commission.

ACTION: Final rule.

SUMMARY: We are removing a number of references to filers' IRS identification numbers currently found in several disclosure schedules and forms because we do not need that information to process the documents, nor is the information material to investors.

DATES: *Effective Date:* August 10, 2007.

FOR FURTHER INFORMATION CONTACT:

James Budge [(202) 551–3115], Division of Corporation Finance, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20459–5553.

SUPPLEMENTARY INFORMATION: We are adopting minor, technical amendments to Form 144¹ under the Securities Act of 1933 (“Securities Act”)² and Forms 3, 4 and 5,³ descriptions of these forms⁴ and Schedules 13D, 13G and TO⁵ under the Securities Exchange Act of 1934 (“Exchange Act”).⁶

I. The Amendments

IRS Identification Numbers

We are amending several disclosure schedules, forms and form descriptions to delete references to IRS identification numbers.

Schedules 13D, 13G and TO provide that a reporting person that is an entity may, at its option, include its IRS identification number on the cover page.⁷ Form 144 requires a reporting person that is an entity to include its

IRS identification number in the filing.⁸ Although we sought IRS identification numbers in the past to better process filings, we no longer use them. In addition, IRS identification numbers serve no useful purpose to investors in the context of these disclosure documents. The number appears in beneficial ownership reports and Schedule TO only when a non-natural person chooses to include it. In the case of Form 144, only forms filed by non-natural persons include the number. Since the Commission and the public have more reliable means to track who is filing these documents based on information unrelated to IRS identification numbers, we are eliminating references to IRS identification numbers in these schedules and Form 144.⁹

In 2003, we modified Forms 3, 4 and 5 in part to remove provisions allowing reporting persons to provide IRS identification numbers in those filings.¹⁰ However, several references to IRS identification numbers inadvertently were not removed from related form descriptions and instructions. Accordingly, we are amending those descriptions and instructions to remove all references to IRS identification numbers.¹¹

II. Paperwork Reduction Act

The amendments will affect three schedules and four forms that contain “collection of information” requirements within the meaning of the Paperwork Reduction Act of 1995.¹² The titles of the affected information collections are Securities Act Form 144

⁸ Form 144 is used by security holders to disclose securities transaction information under Securities Act Rule 144 [17 CFR 230.144].

⁹ In Schedules 13D and 13G, references appear in Item 1 of the cover page and its related instruction. In all three schedules references appear under the heading “Special Instructions for Complying with Schedule * * *.” In Form 144, we are deleting IRS identification numbers references from Item 2(b) and its related instruction. The remaining Items in Form 144 will be renumbered as needed.

¹⁰ Form 3 is used by an officer, director or principal security holder (collectively, “insider”) to disclose securities ownership information under Exchange Act Section 16(a) [15 U.S.C. 78p(a)]. Forms 4 and 5 are used by insiders to disclose securities transaction information under Exchange Act Section 16(a). Forms 3, 4 and 5 permitted filers that were entities to include their IRS identification numbers until the forms were amended in 2003. See Release No. 33–8230 (May 7, 2003) [68 FR 25788 (May 13, 2003)].

¹¹ The forms are described at 17 CFR 249.103, 249.104, 249.105, 274.202 and 274.203. Only the descriptions under 17 CFR Part 249, however, contain references to IRS identification numbers. We are amending these descriptions, as well as the paragraph that precedes the heading “General Instructions” in each form.

¹² 44 U.S.C. 3501 *et seq.*

and Exchange Act Schedules 13D, 13G and TO and Forms 3, 4 and 5.

Form 144 (OMB Control Number 3235–0101) is used by security holders to disclose securities transaction information under Securities Act Rule 144.

Schedules 13D and 13G (both with OMB Control Number 3235–0145) are used by significant security holders to disclose securities ownership and transaction information under Exchange Act Sections 13(d) and 13(g).

