

Holding Company Act of 1935; Sections 8, 30, 31(c) and 38(a) (15 U.S.C. 80a-8, 80a-29, 80a-30(c), 80a-37(a)) of the Investment Company Act of 1940.

Pursuant to Section 23(a)(2) of the Securities Exchange Act, the Commission has considered the impact of these amendments on competition and is not aware at this time of any burden that they would impose on competition.

By the Commission.

George A. Fitzsimmons,
Secretary.

September 2, 1980.

[FR Doc. 80-27816 Filed 9-19-80; 10:30 am]

BILLING CODE 8010-01-M

17 CFR Parts 210, 231, 239, 240 and 249

[Releases Nos. 33-6234, 34-17117, 35-21700; IC-11326, AS-281]

Uniform Instructions as to Financial Statements—Regulation S-X

AGENCY: Securities and Exchange Commission.

ACTION: Amendment of rules.

SUMMARY: The Commission announces the adoption of amendments to rules establishing uniform instructions governing the periods to be covered by financial statements included in (1) most registration and reporting forms filed with the Commission under the Securities Act of 1933 and Securities Exchange Act of 1934, and (2) annual reports to security holders furnished pursuant to the proxy rules. The amendments specify the periods to be covered by audited financial statements as well as the periods for which unaudited interim financial information is required when securities are being registered. In addition, requirements as to the form and content of interim financial information included in registration statements have been adopted which parallel current requirements of quarterly reports filed on Form 10-Q. The amendments remove substantially all present instructions as to financial statements from the various registration and reporting forms and establish a centralized set of revised instructions in Regulation S-X. The amendments adopted are intended to simplify the registration and reporting requirements under the Federal securities laws and further the ability of registrants to integrate reporting under the 1933 and 1934 Acts.

EFFECTIVE DATE: Effective for companies with fiscal years ended after December 15, 1980. However, upon publication in

the Federal Register, earlier implementation is encouraged.

FOR FURTHER INFORMATION CONTACT: Lawrence C. Best, Office of the Chief Accountant, Securities and Exchange Commission, Washington, D.C. 20549 (202-272-2130).

SUPPLEMENTARY INFORMATION: The Securities and Exchange Commission is adopting amendments to rules establishing uniform instructions as to the periods to be covered by financial statements included in most registration and reporting forms filed with the Commission under the Securities Act of 1933 ("Securities Act") and the Securities Exchange Act of 1934 ("Exchange Act," together the "securities acts") and in annual reports to security holders furnished pursuant to the proxy rules. Further, amendments are being adopted which modify requirements as to the form and content of interim financial information included in registration statements, conforming for most registrants previous requirements under the Securities Act with current requirements for quarterly data under the Exchange Act. The amendments remove substantially all present instructions as to financial statements from the various registration and reporting forms and establish a centralized set of revised instructions in Regulation S-X.

Adoption of the amendments contained in this release result in amendments to Forms S-1 (17 CFR 239.11), S-2 (17 CFR 239.12), S-3 (17 CFR 239.13), S-7 (17 CFR 239.26), S-11 (17 CFR 239.18), 10 (17 CFR 249.210), 10-K (17 CFR 249.310), 11-K (17 CFR 249.311), Rule 14a-3 (17 CFR 240.14a-3), Schedule 14a (17 CFR 240.14a-1 *et seq.*) Rule 14c-3 (17 CFR 240.14c-3), Regulation S-X (17 CFR 210) and Guide 23 (17 CFR 231.4936) under the Securities Act of 1933 or the Securities Exchange Act of 1934.

Background

On January 15, 1980, the Securities and Exchange Commission, in four separate but related releases, introduced a plan to redesign the registration and reporting system under the securities acts.¹ The plan proposed substantial changes to the disclosure system and incorporated revisions designed to improve overall disclosure, simplify existing rules, and reduce the registration and reporting burdens for most registrants. The underlying theme of the plan was the accomplishment of a coordinated disclosure system encompassing integrated reporting

under the Securities Act and the Exchange Act.

The plan envisioned, among other things, the use of what may be referred to as a "uniform financial disclosure package" as the central disclosure mechanism in the integrated disclosure system. This uniform package containing certain minimum disclosures was to appear in the annual report to security holders and be incorporated by reference into the Form 10-K as well as certain Securities Act filings. It was to contain items of disclosure the Commission believed warranted maximum public exposure.

In developing this plan for an integrated disclosure system, the Commission placed a high priority on determining what it believed to be the minimum content necessary for an informed investment decision and undertook to reexamine its financial disclosure requirements in an effort to develop a uniform financial disclosure package. This reexamination involved revisiting requirements for primary audited financial statements, the summary of operations, and management's discussion and analysis of the summary of operations as well as the provisions of Regulation S-X.

The reassessment of these rules resulted in the Commission proposing a redesign of the basic financial disclosure model included in most filings and in annual reports to security holders. Under the proposal, the summary of operations would be eliminated and management's discussion and analysis would be refocused on the primary audited financial statements. In addition, management's discussion and analysis would be expanded to encompass an explanation of factors affecting financial condition and changes in financial condition as well as the results of operations. The primary financial statements, prepared in accordance with Regulation S-X, would include balance sheets as of the end of the two most recent fiscal years and statements of income and changes in financial position for the three most recent fiscal years. Also, the financial disclosure package would include selected financial data and certain market data relating to common shares outstanding.

Final rules evolving from these proposals and the related public comment process are being adopted today in this release and three other concurrent releases. Amendments constituting a major restructuring of Form 10-K and a discussion of the concept of integration adopted by the Commission are included in Securities Act Release No. 6231, September 2, 1980

¹ Securities Act Release Nos. 6176, 6177, 6178 and 6179.

(Amendments to Annual Report Form, Related Forms, Rules and Guides; Integration of Securities Acts Disclosure Systems). Amendments to Regulation S-X constituting a general revision of Articles 3, 5 and 12 aimed at facilitating integration are included in Securities Act Release No. 6233, September 2, 1980 (General Revision—Regulation S-X). Finally, the adoption of a new registration form, Form S-15, representing an experimental optional short form for registration of securities issued in certain business combinations, encompassing integrated disclosure concepts, is the subject of Securities Act Release No. 6232, September 2, 1980 (Business Combination Transactions—New Short Form for Registration and Related Rule Amendments).

The principal focus of this release is the adoption of a uniform requirement for financial statements included in the uniform financial disclosure package referred to above and covered in the amendments adopted in the concurrent release on revision of Form 10-K. In addition, this release establishes certain uniform instructions as to the age, form and content of interim financial information included in registration statements.

All four releases referred to above are related and were developed with the intention of achieving mutual goals and objectives. Consequently, this release should be read in conjunction with the three other concurrent releases in order to fully understand the registration and reporting format adopted by the Commission.

Uniform Requirement for Financial Statements

As registration and reporting requirements have evolved, differences have been created in the rules covering the periods for which financial disclosures are required. These differences have resulted to some extent from a piecemeal approach, covering many years, in developing the disclosure system. Also, these differences have resulted from continuous attempts to tailor disclosure requirements to the particular circumstances surrounding the use of each of the respective forms. Such differences in requirements have contributed to the complexity of the disclosure rules and frequently have been a source of confusion to those attempting to understand filing requirements.

Under present rules, the periods for which financial statements are required to be filed with the Commission vary depending on the particular registration or reporting form being filed. A registrant, for example, filing a

registration statement on Form S-1 under the Securities Act is required to include statements of income and changes in financial position for three years and a balance sheet as of a recent date. A registrant filing a registration statement under the same Act on Form S-7 is required to provide statements of income and changes in financial position for five years and a balance sheet as of a recent date. For registration of securities using Form S-8, a registrant is required to provide the financial statements required to be included in Form 10-K (under the 1934 Act) or in the annual report to security holders consisting of statements of income and changes in financial position for two years plus balance sheets as of the end of the most recent two fiscal years.

The Commission, in connection with its reassessment of the reporting and disclosure requirements, has questioned the necessity for these differences among forms. Common to all investment decisions involving securities is the need for sufficient information to assess the financial health of the underlying issuer. Whether a potential investor is considering investing in a security traded on the open market or in one being registered for the first time, his method of analysis and evaluation is most likely very similar and his basic informational needs the same.

It is difficult, therefore, to draw meaningful distinctions among the various registration and reporting forms to support the need for the financial statements to encompass differing periods of time. Although the nature of securities and the purpose of registration may differ in many respects and thus require certain disclosures tailored to the specific circumstances of the filing, the Commission believes that such varying circumstances do not warrant a variation among forms as to the periods to which primary financial statements relate.

Accordingly, the Commission in conjunction with the adoption of a uniform financial disclosure package, discussed in greater detail in the concurrent release on revision of Form 10-K, is adopting uniform instructions as to periods to be covered by financial statements. These instructions require registrants to, among other things, provide audited statements of income and changes in financial position for three fiscal years and audited balance sheets as of the end of two fiscal years in most disclosure documents prepared under the securities acts. The Commission believes that the adoption of this uniform requirement will improve

overall disclosure and simplify existing rules.

The proposal of uniform instructions as to financial statement periods generated response from a significant number of commentators, most of whom were preparers of financial statements. The commentators generally offered support for the Commission's stated goals and agreed that a uniform requirement should prove to simplify rules and facilitate the move toward integrated reporting. However, the views of commentators varied as to the appropriate periods to be encompassed by such a uniform requirement.

Commentators supportive of the amendments as proposed concurred with the Commission's view that three-year statements of income are necessary to an understanding of changes in results of operations for two years and that selected financial data for five years, in lieu of the more detailed summary of operations, should be sufficient for an assessment of trends. These commentators further indicated that any incremental costs associated with the additional year's statements of income and changes in financial position would not be significant. In addition, support for the amendments was expressed by other commentators who viewed the amendments as striking an appropriate balance within the framework of an integrated reporting system.

Opposition to the amendments as proposed was based on various concerns regarding the addition of a third year's statements of income and changes in financial position in Form 10-K and in annual reports to shareholders. In the view of opposing commentators, the addition of a third year would jeopardize the readability of disclosure documents, especially the annual report to shareholders, by adding to the prolixity of disclosures already provided. They argued that the benefits accruing from the additional year would be marginal and that the proposed selected financial data would provide sufficient disclosure regarding earlier years.

In addition, opposition to the proposal was voiced by commentators arguing that a user, seeking information for the additional year, could refer to previously filed documents for such data. These same commentators suggested that the additional costs and burdens associated with providing the third year's financial statements would be substantial.

In response to concerns regarding the decreased readability of the financial statements and the increased cost of their preparation, the Commission

attempted to project the incremental disclosure involved in requiring the additional year's statements of income and changes in financial position. From this, the Commission observed that the major portion of footnote disclosure in financial statements is balance sheet oriented, and that few, if any, of the notes relate directly to the statement of changes in financial position. Also, where footnote disclosure relates to the income statement, the addition of one year often will require only the inclusion of an additional dollar amount to a note already prepared for the latest two fiscal years.

Incremental disclosure imposed by the requirement for a third year will principally involve only the addition of one column to both the statements of income and changes in financial position and the addition of several lines to any statement of shareholder's equity presented. This degree of added disclosure in the view of the Commission should not have a negative impact on the readability of disclosure documents and should not, in most cases, result in any significant increases in preparatory costs.

In response to comments questioning the benefits accruing from the third year's information and suggesting that such data is already available in previously filed documents, the Commission has reviewed its stated objectives for developing a uniform financial disclosure package. A principal objective of the uniform package is to provide enough data to satisfy the needs of most users desiring to make an informed judgment as to the financial well-being of an underlying issuer. It has been designed with the intention of providing users with easy access to sufficient data for an informed decision while refraining from requiring data in excess of the amount necessary to satisfy most users or data for which the costs of preparation cannot be justified by the benefits.

The decision to require statements of income and changes in financial position for three years is premised on the view that investors should be provided sufficient detail to analyze and understand a company's results of operations for at least the most recent two fiscal years. Since information for the immediately preceding year is needed to understand changes in operations for one year, comparative information for three years is necessary for an understanding of changes in operations for two years.

The view that three years' income statements are necessary to provide an understanding of the results of operations for two fiscal years is not

unique to these amendments. Since 1974 the Commission has required registrants in their annual reports to shareholders to provide management's discussion and analysis of its results of operations for the three most recent fiscal years. With the elimination of the detailed summary of operations, discussed in the concurrent release on revision of Form 10-K, the three-year requirement for financial statements retains the disclosures previously focused on by management's discussion and analysis and provides a more effective disclosure package.

One of the Commission's principal intentions in developing the uniform financial disclosure package was to refocus the concentration of users to the financial statements as a whole. In the past, the results of operations was given greater emphasis than financial condition by separate display in a detailed summary of operations, which, in turn, was the exclusive focus of management's discussion and analysis. The Commission believes that, by eliminating the summary of operations, requiring the financial statements to cover results of operations for three years, and by refocusing management's discussion and analysis on the financial statements, users will concentrate more on the financial statements as a whole and be provided a more effective presentation.

Interim Financial Information—Age, Form and Content

In addition to adopting a uniform requirement for periods to be covered by audited financial statements, substantial changes are being adopted relating to the age, form and content of unaudited interim financial information provided in registration statements. Under present requirements of the various forms, a "90-day" or "six-month" rule must be followed to determine the age of financial information required to be filed. The amendments adopted in this release revise and update these requirements to recognize quarterly reporting requirements under the Exchange Act and ensure that interim data provided in registration statements under the Securities Act is at least as current as the data already filed under the Exchange Act. As to form and content, changes are being adopted which will greatly reduce the burden on registrants required to file interim financial information. The amendments eliminate the requirement to provide complete financial statements and schedules for interim periods and allow interim data to be presented in condensed financial statements in the

same degree of detail as is required under Form 10-Q.

Age of Financial Statements

In general, the amendments adopted today regarding the inclusion of interim financial information in registration statements parallel existing requirements for interim financial data under Form 10-Q. The new rules do not require registrants to provide in registration statements interim financial data any more current than interim data required for most registrants in quarterly reports on Form 10-Q. A discussion of the new rules, which specify the interim data to be included both as of the date of filing and as of the expected effective date of the filing, or proposed mailing date in the case of a proxy statement, and a description of the exceptions to the general rule are set forth below.

Filings Within 90 Days of Year-End

The uniform financial statement requirement adopted in this release requires audited balance sheets as of the end of the two most recent fiscal years and audited statements of income and changes in financial position for each of the most recent three fiscal years. Exceptions to this rule occur under the amendments adopted when filings, other than on Form 10-K or Form 10, are made within 45 days after the end of the registrant's fiscal year and audited financial statements for the most recent fiscal year are not yet available. In these circumstances, the rules provide that the audited balance sheets may be as of the end of the two preceding fiscal years and audited statements of income and changes in financial position may be presented for each of the three fiscal years preceding the most recent audited balance sheet presented. Under these circumstances, however, an additional balance sheet (which may be unaudited) will be required as of an interim date at least as current as the end of the registrant's third fiscal quarter of the most recently completed fiscal year and unaudited statements of income and changes in financial position will be required, on a comparative basis, for the interim period between the date of the most recent audited balance sheet presented and the date of the most recent interim balance sheet being filed.

This same provision for filing interim financial data will be applicable to filings, other than on Form 10-K or Form 10, made after 45 days but within 90 days of the end of the registrant's fiscal year provided the registrant meets certain prescribed conditions.

To this extent, the rules adopted parallel interim reporting requirements

under the 1934 Act. A potential investor of securities already registered and traded in the open market, for instance, wishing to make an investment decision on March 1, may only have available to him for a calendar year company the audited financial statements for the two years preceding the fiscal year most recently completed and unaudited interim data on a condensed basis through the end of the third fiscal quarter of the most recent fiscal year (as filed on Form 10-Q). Under the rules adopted, this same level disclosure will be available to the investor considering an investment in shares being registered on March 1.

However, where a company files a registration statement or plans to become effective with a registration after 45 days but within 90 days of the end of its fiscal year (i.e., February 16 to March 31 for calendar year companies) and does not meet the conditions prescribed by the rules described below, the Commission will require that audited financial statements for the most recently completed fiscal year be included in the registration statement. To avoid the possibility of having to accelerate the preparation and audit of the financial statements for the most recently completed fiscal year, a company filing in the "45 day window" specified above must:

(1) Be a registrant who files annual, quarterly and other reports pursuant to section 13 or 15(d) of the Exchange Act; (2) have filed all reports due; (3) reasonably and in good faith expect income, after taxes but before extraordinary items and cumulative effect of a change in accounting principle, for the most recent fiscal year for which audited financial statements are not yet available; and (4) for at least one of the two immediately preceding fiscal years for which audited financial statements are available, have reported income, after taxes but before extraordinary items and cumulative effect of a change in accounting principle.

In adopting the requirement for certain registrants to provide audited financial statements for the most recent fiscal year when within the "45 day window," the Commission recognizes that for some short period of time these companies may be prevented from going to the market. However, the Commission has concluded that, when a company is either a new registrant or is a registrant with unprofitable operations and is attempting to raise capital in the marketplace during the 45 days before audited financial statements for the most recent fiscal year would otherwise

be required, it is reasonable to delay registration until such financial statements become available. The Commission believes that companies which do not meet the conditions described above will be cognizant of applicable registration requirements and will plan to accelerate the preparation and audit of their financial statements when planning to file or become effective in this 45 day period.

The Commission believes that this exception in the rules is in the best interest of the investing public and will not create any burden on the large majority of registrants. Also, it should be understood that, as in the past, the Commission will offer waivers to the rules where unusual circumstances dictate the need for them.

Filings After 134 Days of Year-End

The amendments also provide for interim financial information in registration statements filed after 134 days subsequent to the end of a registrant's fiscal year—the period after audited financial statements for the most recently completed fiscal year are already required to be filed by most registrants on Form 10-K and on or after the date most registrants are required to have filed interim financial statements for the first fiscal quarter. When a registration statement is filed during this period an additional balance sheet is required as of an interim date within 135 days of the date of filing but as of a date at least as current as the date of the most recent quarterly data filed with the Commission on Form 10-Q. Also, statements of income and changes in financial position are required, on a comparative basis, for the interim period between the date of the most recent audited balance sheet and the date of the most recent interim balance sheet being filed. Here again, the rules adopted parallel the requirements for interim information under the 1934 Act but also provide some flexibility for those registrants who may not be required to file quarterly data on Form 10-Q.²

These new rules for interim financial data in registration statements are being

²For instance, a calendar year company not subject to quarterly reporting requirements under the Exchange Act and therefore not required to file a Form 10-Q may, in a filing on May 30, include interim financial statements as of, say, the end of January or February as opposed to the end of the first fiscal quarter (March 31). For some companies not accustomed to reporting as of an interim date, a requirement for data as of the end of the most recent fiscal quarter imposes a significant burden in preparing a registration statement. Under the amendments adopted, data less current than as of the end of the most recent fiscal quarter will be acceptable as long as it is within the prescribed 135 day period prior to the date of filing.

adopted primarily to update the rules to recognize quarterly reporting requirements under the Exchange Act. The previous six-month rule under Forms S-1, S-7 and S-11 was never updated in recognition of requirements to file interim data on Form 10-Q. Applicable to registrants meeting certain conditions, the six-month rule was originally adopted with Form S-1 prior to the inception of quarterly reporting requirements and was subsequently incorporated into Form S-7 and S-11 without modification.