Schedule TO (OMB Control Number 3235–0515) is used by bidders to disclose tender offer information under Exchange Act Sections 13(e)(1) and 14(d)(1).

Form 3 (OMB Control Number 3235–0104) is used by insiders to disclose securities ownership information under Exchange Act Section 16(a).

Forms 4 (OMB Control Number 3235–0287) and 5 (OMB Control Number 3235–0362) are used by insiders to disclose securities transaction information under Exchange Act Section 16(a).

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.

The removal of the provisions will result in a negligible reduction in filer burden that is too minimal to quantify and does not affect any collection of information in a substantive way. 44 U.S.C. 3507(h)(3) and 5 CFR 1320(g). Consequently, we have not submitted the revisions to the collections of information to the Office of Management and Budget for review under 44 U.S.C. 3507(d) and 5 CFR 1320.11.

III. Cost-Benefit Analysis

We expect that the amendments will neither significantly benefit investors or filers of beneficial ownership reports and Schedules TO and investors, nor will they impose costs on them, since the inclusion of IRS numbers in those documents now is voluntary. The amendment to remove Form 144's requirement that non-natural reporting persons disclose their IRS identification numbers should slightly benefit those filers by reducing the amount of information they must provide; these amendments should not impose costs on filers or investors.

IV. Effect on Efficiency, Competition and Capital Formation

Section 23(a)(2) of the Exchange Act¹³ requires us, when adopting rules

¹³ 15 U.S.C. 78w(a)(2).

¹ 17 CFR 239.144.

² 15 U.S.C. 77a *et seq.*

³ 17 CFR 249.103, 249.104 and 249.105. Forms 3 and 4 also are referenced in connection with the Investment Company Act of 1940 (“Investment Company Act”) [15 U.S.C. 80a–1 *et seq.*] in 17 CFR 274.202 and 274.203.

⁴ 17 CFR 249.103, 249.104 and 249.105, respectively.

⁵ 17 CFR 240.13d–101, 240.13d–102 and 240.14d–100, respectively.

⁶ 15 U.S.C. 78a *et seq.*

⁷ Schedules 13D and 13G are used by significant security holders to disclose securities ownership and transaction information under Exchange Act Sections 13(d) [15 U.S.C. 78m(d)] and 13(g) [15 U.S.C. 78m(g)]. Schedule TO is used by bidders to disclose tender offer information under Exchange Act Sections 13(e)(1) [15 U.S.C. 78m(e)(1)] and 14(d)(1) [15 U.S.C. 78n(d)(1)]. Schedule TO indirectly permits filers that are entities to include an IRS identification number by permitting them to amend a previously filed Schedule 13D to create a combined filing with the Schedule TO.

under the Exchange Act, to consider the impact that any 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,¹⁴ Section 3(f) of the Exchange Act,¹⁵ and Section 2(c) of the Investment Company Act¹⁶ 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 amendments merely remove the voluntary or required inclusion of information that is no longer useful and make conforming technical changes. We believe the amendments will not impose a burden on competition and have no impact on efficiency, competition or capital formation.

V. Certain Findings

Under the Administrative Procedure Act (“APA”), notice of proposed rulemaking is not required when an agency, for good cause, finds “that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest.”¹⁷ As we have explained previously, IRS identification numbers do not provide useful information in the context of federal securities law disclosures made in Schedules 13D, 13G and TO and Form 144 filings. They are provided only in certain of those filings, mostly on a voluntary basis. The changes we are adopting today remove the opportunities to provide information that we sought for internal processing purposes, but have found is no longer useful. Therefore, we believe publication for public comment is unnecessary. In addition, the amendments to Forms 3, 4 and 5 and their descriptions to delete references to the filer’s IRS identification number are technical changes to conform to a previous rule change and have no practical effect. Accordingly, we find that publishing notice of these amendments is likewise unnecessary.¹⁸

The APA also requires publication of a rule at least 30 days before its effective date unless the agency finds otherwise for good cause.¹⁹ Since we find this information to be not useful or necessary, we see no reason to retain the provisions for 30 days after these rule changes are published in the **Federal Register**. We believe filers should be able to have the limited benefits of these changes immediately. Consequently, we find there is good cause for the amendments to take effect immediately upon publication in the **Federal Register**.