Currently, reporting companies are required to file unaudited interim financial information on Form 10-Q within 45 days of the end of each of the first three quarters of their fiscal year. Under present registration requirements, a filing could conceivably be filed under the Securities Act with financial information less current than that already filed under the Exchange Act. Under the amendments adopted, financial statements included in a registration statement will be required to be at least as current as any financial statements filed under the Exchange Act. Although the amendments require more current information than would be required under the six-month rule, they do not require most reporting companies to provide information which is any more current than is now required under the Exchange Act.

Age at Effective Date of Filing

In addition to the adoption of the above rules applicable to financial statements as of the filing date of a registration statement, financial statement updating requirements are also being adopted which focus on the age of financial statements at the effective date of a registration statement or the proposed mailing date in the case of a proxy statement. Here again, the rules adopted, except for certain registration statements which are expected to become effective during the "45 day window" referred to in the previous discussion, correspond with the requirements for quarterly data under the 1934 Act on Form 10-Q.

Where financial statements in a filing are as of a date 135 days or more prior to the date the filing is expected to become effective or proposed mailing date in the case of a proxy statement, the rules require the financial statements to be updated with a balance sheet as of an interim date within 135 days and with statements of income and changes in financial position, on a comparative basis, for the interim period between the end of the most recent fiscal year and the date of the interim balance sheet provided.

Two exceptions to this rule have been provided. First, where the registrant meets the four conditions described in the previous section and the anticipated effective date or proposed mailing date in the case of a proxy statement falls after 45 days but within 90 days of the end of the fiscal year, the filing need not be updated with financial statements more current than as of the end of the third fiscal quarter of the most recently completed fiscal year provided audited financial statements for such fiscal year are not available. Second, where the registrant does not meet the prescribed conditions referred to above and the anticipated effective date or proposed mailing date falls after 45 days but within 90 days of the end of the fiscal year, the filing will be required to include the audited financial statements for the most recent fiscal year. Both of these exceptions are consistent with the rules adopted governing financial statements as of the date of filing and have been included for the same reasons described in the previous sections.

In addition, the updating rules include a general provision that, if a filing is made near the end of a fiscal year and the audited financial statements for that fiscal year are not included in the original filing, the filing shall be updated with such audited financial statements if they become available prior to the anticipated effective date, or proposed mailing date in the case of a proxy statement.

As a consequence of adopting these rules for updating financial statements, the amendments in the release include the elimination of the previous "Guide 23" of "Guides for Preparation and Filing registration Statements."³

Views of Commentators

Commentators were generally supportive of the Commission's efforts to conform the requirements for interim data under the Securities Act with those

under the Exchange Act.⁴ However, many commentators felt that greater conformity could and should be adopted. For instance, under the rules as proposed registrants would have been required to include in filings made within 90 days of the most recent fiscal year-end unaudited balance sheets as of a date within 90 days prior to the date of filing if audited financial statements for the fiscal year were not available. Such interim balance sheets would have been accompanied by comparative statements of income and changes in financial position for the interim period between the date of the most recent audited balance sheet and the date of the interim balance sheet provided. Also, under the proposed rules all registrants filing registration statements after 90 days subsequent to the end of the most recent fiscal year could not have availed themselves of the proposed 135 day rule. Unless they could meet certain prescribed conditions a more stringent 90 day rule would have applied.

The Commission considered the views of commentators in reevaluating the rules as proposed and concluded that a higher level of conformity between the Securities Act and the Exchange Act is appropriate. As a consequence, the rules adopted have been revised (as discussed in the previous sections) from those proposed to conform the timing of interim data in registration statements with the timing imposed by quarterly reporting requirements of Form 10-Q under the Exchange Act. Under the rules as adopted, registrants filing registration statements will not be subject to requirements for interim data more stringent than requirements under Form 10-Q. In addition, the 135 day rule has been made applicable to all registrants filing registration statements after 90 days subsequent to the end of the most recent fiscal year.

Form and Content

Presently, the disclosure requirements as to the form and content of interim data under the Securities Act and the Exchange Act are significantly different. Interim or stub period information included in registration statements under the Securities Act is required to be presented in full compliance with Regulation S-X, including complete financial statements and schedules. Where separate financial statements for the parent company only, unconsolidated subsidiaries or any 50

percent or less owned persons are required for annual periods, complete financial statements and schedules for these entities are also required for interim periods. Under the Exchange Act the disclosure required for interim periods is significantly different as to both the degree of detail and the entities for which financial statements are provided. On a Form 10-Q, only condensed financial statements, without schedules, are required for the registrant and its subsidiaries consolidated. In most cases, parent company only financial statements are omitted and only summarized data is provided for significant unconsolidated subsidiaries and 50 percent or less owned persons.

As an additional step toward attaining consistency between the disclosures required under the Securities Act and those required under the Exchange Act, the Commission is adopting amendments which conform the requirements as to form and content of interim financial data under the Securities Act with existing requirements as to form and content under Form 10-Q under the Exchange Act. The rules as adopted eliminate the requirements to include, in registration statements, complete financial statements and schedules for interim periods. Further, the rules eliminate interim period requirements for separate financial statements for separate entities such as parent company only, unconsolidated subsidiaries or 50 percent or less owned persons. The form and content of financial statements for interim periods included in registration statements must only, as a minimum, comply with rules which conform with requirements for such data under Form 10-Q.

The amendments adopted are revised from those proposed to the extent that complete conformity with the form and content provisions under Form 10-Q has been adopted. The rules as adopted are consistent with the Commission's view that disclosure requirements under the Securities Act and those under the Exchange Act should not be materially different.

The election to remove the major differences, as to form and content of interim data, between requirements under the Securities Act and those under the Exchange Act, however, should not be construed as representing a determination by the Commission that separate financial statements of the entities referred to above may not be required for interim periods at some future point in time. As indicated in the release containing the proposed rules, the Commission is presently studying

³The Commission recognizes that many foreign private issuers will have difficulty complying with the provisions adopted in this release. As announced in the concurrent Release 33-6231, the Commission is considering the feasibility of developing an integrated disclosure system for foreign issuers and will consider the development of specific rules concerning the age and content of financial statements for foreign issuers in the context of that project. Until final rules are adopted, however, the staff will consider, as it has in the past, requests for waivers of certain of the requirements of Regulation S-X that may be inappropriate for foreign issuers. In particular, registrants should be aware that waiver requests regarding the age of financial statements in a firm commitment underwritten offering have in the past been granted if the registrant presented financial statements at least as current as six months prior to the effectiveness of the registration statement.

⁴Letters of comment were received from 160 commentators in response to the invitation to comment included in Securities Act Release No. 6179.

the significance and utility of the various separate financial statements currently required by most disclosure forms for annual periods. After the Commission completes its studies of the significance and utility of these separate statements, a determination will then be made as to whether such statements in a condensed form need be included where interim periods are presented (registration statements as well as Form 10-Q).

Instructions to Financial Statements Centralized in Regulation S-X

Instructions as to the financial statements to be provided in a filing and the periods to be covered are presently located in the various registration and reporting forms. The amendments adopted today remove substantially all these instructions from the various forms and position a centralized set of revised instructions in a new Article 3 of Regulation S-X. The Commission believes that the centralization of these instructions simplifies the rules and facilitates the establishment of a uniform requirement for periods to be covered by financial statements.

In relocating the instructions as to financial statements to Regulation S-X, it should be noted that no significant changes have been made other than those relating to the periods to be covered by financial statements and those regarding the form and content of interim data in registration statements. Certain minor changes, however, that should be noted are briefly described below.

Consistent with the adoption of a uniform requirement for registrants to provide statements of income for three fiscal years, a requirement that the disclosure of segment information in accordance with provisions of Statement of Financial Accounting Standards No. 14 for each year for which an audited income statement is presented has been adopted. This specific amendment to the rules is required because generally accepted accounting principles only require segment data when complete financial statements—including balance sheet—are presented. This requirement is also consistent with the number of years provided for by the revised Item 1 of Regulation S-K discussed in the release on revision of Form 10-K. The amendment adopted herein provides that to the extent that the segment information required to be included in the financial statements comply with the provisions of Item 1 of Regulation S-K, the disclosures may be combined by cross referencing to or from the financial statements.

The amendments also revise the present rules applicable to financial statements of development stage companies required to be filed on Form 10-K. Presently, when receipts and expenditures of a development stage company, each, do not exceed \$5,000, the financial statements may be unaudited. The rules adopted would encompass financial statements of any inactive company and would raise the receipts and expenditures levels, each, to \$100,000. This change broadens and updates the present rules.

Further, because Regulation S-X now encompasses requirements for financial statements, its title has been changed from "Form and Content of Financial Statements" to "Form and Content of and Requirements for Financial Statements."

Text of Amended Rules, Forms, and Guides

[Regulation S-X]

1. The Part heading for 17 CFR Part 210 is revised to read as follows:

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

2. Paragraph (a) of § 210.1-01 is amended to read as follows:

§ 210.1-01 Application of Regulation S-X (17 CFR Part 210).