VI. Statutory Basis

We are adopting the amendments under the authority in Section 19(a)²⁰ of the Securities Act, Sections 13,²¹ 14,²² 16²³ and 23(a)²⁴ of the Exchange Act, and Sections 30(h)²⁵ and 38²⁶ of the Investment Company Act.

Text of Rule Amendments

List of Subjects in 17 CFR Parts 239, 240, 249 and 274

Reporting and recordkeeping requirements, Securities.

■ For the reasons set out in the preamble, we amend Title 17, Chapter II of the Code of Federal Regulations as follows.

PART 239—FORMS PRESCRIBED UNDER THE SECURITIES ACT OF 1933

■ 1. 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, 77z-3, 77sss, 78c, 78l, 78m, 78n, 78o(d), 78u-5, 78w(a), 78ll(d), 78mm, 80a-2(a), 80a-3, 80a-8, 80a-9, 80a-10, 80a-13, 80a-24, 80a-26, 80a-29, 80a-30, and 80a-37, unless otherwise noted.

* * * * *

■ 2. Amend Form 144 (referenced in § 239.144) by:

- a. Removing Item 2(b) and redesignating Items 2(c) and 2(d) as Items 2(b) and 2(c);
- b. Removing Instruction 2(b) and redesignating Instructions 2(c) and 2(d) as Instructions (b) and 2(c).

analysis, the term “rule” means any rule for which the agency publishes a general notice of proposed rulemaking) and 5 U.S.C. 804(3)(C) (for purposes of Congressional review of agency rulemaking, the term “rule” does not include any rule of agency organization, procedure or practice that does not substantially affect the rights or obligations of non-agency parties).

¹⁹ See 5 U.S.C. 553(d)(3).

²⁰ 15 U.S.C. 77s(a).

²¹ 15 U.S.C. 78m.

²² 15 U.S.C. 78n.

²³ 15 U.S.C. 78p.

²⁴ 15 U.S.C. 78w(a).

²⁵ 15 U.S.C. 80a-29(h).

²⁶ 15 U.S.C. 80a-37.

Note: The text of Form 144 does not and this amendment will not appear in the Code of Federal Regulations.

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

■ 3. 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, 78l, 78m, 78n, 78o, 78p, 78q, 78s, 78u-5, 78w, 78x, 78ll, 78mm, 80a-20, 80a-23, 80a-29, 80a-37, 80b-3, 80b-4, 80b-11, and 7201 *et seq.*; and 18 U.S.C. 1350, unless otherwise noted.

* * * * *

- 4. Amend § 240.13d-101 by:
 - a. Revising Item 1 on the Cover Page;
 - b. Revising Item 1 of the Instructions for Cover Page; and
 - c. Revising the Special Instructions for Complying with Schedule 13D, to read as follows:

§ 240.13d-101 Schedule 13D—Information to be included in statements filed pursuant to § 240.13d-1(a) and amendments thereto filed pursuant to § 240.13d-2(a).

Securities and Exchange Commission, Washington, DC 20549

Schedule 13D

* * * * *

(1) Names of reporting persons.

* * * * *

Instructions for Cover Page

(1) *Names of Reporting Persons*—Furnish the full legal name of each person for whom the report is filed—i.e., each person required to sign the schedule itself—including each member of a group. Do not include the name of a person required to be identified in the report but who is not a reporting person.

* * * * *

Special Instructions for Complying With Schedule 13D

Under sections 13(d) and 23 of the Securities Exchange Act of 1934 and the rules and regulations thereunder, the Commission is authorized to solicit the information required to be supplied by this schedule by certain security holders of certain issuers.