(a) This part (together with the Accounting Series Releases (Part 211 of this chapter)) sets forth the form and content of and requirements for financial statements required to be filed as a part of:

(1) Registration statements under the Securities Act of 1933 (Part 239 of this chapter), except as otherwise specifically provided in the forms which are to be used for registration under this Act;

(2) Registration statements under section 12 (Subpart C of Part 249 of this chapter), annual or other reports under sections 13 and 15(d) (Subparts D and E of Part 249 of this Chapter), and proxy and information statements under section 14 of the Securities Exchange Act of 1934 except as otherwise specifically provided in the forms which are to be used for registration and reporting under these sections of this Act;

(3) Registration statements and annual reports filed under the Public Utility

Holding Company Act of 1935 (Part 259 of this chapter) by public utility holding companies registered under such Act; and

(4) Registration statements and annual reports under the Investment Company Act of 1940 (Part 274 of this chapter)).

* * * * *

§§ 210.3A-01 through 210.3A-08 [Redesignated]

3. Sections 210.4-01 through 210.4-08 and the related heading "Consolidated and Combined Financial Statements" are redesignated as §§ 210.3A-01 through 210.3A-08. In addition, a new heading "General Instructions as to Financial Statements" with a three paragraph introduction and new § 210.3-01 through § 210.3-16 (old §§ 210.3-01 through 210.3-18 removed in concurrent release number 33-6233), are added as set forth below:

General Instructions as to Financial Statements

Note.—These instructions specify the balance sheets and statements of income and changes in financial position to be included in disclosure documents prepared in accordance with Regulation S-X. Other portions of Regulation S-X govern the examination, form and content of such financial statements, including the basis of consolidation and the schedules to be filed. The financial statements described below shall be audited unless otherwise indicated.

For filings under the Securities Act of 1933, attention is directed to § 230.411(b) regarding incorporation by reference to financial statements and to section 10(a)(3) of the Act regarding information required in the prospectus.

For filings under the Securities Exchange Act of 1934, attention is directed to § 240.12b-23 regarding incorporation by reference and § 240.12b-36 regarding use of financial statements filed under other acts.

§ 210.3-01 Consolidated balance sheets.

(a) There shall be filed, for the registrant and its subsidiaries consolidated, audited balance sheets as of the end of each of the two most recent fiscal years.

(b) If the filing, other than a filing on Form 10-K or Form 10, is made within 45 days after the end of the registrant's fiscal year and audited financial statements for the most recent fiscal year are not available, the balance sheets may be as of the end of the two preceding fiscal years and the filing shall include an additional balance sheet as of an interim date at least as current as the end of the registrant's third fiscal quarter of the most recently completed fiscal year.

(c) The instruction in paragraph (b) is also applicable to filings, other than on Form 10-K or Form 10, made after 45

days but within 90 days of the end of the registrant's fiscal year: *Provided*, That the following conditions are met:

(1) The registrant files annual, quarterly and other reports pursuant to section 13 or 15(d) of the Securities Exchange Act of 1934 and all reports due have been filed;

(2) For the most recent fiscal year for which audited financial statements are not yet available the registrant reasonably and in good faith expects to report income, after taxes but before extraordinary items and cumulative effect of a change in accounting principle; and

(3) For at least one of the two fiscal years immediately preceding the most recent fiscal year the registrant reported income, after taxes but before extraordinary items and cumulative effect of a change in accounting principle.

(d) For filings made after 45 days but within 90 days of the end of the registrant's fiscal year where the conditions set forth in paragraph (c) of this section are not met, the filing must include the audited balance sheets required by paragraph (a) of this section.

(e) For filings made after 134 days subsequent to the end of the registrant's most recent fiscal year the filing shall also include a balance sheet as of an interim date within 135 days of the date of filing.

(f) Any interim balance sheet provided in accordance with the requirements of this section may be unaudited and need not be presented in greater detail than is required by instructions to Form 10-Q. Notwithstanding the requirements of this section, the most recent interim balance sheet included in a filing shall be at least as current as the most recent balance sheet filed with the Commission on Form 10-Q.

§ 210.3-02 Consolidated statements of income and changes in financial position.

(a) There shall be filed, for the registrant and its subsidiaries consolidated, audited statements of income and changes in financial position for each of the three fiscal years preceding the date of the most recent audited balance sheet being filed.

(b) In addition, for any interim period between the latest audited balance sheet and the date of the most recent interim balance sheet being filed, and for the corresponding period of the preceding fiscal year, statements of income and changes in financial position shall be provided. Such interim financial statements may be unaudited and need not be presented in greater

detail than is required by instructions to Form 10-Q.

§ 210.3-03 Balance sheets of the registrant.

There shall be filed for the registrant and its predecessors audited balance sheets as of the same dates as the audited consolidated balance sheets required to be filed pursuant to § 210.3-01.

§ 210.3-04 Statements of income and changes in financial position of the registrant.

There shall be filed for the registrant and its predecessors audited statements of income and changes in financial position for each of the three fiscal years preceding the date of the most recent audited balance sheet being filed.

§ 210.3-05 Omission of registrant's financial statements in certain cases.

(a) Notwithstanding §§ 210.3-03 and 3-04, the individual financial statements of the registrant may be omitted if:

(1) Consolidated financial statements of the registrant and one or more of its subsidiaries are being filed, and
(2) The conditions specified in either paragraphs (a)(2) (i) or (ii) of this section are met.

(i) The registrant is primarily an operating company and all subsidiaries included in the consolidated financial statements being filed, in the aggregate, do not have minority equity interests and/or indebtedness to any person other than the registrant or its consolidated subsidiaries in amounts which together exceed 5 percent of the total assets as shown by the most recent year end consolidated balance sheet. Indebtedness incurred in the ordinary course of business which is not overdue and which matures within one year from the date of its creation, whether evidenced by securities or not, and indebtedness of subsidiaries which is collateralized by the registrant by guarantee, pledge, assignment or otherwise are to be excluded for the purpose of this determination.

(ii) The registrant's total assets, exclusive of investments in and advances to its consolidated subsidiaries, as would be shown by its most recent year-end balance sheet if it were filed, constitute 75 percent or more of the total assets as shown by the most recent year-end consolidated balance sheet; and the registrant's total sales and revenues, exclusive of interest and dividends received from or its equity in the income of the consolidated subsidiaries, as would be shown by its income statement for the most recent fiscal year if it were filed, constitute 75 percent or more of the total sales and

revenues shown by the most recent annual consolidated income statement.

(b) The basis for the omission of registrant's financial statements shall be stated in the index of financial statements filed.

§ 210.3-06 Instructions to income statement requirements.

(a) The statements required shall be prepared in compliance with the applicable requirements of this Regulation.

(b) If the registrant is engaged primarily (1) in the generation, transmission or distribution of electricity, the manufacture, mixing, transmission or distribution of gas, the supplying or distribution of water, or the furnishing of telephone or telegraph service; or (2) in holding securities of companies engaged in such businesses, it may at its option include statements of income and changes in financial position (which may be unaudited) for the twelve-month period ending on the date of the most recent balance sheet being filed, in lieu of the statements of income and changes in financial position for the interim periods specified.

(c) If a period or periods reported on include operations of a business prior to the date of acquisition, or for other reasons differ from reports previously issued for any period, the statements shall be reconciled as to sales or revenues and net income in the statement or in a note thereto with the amounts previously reported: *Provided, however*, That such reconciliations need not be made (1) if they have been made in filings with the Commission in prior years or (2) the financial statements which are being retroactively adjusted have not previously been filed with the Commission or otherwise made public.

(d) In connection with any unaudited statement for an interim period a statement shall be made that all adjustments necessary to a fair statement of the results for such period have been included. If all such adjustments are of a normal recurring nature, a statement to that effect shall be made; otherwise, there shall be furnished information describing in appropriate detail the nature and amount of any adjustments other than normal recurring adjustments entering into the determination of the results shown.

(e) Disclosures regarding business segments required by generally accepted accounting principles (Statement of Financial Accounting Standards No. 14) shall be provided for each year for which an audited statement of income is presented. To the extent that the

segment information presented pursuant to this instruction complies with the provisions of Item 1 of Regulation S-K, the disclosures may be combined by cross referencing to or from the financial statements.

§ 210.3-07 Past successions to other businesses.

(a) If, during the period for which its income statements are required, the registrant has by purchase or pooling of interests succeeded to one or more businesses, the additions, eliminations and other changes effected in the succession shall be appropriately set forth in a note or supporting schedule to the balance sheets being filed, and, if a purchase has been effected during the most recent fiscal year or in a subsequent period, pro forma statements of income reflecting the combined operations of the entities shall be furnished in columnar form for the latest fiscal year and any comparable interim periods. In addition, if any purchased business or businesses, singly or in the aggregate, had major significance in relation to the registrant, audited income statements, separate or combined as appropriate, for such business or businesses shall be filed for such periods prior to the purchase as may be necessary when added to the time, if any, for which audited income statements after the purchase are filed to cover the equivalent of the period specified in § 210.3-02. The test of major significance shall be based on the tests used in the term "significant subsidiary" with substituted percentages (determined in comparison to the most recent annual consolidated financial statements of the registrant being filed) being utilized in relation to the period the businesses have been merged prior to the date of the registrant's most recent audited balance sheet as follows: (1) For one full year or less, no substitution; (2) more than one but less than two full years, 25 percent; and (3) two full years or more, 45 percent. If financial statements for an acquired business would not be required in the year of acquisition, they would not be required subsequently. (See Release No. 33-4950 with regard to audit requirements for such financial statement.)

(b) The instruction in paragraph (a) of this section shall not apply with respect to the registrant's succession to the business of any totally held subsidiary or to the succession of one or more businesses if such businesses, considered in the aggregate, would not meet the test of a significant subsidiary.

(c) Information required by this section is not required to be included in a filing on Form 10-K.

§ 210.3-08 Future successions to other businesses.

(a) If, after the date of the most recent balance sheet filed pursuant to § 210.3-01, the registrant by purchase or by pooling of interests has succeeded to or is about to succeed to one or more businesses or has acquired or is about to acquire an investment in a business the investment in which is required to be accounted for by the equity method, there shall be filed for such businesses financial statements, combined if appropriate, prepared in accordance with Regulation S-X. In addition, to reflect the succession to any businesses, there shall be filed in columnar form: (1) A balance sheet of the registrant (or the registrant and its subsidiaries consolidated, if appropriate), (2) the balance sheets of the constituent businesses, (3) the changes to be effected in the succession, and (4) the pro forma balance sheet of the registrant giving effect to the plan of succession. There shall also be filed in columnar form pro forma statements of income for the periods for which the results of operations of the acquired business would have been included in the registrant's income statement for a pooling of interests or would have been presented on a pro forma basis for a purchase had the succession occurred on the date of the latest balance sheet filed. By a note to the financial statements or otherwise, a brief explanation of the changes shall be given.

(b) The acquisition of securities shall be deemed to be the acquisition of a business if such securities give control of the business or combined with securities already held give such control. In addition, the acquisition of securities which will extend the registrant's control of a business shall be deemed the acquisition of the business if any of the securities being registered hereunder are to be offered in exchange for the securities to be acquired.

(c) No financial statements need be filed, however, for any business acquired or to be acquired or for any business in which an investment acquired or to be acquired is required to be accounted for by the equity method, from a totally held subsidiary. In addition, the statements of any one or more such businesses may be omitted if the businesses, considered in the aggregate would not meet the test of a significant subsidiary; *Provided*, That the statements of any business may not be omitted where any of the securities

being registered are to be offered in exchange for securities representing such business or for assets of such business.

(d) Information required by this section is not required to be included in a filing on Form 10-K.

§ 210.3-09 Financial statements of subsidiaries not consolidated and 50 percent or less owned persons.

(a) Subject to § 210.3A-03 regarding group financial statements and paragraphs (b) and (c) of this section, there shall be filed for each majority-owned subsidiary not consolidated and each 50 percent or less owned person for which the investment is accounted for by the equity method by the registrant or a consolidated subsidiary of the registrant the financial statements which would be required if each such subsidiary or other person were a registrant and were required to file financial statements. Insofar as practicable, these financial statements shall be as of the same dates or for the same periods as those of the registrant.

(b) *Summarized financial information.* Notwithstanding paragraph (a) of this section, summarized information as to assets, liabilities and results of operations may be presented on an individual or group basis in notes to the financial statements for all subsidiaries not consolidated and 50 percent or less owned persons accounted for by the equity method, except such subsidiaries or 50 percent or less owned persons which are individually significant under the tests specified in paragraph (c) of this section.

(c) *Omission of financial statements required by paragraphs (a) and (b).* Notwithstanding paragraphs (a) and (b) of this section, there may be omitted all financial statements of any one or more unconsolidated subsidiaries or 50 percent or less owned persons accounted for by the equity method, if in the aggregate: (1) Neither the registrant's and its other subsidiaries' investments in and advances to, nor their proportionate share of the total assets (after intercompany eliminations) of, such subsidiaries and other persons exceed 10 percent of the total assets as shown by the most recent year-end consolidated balance sheet; (2) the total sales and revenues (after intercompany eliminations) of such subsidiaries or other persons, reduced to the percentages of equity interests held by the registrant and its subsidiaries in such subsidiaries and other persons, do not exceed 10 percent of the total sales and revenues as shown by the most recent annual consolidated income statement; and (3) the registrant's and

its other subsidiaries' equity in the income before income taxes and extraordinary items of the subsidiaries and other persons does not exceed 10 percent of such income of the registrant and consolidated subsidiaries for the most recent fiscal year: *Provided*, That, if such income of the registrant and its consolidated subsidiaries for the last fiscal year is at least 10 percent lower than the average of such income for the last five fiscal years, such average income may be substituted in the determination.

§ 210.3-10 Financial statements of affiliates whose securities collateralize an issue registered or being registered.

(a) For each affiliate of the registrant whose securities constitute a substantial portion of the collateral for any class of securities registered or being registered, there shall be filed the financial statements that would be required if the affiliate were a registrant and required to file financial statements. However, statements need not be filed pursuant to this instruction for any person whose statements are otherwise filed with the registration statement on an individual, consolidated or combined basis.

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

§ 210.3-11 Financial statements of an inactive registrant.

If a registrant is an inactive entity as defined below, the financial statements required by this regulation for purposes of reports pursuant to the Securities Exchange Act of 1934 may be unaudited. An inactive entity is one meeting all of the following conditions:

(a) Gross receipts from all sources for the fiscal year are not in excess of \$100,000;

(b) The registrant has not purchased or sold any of its own stock, granted options therefor, or levied assessments upon outstanding stock;

(c) Expenditures for all purposes for the fiscal year are not in excess of \$100,000;

(d) No material change in the business has occurred during the fiscal year, including any bankruptcy, reorganization, readjustment or succession or any material acquisition or disposition of plants, mines, mining equipment, mine rights or leases; and

(e) No exchange upon which the shares are listed, or governmental authority having jurisdiction, requires the furnishing to it or the publication of audited financial statements.

§ 210.3-12 Age of financial statements at effective date of registration statement or at mailing date of proxy statement.

(a) If the financial statements in a filing are as of a date 135 days or more prior to the date the filing is expected to become effective or proposed mailing date in the case of a proxy statement, the financial statements shall be updated, except as specified in the following paragraphs, with a balance sheet as of an interim date within 135 days and with statements of income and changes in financial position for the interim period between the end of the most recent fiscal year and the date of the interim balance sheet provided and for the corresponding period of the preceding fiscal year. Such interim financial statements may be unaudited and need not be presented in greater detail than is required by instructions to Form 10-Q. Notwithstanding the above requirements, the most recent interim financial statements shall be at least as current as the most recent financial statements filed with the Commission on Form 10-Q.

(b) Where the anticipated effective date of a filing, or in the case of a proxy statement the proposed mailing date, falls within the period after 45 days but within 90 days of the end of the fiscal year and the registrant meets the conditions prescribed under paragraph (c) of § 210.3-01, the filing need not include financial statements more current than as of the end of the third fiscal quarter of the most recently completed fiscal year provided the audited financial statements for such fiscal year are not available. A registrant not meeting the conditions prescribed under paragraph (c) of § 210.3-01 must include in the filing audited financial statements for the most recent fiscal year.

(c) Where a filing is made near the end of a fiscal year and audited financial statements for that fiscal year are not included in the filing, the filing shall be updated with such audited financial statements if they become available prior to the anticipated effective date, or proposed mailing date in the case of a proxy statement.

§ 210.3-13 Filing of other financial statements in certain cases.

The Commission may, upon the informal written request of the registrant, and where consistent with the protection of investors, permit the

omission of one or more of the financial statements herein required or the filing in substitution therefor of appropriate statements of comparable character. The Commission may also by informal written notice require the filing of other financial statements in addition to, or in substitution for, the statements herein required in any case where such statements are necessary or appropriate for an adequate presentation of the financial condition of any person whose financial statements are required, or whose statements are otherwise necessary for the protection of investors.

§ 210.3-14 Special instructions for real estate operations to be acquired.

(a) If, during the period for which income statements are required, the registrant has acquired one or more properties which in the aggregate are significant, or since the date of the latest balance sheet required has acquired or proposes to acquire one or more properties which in the aggregate are significant, the following shall be furnished with respect to such properties:

(1) Audited income statements, for the three most recent fiscal years, which shall exclude items not comparable to the proposed future operation of the property such as mortgage interest, leasehold rental, depreciation, corporate expenses and Federal and state income taxes. Earnings per unit shall not be given in these statements.

(2) If the property is to be operated by the registrant, there shall be furnished a statement showing the estimated taxable operating results of the registrant based on the most recent twelve month period including such adjustments as can be factually supported. If the property is to be acquired subject to a net lease the estimated taxable operating results shall be based on the rent to be paid for the first year of the lease. In either case, the estimated amount of cash to be made available by operations shall be shown. There shall be stated in an introductory paragraph the principal assumptions which have been made in preparing the statements of estimated taxable operating results and cash to be made available by operations.

(3) If appropriate under the circumstances, there shall be given in tabular form for a limited number of years the estimated cash distribution per unit showing the portion thereof reportable as taxable income and the portion representing a return of capital together with an explanation of annual variations, if any. If taxable net income per unit will become greater than the cash available for distribution per unit,

that fact and approximate year of occurrence shall be stated, if significant.

(b) Information required by this section is not required to be included in a filing on Form 10-K.

§ 210.3-15 Special provision as to real estate investment trusts.