Disclosure of the information specified in this schedule is mandatory. The information will be used for the primary purpose of determining and disclosing the holdings of certain beneficial owners of certain equity securities. This statement will be made a matter of public record. Therefore, any information given will be available for inspection by any member of the public.

¹⁴ 15 U.S.C. 77b(b).

¹⁵ 15 U.S.C. 78c(f).

¹⁶ 15 U.S.C. 80a-2(c).

¹⁷ 5 U.S.C. 553(b)(3)(B).

¹⁸ For similar reasons, the amendments do not require analysis under the Regulatory Flexibility Act or a report to Congress under the Small Business Regulatory Fairness Act. See 5 U.S.C. 601(2) (for purposes of a Regulatory Flexibility Act

Because of the public nature of the information, the Commission can use it for a variety of purposes, including referral to other governmental authorities or securities self-regulatory organizations for investigatory purposes or in connection with litigation involving the federal securities laws or other civil, criminal or regulatory statutes or provisions.

Failure to disclose the information requested by this schedule may result in civil or criminal action against the persons involved for violation of the federal securities laws and rules promulgated thereunder.

* * * * *

- 5. Amend § 240.13d-102 by:
 - a. Revising Item 1 on the Cover Page;
 - b. Revising Item 1 of the Instructions for Cover Page; and
 - c. Revising the Special Instructions for Complying with Schedule 13G, to read as follows:

§ 240.13d-102 Schedule 13G—Information to be included in statements filed pursuant to § 240.13d-1(b), (c), and (d) and amendments thereto filed pursuant to § 240.13d-2.

Securities and Exchange Commission, Washington, DC 20549

Schedule 13G

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(1) Names of reporting persons.

* * * * *

Instructions for Cover Page

(1) *Names of Reporting Persons*—Furnish the full legal name of each person for whom the report is filed—i.e., each person required to sign the schedule itself—including each member of a group. Do not include the name of a person required to be identified in the report but who is not a reporting person.

* * * * *

Special Instructions for Complying With Schedule 13G

Under Sections 13(d), 13(g) and 23 of the Securities Exchange Act of 1934 and the rules and regulations thereunder, the Commission is authorized to solicit the information required to be supplied by this schedule by certain security holders of certain issuers.

Disclosure of the information specified in this schedule is mandatory. The information will be used for the primary purpose of determining and disclosing the holdings of certain beneficial owners of certain equity securities. This statement will be made a matter of public record. Therefore, any information given will be available for inspection by any member of the public.

Because of the public nature of the information, the Commission can use it for a variety of purposes, including referral to other governmental authorities or securities self-regulatory organizations for investigatory purposes or in connection with litigation involving the Federal securities laws or other civil, criminal or regulatory statutes or provisions.

Failure to disclose the information requested by this schedule may result in civil or criminal action against the persons involved for violation of the Federal securities laws and rules promulgated thereunder.

* * * * *

- 6. Amend § 240.14d-100 by revising the Special Instructions for Complying with Schedule TO to read as follows:

§ 240.14d-100 Schedule TO. Tender offer statement under section 14(d)(1) or 13(e)(1) of the Securities Exchange Act of 1934.

Securities and Exchange Commission, Washington, DC 20549

Schedule TO

* * * * *

Special Instructions for Complying With Schedule TO

Under Sections 13(e), 14(d) and 23 of the Act and the rules and regulations of the Act, the Commission is authorized to solicit the information required to be supplied by this schedule.

Disclosure of the information specified in this schedule is mandatory. The information will be used for the primary purpose of disclosing tender offer and going-private transactions. This statement will be made a matter of public record. Therefore, any information given will be available for inspection by any member of the public.

Because of the public nature of the information, the Commission can use it for a variety of purposes, including referral to other governmental authorities or securities self-regulatory organizations for investigatory purposes or in connection with litigation involving the federal securities laws or other civil, criminal or regulatory statutes or provisions.