(a) In lieu of the income statements required by § 210.5-03 there shall be filed statements of income and expense and statements of realized gain or loss on properties and investments which shall generally conform with the requirements of §§ 210.6-04 and 210.6-05. In place of the balance sheet caption prescribed by § 210.5-02.31(a)(3) there shall be shown separately: (1) The balance of undistributed net income and (2) accumulated net realized gain or loss on investments, and the statements of other stockholders' equity shall generally conform to the requirements of § 210.6-07.

(b) The trust's status as a "real estate investment trust" under applicable provisions of the Internal Revenue Code as amended shall be stated in a note referred to in the appropriate statements. Such note shall also indicate briefly the principal present assumptions on which the trust has relied in making or not making provisions for Federal income taxes.

(c) The tax status of distributions per unit shall be stated (e.g., ordinary income, capital gain, return of capital).

§ 210.3-16 Reorganization of registrant.

(a) If, during the period for which its income statements are required, the registrant has emerged from a reorganization in which substantial changes occurred in its asset, liability, capital shares, other stockholders' equity or reserve accounts, a brief explanation of such changes shall be set forth in a note or supporting schedule to the balance sheets filed.

(b) If the registrant is about to emerge from such a reorganization, there shall be filed, in addition to the balance sheets of the registrant otherwise required, a balance sheet giving effect to the plan of reorganization. These balance sheets shall be set forth in such form, preferably columnar, as will show in related manner the balance sheet of the registrant prior to the reorganization, the changes to be effected in the reorganization and the balance sheet of the registrant after giving effect to the plan of reorganization. By a footnote or otherwise a brief explanation of the changes shall be given.

PART 239—FORMS PRESCRIBED UNDER THE SECURITIES ACT OF 1933

4. Section 239.11, Form S-1, is amended by deleting Instructions as to Financial Statements and revising Item 19 to read as follows:

§ 239.11 Form S-1, registration statement under the Securities Act of 1933.

Item 19. Financial Statements and Supplementary Data

Include in the prospectus the financial statements required by Regulation S-X and the supplementary financial information required by Item 12 of Regulation S-K. Although all schedules required by Regulation S-X are to be included in the registration statement, all such schedules other than those prepared in accordance with Rules 12-15, 12-28 and 12-29 of the Regulation may be omitted from the prospectus.

5. Section 239.12, Form S-2, is amended by revising Item 13 to read as follows:

§ 239.12 Form S-2, for shares of certain corporations in the development stage.

Item 13. Financial Statements and Supplementary Data

Include in the prospectus the financial statements required by Regulation S-X and the supplementary financial information required by Item 12 of Regulation S-K. Although all schedules required by Regulation S-X are to be included in the registration statement, all such schedules may be omitted from the prospectus.

6. Section 239.13, Form S-3, is amended by revising Item 12 to read as follows:

§ 239.13 Form S-3, for shares of mining corporations in the development stage.

Item 12. Financial Statements and Supplementary Data

Include in the prospectus the financial statements required by Regulation S-X and the supplementary financial information required by Item 12 of Regulation S-K. Although all schedules required by Regulation S-X are to be included in the registration statement, all such schedules may be omitted from the prospectus.

7. Section 239.18, Form S-11, is amended by deleting Instructions to Financial Statements and revising Item 24 to read as follows:

§ 239.18 Form S-11, for registration under the Securities Act of 1933 of securities of certain real estate companies.

Item 24. Financial Statements and Supplementary Data

Include in the prospectus the financial statements required by Regulation S-X and

the supplementary financial information required by Item 12 of Regulation S-K. Although all schedules required by Regulation S-X are to be included in the registration statement, all such schedules other than those prepared in accordance with Rules 12-12, 12-28 and 12-29 of the Regulation may be omitted from the prospectus.

8. Section 239.26, Form S-7, is amended by revising Item 11 to read as follows:

§ 239.26 Form S-7, for registration under the Securities Act of 1933 of securities of certain issuers.

Item 11. Financial Statements and Supplementary Data

Include in the prospectus all financial statements required by Regulation S-X and the supplementary financial information required by Item 12 of Regulation S-K. All schedules may be omitted from the registration statement except those prepared in accordance with rules 12-15, 12-28 and 12-29 which shall be included in the prospectus.

PART 249—FORMS, SECURITIES EXCHANGE ACT OF 1934

9. Section 249.210, Form 10, is amended by deleting Instructions to Financial Statements and adding a new Item 17 to read as follows:

§ 249.210 Form 10, general form for registration of securities pursuant to section 12 (b) or (g) of the Securities Exchange Act of 1934.

Item 17. Financial Statements and Supplementary Data

Include in the registration statement all financial statements required by Regulation S-X and the supplementary financial information required by Item 12 of Regulation S-K.

10. Section 249.311, Form 11-K, is amended by revising paragraph (b) of the "Instructions as to Financial Statements" to read as follows:

§ 249.311 Form 11-K, for annual reports of employee stock purchase, savings and similar plans pursuant to section 15(d) of the Securities Exchange Act of 1934.

(b) An audited statement of income and changes in plan equity for each of the latest three fiscal years of the plan (or such lesser period as the plan has been in existence).

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

11. Section 240.14a-3 is amended by revising paragraphs (b)(1) and (b)(2) to read as set forth below. For revision to

paragraph (b)(3), see concurrent Securities Act Release No. 33-6233.

§ 240.14a-3 Information to be furnished to security holders.

(b) * * *

(1) The report shall include, for the registrant and its subsidiaries consolidated, audited balance sheets as of the end of each of the two most recent fiscal years and audited statements of income and changes in financial position for each of the three most recent fiscal years prepared in accordance with Regulation S-X (Part 210 of this chapter), except that the provisions of Article 3, other than § 210.3-06(e), shall not apply and only substantial compliance with Articles 6, 7, 7A and 9 is required. Any financial statement schedules or exhibits or separate financial statements which may otherwise be required in filings with the Commission may be omitted. Investment companies registered under the Investment Company Act of 1940 need include financial statements only for the last fiscal year. If the financial statements of the registrant and its subsidiaries consolidated in the annual report filed or to be filed with the Commission are not required to be audited, the financial statements required by this paragraph may be unaudited.

Note.—Information required by § 210.4-10(k) (1) through (4) or Regulation S-X, applicable to oil and gas companies, is to be included as part of the financial statements included in the report. In addition, the oil and gas information required by § 210.4-10(k) (5) through (8) of Regulation S-X, which may be reported as supplemental information accompanying the financial statements, shall be included in the report.

(2) Financial statements and notes thereto shall be presented in roman type at least as large and as legible as 10-point modern type. If necessary for convenient presentation, the financial statements may be in roman type as large and as legible as 8-point modern type. All type shall be leaded at least 2 points.

12. Section 240.14a-101 is amended by revising Item 15 of Schedule 14A to read as follows:

§ 240.14a-101 Schedule 14A. Information required in proxy statement.

Item 15. Financial statements and supplementary data

If action is to be taken with respect to any matter specified in Item 12, 13 or 14 above, furnish the financial statements required by Regulations S-X and the supplementary

financial information required by Item 12 of Regulation S-K. One copy of the definitive proxy statement filed with the Commission shall include a manually signed copy of the accountant's certificate.

The financial statements of an acquired company not subject to the reporting provisions of the Exchange Act required to be furnished pursuant to Regulation S-X shall be certified to the extent practicable. However, if the proxy statement is to be included in a filing on Form S-14 and if any of the securities are to be reoffered to the public by any person who is deemed to be an underwriter thereof, within the meaning of Rule 145(c), the financial statements of the acquired business must be certified for three years or must comply with the requirements of Securities Act Release No. 4950.

Notwithstanding the provisions of Regulation S-X, no schedules other than those prepared in accordance with Rules 12-15, 12-28 and 12-29 of that regulation need be furnished in the proxy statement.

Parent company only financial statements are not required to be furnished unless necessary to make the financial statements not misleading.

13. Section 240.14c-3 is amended by revising paragraphs (a)(1) and (a)(2) to read as set forth below. For revision to paragraph (a)(3), see concurrent Securities Act Release No. 33-6233.

§ 240.14c-3 Annual report to be furnished security holders.

(a) * * *

(1) The report shall include, for the registrant and its subsidiaries consolidated, audited balance sheets as of the end of each of the two most recent fiscal years and audited statements of income and changes in financial position for each of the three most recent fiscal years prepared in accordance with Regulations S-X (Part 210 of this chapter), except that the provisions of Article 3, other than § 210.3-06(e), shall not apply and only substantial compliance with Articles 6, 7, 7A and 9 is required. Any financial statement schedules or exhibits or separate financial statements which may otherwise be required in filings with the Commission may be omitted. Investment companies registered under the Investment Company Act of 1940 need include financial statements only for the last fiscal year. If the financial statements of the registrant and its subsidiaries consolidated in the annual report filed or to be filed with the Commission are not required to be audited, the financial statements required by this paragraph may be unaudited.

Note.—Information required by § 210.4-10(k)(1) through (4) of Regulation S-X, applicable to oil and gas companies, is to be included as part of the financial statements included in the report. In addition, the oil and

gas information required by § 210.4-10(k)(5) through (8) of Regulation S-X, which may be reported as supplemental information accompanying the financial statements, shall be included in the report.

(2) Financial statements and notes thereto shall be presented in roman type at least as large and as legible as 10-point modern type. If necessary for convenient presentation, the financial statements may be in roman type as large and as legible as 8-point modern type. All type shall be leaded at least 2 points.

PART 231—INTERPRETATIVE RELEASES RELATING TO THE SECURITIES ACT OF 1933 AND GENERAL RULES AND REGULATIONS THEREUNDER

14. Guide 23, "Current Financial Statements and Related Data," of "Guides for Preparation and Filing of Registration Statements," Release No. 33-4936, is deleted, and the table in Part 231 is amended by adding a citation to this Federal Register page to the entry describing Release No. 33-4936.

These amendments are adopted pursuant to authority in Sections 6, 7, 8, 10 and 19(a) (15 U.S.C. 77f, 77g, 77h, 77j, 77s) of the Securities Act of 1933; Sections 12, 13, 15(d) and 23(a) (15 U.S.C. 78l, 78m, 78o(d), 78w) of the Securities Exchange Act of 1934; Sections 5(b), 14 and 20(a) (145 U.S.C. 79e, 79n, 79t) of the Public Utility Holding Company Act of 1935; and Sections 8, 30, 31(c) and 38(a) (15 U.S.C. 80a-8, 80a-29, 80a-30(c) and 80a-37(a)) of the Investment Company Act of 1940. Pursuant to Section 23(a)(2) of the Securities Exchange Act, the Commission has considered the impact of these amendments on competition and is not aware of any burden that they would impose on competition.

By the Commission.
George A. Fitzsimmons,
Secretary.

September 2, 1980.

[FR Doc. 80-27817 Filed 9-19-80; 10:30 am]

BILLING CODE 8010-01-M

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 230 and 239

[Release No. 33-6235; IC-11327; File No. S7-849]

Proposed Comprehensive Revision to System for Registration of Securities Offerings

AGENCY: Securities and Exchange Commission.

ACTION: Proposed rulemaking.

SUMMARY: The Commission is publishing for comment three proposed new forms to be used to register offerings of securities under the Securities Act of 1933. This action represents another major step in the Commission's efforts to integrate the disclosure systems under the various Federal securities laws and to simplify and streamline the disclosure requirements imposed under those systems. The three new forms proposed today would constitute the basic disclosure document format for most Securities Act registration, with different levels of disclosure and delivery requirements applicable for different levels of companies registering offerings of securities.

DATE: Comments should be submitted on or before January 15, 1981.

ADDRESSES: Comments should be submitted in triplicate to George A. Fitzsimmons, Secretary, Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C. 20549. Comment letters should refer to File No. S7-849. All comments received will be available for public inspection and copying in the Commission's Public Reference Room, 1100 L Street N.W., Washington, D.C. 20549.

FOR FURTHER INFORMATION CONTACT: Mary Margaret W. Hammond (202) 272-3059, Bruce S. Mendelsohn (202) 272-2589, or Catherine Collins McCoy (202) 272-2589, Office of Disclosure Policy, Division of Corporation Finance, Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C. 20549.

SUPPLEMENTARY INFORMATION: The Commission is proposing three new registration statement forms to be used to register offerings of securities under the Securities Act of 1933 (the "Securities Act") (15 U.S.C. 77a et seq.). These three forms, denominated Forms A, B and C for proposal purposes, would replace the most widely used existing registration statement forms and would

constitute the basic framework for Securities Act registration.¹

This proposal should be considered together with a number of final rulemaking actions also announced today. Those actions are: (1) The adoption of amendments to Form 10-k (17 CFR 249.310), Rule 14a-3 (17 CFR 240.14a-3), and Regulation S-K (17 CFR 229.20) to reduce certain regulatory burdens thereunder and to facilitate the integration of disclosure systems; (2) the adoption of amendments to Regulation S-X (17 CFR Part 210) to establish uniform financial statement instructions for certain forms and reports required to be filed pursuant to the Securities Act and the Securities Exchange Act of 1934 (the "Exchange Act") (15 U.S.C. 78a et seq.); (3) the adoption of amendments to Regulation S-X to eliminate, to the extent possible, the differences between the requirements of that regulation and the requirements of generally accepted accounting principles ("GAAP"); and (4) the adoption of Form S-15 (17 CFR 239.29), a new simplified form for the registration of securities issued in certain types of business combination transactions. These four rulemaking actions (Securities Act Release Nos. 6231, 6232, 6233, and 6234, respectively, September 2, 1980) were published for comment in January 1980² and constituted a major effort to achieve a simplified and integrated disclosure system. The new Securities Act registration framework being proposed today builds upon that effort and implements its objectives for simplifying and streamlining Securities Act disclosure requirements.

The framework contemplates dividing issuers into three categories.³ The category to which an issuer belongs would determine the extent to which previously disseminated information would also be required to be presented in the prospectus or otherwise delivered to potential investors. Because of its prior impact on the market and to ensure its accuracy, information not actually delivered would be incorporated by reference.

Proposed Forms A, B, and C are designed to work as a coordinated system using standard disclosure

requirements for the registration of securities under the Securities Act.⁴ Form A, which is analogous to existing Form S-16 and is to be used by companies widely followed by the market, serves as the initial repository of the uniform disclosure item requirements. In this respect, Forms B and C refer to Form A for much of their content. Form A itself calls for very little prospectus disclosure and would primarily entail incorporation by reference from Exchange Act Information. Form B provides an option to allow companies to incorporate certain information and either to deliver the annual report to security holders or to present substantially equivalent disclosure in the prospectus. Form C is a streamlined Form S-1 and provides for very little incorporation by reference.

The proposed three forms represent a detailed implementation of the approach adumbrated by the Commission in January. The Commission believes that the new Securities Act system which would be implemented by adoption of the forms should reduce unnecessary costs and burdens of registration to issuers without attendant losses in the quality of information flowing to investors. By taking advantage of existing, high quality Exchange Act disclosure documents wherever possible, the approach embodied in these proposed Securities Act forms integrates the disclosure systems under two Acts. By eliminating unnecessary disclosure items and by making those retained uniform wherever possible, these proposed forms should greatly simplify registration of securities under Securities Act.

This release contains a general discussion of the fundamental questions integration poses; the legislative and administrative background of the integration proposals published today; and the current characteristics of the securities markets and of the technology of information dissemination which also contributed to shape the proposals. This introductory discussion is followed by a detailed synopsis of the proposed forms to assist in a better understanding of their provisions.

I. Integration

The Commission's integration program involves a comprehensive

¹ If proposed Forms A, B and C were adopted by the Commission the following forms would be rescinded: Form S-1 (17 CFR 239.11); Form S-2 (17 CFR 239.12); Form S-7 (17 CFR 239.26); and Form S-16 (17 CFR 239.27).

² Securities Act Release Nos. 6176, 6179, 6178 and 6177 (January 15, 1980) (45 FR 5972, 5934, 5943 and 5963).

³ The classification of issuers is based on such factors as longevity of reporting pursuant to the requirements of the 1934 Act, dissemination and professional analysis of such information, and financial stability.

⁴ However, the forms which are presently available for certain specialized offerings of securities, such as Forms S-8 (17 CFR 239.16b), S-11 (17 CFR 239.18), S-14 (17 CFR 239.23) and S-15 (17 CFR 239.29) will continue to be available for the foreseeable future. Also, appropriate accommodation for the special needs of small business, as in Form S-18 (17 CFR 239.28), will continue.

evaluation of the disclosure policies and procedures underlying the Securities Act of 1933 and the Securities Exchange Act of 1934 with a view toward integrating the information systems under those Acts so that investors and the marketplace are provided meaningful, nonduplicative information periodically and when securities are sold to the public, while the costs of compliance for public companies are decreased.

The shape of the program will be influenced by the answers to two fundamental questions:

- (1) What information is material to investment decisions in the context of public offerings of securities; and
- (2) Under what circumstances and in what form should such material information be disseminated and made available by companies making public offerings of securities to the various participants in the capital market system?

The task of identifying what information is material to investment and voting decisions is a continuing one in the field of securities regulation. Intergration, as a concept, involves a conclusion as to equivalency between transactional (Securities Act) and periodic (Exchange Act) reporting. If a subject matter is material information (other than a description of the transaction itself), then it will be material both in the distribution of securities and to the trading markets.

Moreover, requirements governing the description of such subject matters should be the same both purposes. As an example, if a management's discussion of the financial statements is important for transactions involving distributions, then it would also be equally important for an informed trading market. Thus, both prospectuses and periodic reports should take this information into account. Also, the requirements for its content should be essentially the same. This principle of equivalency has led to the development and expansion of Regulation S-K, a technical device designed to state in one place uniform requirements which both Securities Act and Exchange Act items incorporate by reference. It also has led to increasing the quality of reports under the Exchange Act, a trend that started in 1970 when Form 10 was amended.⁵

Intergration consists, however, of more than just the notion of equivalency of reportable material information under both Acts. It involves answers to the second question posed above: Under what circumstances and to whom should this information be made available? Equivalency alone might be read to suggest that all the information contained, for example, in a Form 10-K should also be reiterated in all prospectuses.

However, the concept of integration also proceeds from the observation that information is regularly being furnished to the market through periodic reports under the Exchange Act. This information is evaluated by professional analysts and other sophisticated users, is available to the financial press and is obtainable by any other person who seeks it for free or at nominal cost. To the extent that the market accordingly acts efficiently, and this information is adequately reflected in the price of a registrant's outstanding securities, there seems little need to reiterate this information in a prospectus in the context of a distribution. The fact of market availability of information for sophisticated users also allows the exploration of other values in addition to cost reductions afforded through non-duplication: In particular, readability and effective communication in specific contexts.

Set forth below as additional background information for these proposals is a review of the evolution of the Securities Act and the Exchange Act, the nature of and participants in the securities marketplace, and recent technological advances.