Failure to disclose the information required by this schedule may result in civil or criminal action against the persons involved for violation of the federal securities laws and rules.

* * * * *

PART 249—FORMS, SECURITIES EXCHANGE ACT OF 1934

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

Authority: 15 U.S.C. 78a et seq. and 7202, 7233, 7241, 7262, 7264, and 7265; and 18 U.S.C. 1350, unless otherwise noted.

* * * * *

§ 249.103 [Amended]

- 8. Amend § 249.103 by:
 - a. Removing from the second sentence the phrase “sections 17(a) and 20(a) of the Public Utility Holding Company Act of 1935 (15 U.S.C. 79q(a) and 79t(a));”
 - b. Removing from the third sentence the phrase “, except for disclosure of I.R.S. identification number by entities, which is voluntary”; and
 - c. Removing the fourth sentence.

§ 249.104 [Amended]

- 9. Amend § 249.104 by:
 - a. Removing from the second sentence the phrase “sections 17(a) and 20(a) of the Public Utility Holding Company Act of 1935 (15 U.S.C. 79q(a) and 79t(a));”
 - b. Removing from the third sentence the phrase “, except for disclosure of I.R.S. identification number by entities, which is voluntary”; and
 - c. Removing the fourth sentence.

§ 249.105 [Amended]

- 10. Amend § 249.105 by:
 - a. Removing from the second sentence the phrase “sections 17(a) and 20(a) of the Public Utility Holding Company Act of 1935 (15 U.S.C. 79q(a) and 79t(a));”
 - b. Removing from the third sentence the phrase “, except for disclosure of I.R.S. identification number by entities, which is voluntary”; and
 - c. Removing the fourth sentence.
- 11. Amend Form 5 (referenced in § 249.105) by:
 - a. Removing the phrase “, Section 17(a) of the Public Utility Holding Company Act of 1935” from the first paragraph following the heading “Annual Statement of Changes in Beneficial Ownership of Securities”; and
 - b. Removing from the first sentence of the second paragraph of the introductory section preceding the General Instructions the phrase “, except for disclosure of the I.R.S. identification number of the reporting person if such person is an entity, which is voluntary”; and
 - c. Removing the second sentence of the second paragraph of the introductory section preceding the General Instructions.

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

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

- 12. 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), 78l, 78m, 78n, 78o(d), 80a-8, 80a-24, 80a-26, and 80a-29, unless otherwise noted.

* * * * *

PART 249—FORMS, SECURITIES EXCHANGE ACT OF 1934

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

- 13. Amend Form 3 (referenced in § 249.103 and § 274.202) by:
 - a. Removing the phrase “, Sections 17(a) and 20(a) of the Public Utility Holding Company Act of 1935” from the first paragraph following the heading “Initial Statement of Beneficial Ownership of Securities”;
 - b. Removing from the first sentence of the second paragraph of the introductory section preceding the

General Instructions the phrase “, except for disclosure of the I.R.S. identification number of the reporting person if such person is an entity, which is voluntary”; and

- c. Removing the second sentence of the second paragraph of the introductory section preceding the General Instructions.

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

- 14. Amend Form 4 (referenced in § 249.104 and § 274.203) by:
 - a. Removing the phrase “, Sections 17(a) and 20(a) of the Public Utility Holding Company Act of 1935” from the first paragraph following the heading “Statement of Changes in Beneficial Ownership”;
 - b. Removing from the first sentence of the second paragraph of the

introductory section preceding the General Instructions the phrase “, except for disclosure of the I.R.S. identification number of the reporting person if such person is an entity, which is voluntary”; and

- c. Removing the second sentence of the second paragraph of the introductory section preceding the General Instructions.

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

Dated: August 6, 2007.

By the Commission.

Nancy M. Morris,
Secretary.

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