A. Background

1. *The Law.* The Securities Act and the Exchange Act were enacted as separate legislation and in response to different needs. The Securities Act was intended to prevent frauds in the sale of securities by providing full and fair disclosure in the context of public offerings of securities.⁶ The Exchange Act was enacted to regulate brokers and dealers and securities markets.⁷ The disclosure framework of the Exchange Act contemplated in 1934 pertained primarily to classes of securities traded on stock exchanges. While both statutes were designed to provide disclosure to

investors and the marketplace, the framework of the Securities Act was transaction oriented, *i.e.*, the focus was upon the public offering of securities by any company. The framework of the Exchange Act was status oriented *i.e.*, the focus was upon issuers with a class of securities listed and traded on an exchange. Also, the two frameworks operated independently. Information required in the Securities Act context was not modified because of the existence of Exchange Act reporting and was only triggered by public offerings at varying times.

While the disparate orientations of the two statutes still exist, the gap between the disclosure frameworks has significantly narrowed since 1934. In 1936, Section 15(d) was added to the Exchange Act to provide that under certain circumstances the continuous reporting system would apply to unlisted companies with respect to classes of their securities for which a registration statement had become effective under the Securities Act. Thus, Section 15(d) expanded investor protection under the Exchange Act to the over-the-counter market, but only on a fragmentary basis.

The disparity between Exchange Act disclosure requirements for listed and unlisted classes of securities was not resolved until the passage of the Securities Acts Amendments of 1964⁸ which brought many more companies into the continuous reporting system of the Exchange Act.⁹ With the passage of Section 15(d) and the 1964 amendments, all issuers of a certain size and issuers with certain characteristics selling securities to the public pursuant to an effective registration statement were subjected to the registration and reporting obligations of the Exchange Act.¹⁰ It is estimated that over 9,000

⁵ Pub. L. No. 88-467, 78 Stat. 566 (1964).

⁶ Prior to these amendments, issuers could delist their securities from the exchange on which they were traded and thereby avoid the 1934 Act reporting requirements. This simple method of thwarting any Commission effort to upgrade the quality of Exchange Act reports was therefore blocked. Prior to 1964, however, Section 15(d) of the Exchange Act did provide that all registration statements filed under the Securities Act contain an undertaking by the registrant to comply with the reporting requirements of Section 13. However, the undertaking became operative and the reports were required only when the value of the securities offered plus the value of all other outstanding securities of the same class equalled at least \$2 million. The duty to file such reports was suspended if, and for as long as, the value of the securities outstanding was reduced to less than \$1 million or the issuer had become subject to an equivalent reporting requirement.

¹⁰ The Securities Acts Amendments of 1964, Pub. L. No. 88-467, 78 Stat. 566 (1964), added Section 12(g) to the Act which requires issuers with total assets exceeding \$1,000,000 and a class of equity

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⁵ Securities Exchange Act Release No. 8996 (October 14, 1970) (35 FR 16537). These revisions were proposed in Securities Exchange Act Release No. 8681 (September 15, 1969) (34 FR 14236) in response to recommendations of the "Report and Recommendations to the Securities and Exchange Commission from the Disclosure Policy Study, Disclosure to Investors, A Reappraisal of Administrative Policies under the 1933 and 1934 Acts" (March 1969) (The "Wheat Report").

⁶ The Act also contains broad liability sections which were intended to have the prophylactic effect of preventing such frauds. See, e.g., Section 11 of the Securities Act of 1933 (15 U.S.C. 77k).

⁷ In addition to these purposes, the 1934 Act also established the continuous disclosure system whereby companies subject to certain provisions of the Act are required to file periodic reports. See Section 13 of the Securities Exchange Act of 1934 (15 U.S.C. 78m).

companies are now required to file periodic reports under the Exchange Act.

These amendments not only closed a gap under the Exchange Act, but also narrowed the gap between the disclosure framework under the Securities Act—information concerning the issuer and the transaction given only in the context of the public offering—and that under the Exchange Act—continuous disclosures about the issuer. Milton Cohen, a principal advocate of the concept of integration, opined that the disclosure frameworks under the Acts would have been quite different—and perhaps more congruent—if they “had been enacted in opposite order, or had been enacted as a single, integrated statute—that is, if the starting point had been a statutory scheme of continuous disclosures covering issuers of actively traded securities and the question of special disclosure in connection with public offerings had then been faced in this setting.”¹¹ In large part, the Commission’s efforts will attempt to redress this legislative anomaly by establishing an integrated system of disclosure which will provide investor protection both in public offerings and in the securities markets, at a minimum burden to public companies.

2. Nature of the Securities Markets. The basic issues relating to Securities Act disclosure, i.e., the type of information that should be available and the dissemination of that information, must also be considered in light of the composition of today’s markets. The participants in the markets, and therefore the users of the information made available to the markets, are varied and have correspondingly varied needs. They include the professional analyst, the institutional investor, the financial press, and the individual investor.

The professional analysts, widespread throughout the country, constantly digest and synthesize market and company-specific information. These professionals use, and often implore the Commission to require, increasingly complex and sophisticated information. The influx of institutional investors, and their financial advisors, also contributes to the constituency for technical but important statistical data. To a large extent, these professionals act as essential conduits in the flow of information to the ordinary investor and as intermediaries acting on behalf of

participants in collective investment media.

In addition, this country has a uniquely active and responsive financial press which facilitates the broad dissemination of highly timely and material company-oriented information to a vast readership. The information needs of the individual investor must be considered in this context, recognizing that information reaches the individual investor through both direct and indirect routes.¹²

It is incumbent upon the Commission to consider the entire community of users of company information in developing the proposed system and its model information package and to maintain a balance between the needs of the more and less sophisticated users.

3. Technological Advances. The instant proposals are also evidence of an awareness by the Commission of the increasingly easy availability of Exchange Act information through improved technological means. Computerization and electronics are progressing to such a level that information necessary to trading markets is becoming available on a timely and inexpensive basis. Additionally, a large volume of such information can be synthesized, analyzed and presented quickly and in almost any format desired by the user.

The system of public dissemination of Exchange Act information has improved dramatically in recent years. The Commission now employs an outside contractor to microfiche all filed reports. This microfiche is produced not only for the Commission’s use, but also for the subscribers of private services. Such subscribers include individual and institutional investors, law firms, corporations and other specialized financial research services. The microfiche covers the entire Exchange Act reporting system, is becoming more timely, and is relatively inexpensive. Should subscribers wish to extract only certain financial data or information regarding insiders or litigation, for instance, they may also subscribe to on-line computer data base systems which will provide such information. Financial research services break down this acquired information into a myriad array of informational matrices depending upon either the purposes of

the users’ research or the ultimate users’ needs. Also developed in the last few years are magnetic tape systems which will extract numerous data items on a particular company and provide the user with a long-term historic view of such company by carrying this information back five to twenty years. The service bureaus which buy and sell Exchange Act information, either directly from the Commission’s contractor or through other information providers, furnish the market with sophisticated research which is further disseminated to broker dealers and investment advisers and through them, to the public at large.

B. Materiality of Disclosure Under the Securities Act

As noted above, the determination of what information is material to an investment decision in the context of a public offering is a critical question in establishing an integrated system of disclosure. Prior to the adoption of Regulation S-K (17 CFR 229.20) in December, 1977, there were disparate informational requirements between Securities Act registration forms and Exchange Act reporting forms. Regulation S-K reflects the perception of equivalency discussed above—that information necessary for investment or voting decisions (other than that relating to the transaction itself) should be similar for distribution and for trading markets. With that acknowledgement, the Commission is in a position to develop what information is material, then to shift to determine under what circumstances this information must be reiterated in a prospectus.

Regulation S-K has been designed as the repository for the Commission’s requirements for standard and integrated disclosure requirements. In December 1977, the Commission adopted Items 1 and 2 of Regulation S-K, the first significant steps in achieving standard disclosure under both Acts.¹³ In the following year, Items 3 through 6 were added as an express response to the suggestions of the Advisory Committee.¹⁴ The Regulation represented the first step in the definition of that company information which is material to an investment or voting decision, whether that decision is under the purview of the Securities Act or the Exchange Act. Accordingly, the multiplication of disclosure item requirements in Regulation S-K is a recognized prerequisite to full integration of the registration and

Footnotes continued from last page
security held of record by five hundred or more persons, to comply with the Act’s continuous reporting provisions.

¹¹ See Cohen, “Truth in Securities” Revisited, 79 Harv. L. Rev. 1340, 1341 (1966).

¹² For a more complete discussion of various market participants and their respective roles in the dissemination of information to the investment decisionmakers, see “The Report of the Advisory Committee on Corporate Disclosure to the Securities and Exchange Commission” Committee Print 95-29, House Committee on Interstate and Foreign Commerce, 95th Cong., 1st Sess. at 1-304 (November 3, 1977) (the “Advisory Committee Report”).

¹³ Securities Act Release No. 5893 (December 23, 1977) (42 FR 65554).

¹⁴ Securities Act Release No. 5949 (July 28, 1978) (43 FR 34407).

reporting requirements under the two Acts. Consequently, in addition to the present Regulation S-K items pertaining to disclosures regarding an issuer's business, property, directors and executive officers, their remuneration and security ownership, and legal proceedings, the Commission has adopted six more item requirements.¹⁵ These new items will ensure uniform disclosure under both Acts of information regarding market price of the issuer's common stock, selected financial data, management's discussion and analysis of the issuer's financial condition, supplementary financial information, and exhibits. It is anticipated that Regulation S-K will develop in time to encompass further disclosure requirements.

C. Dissemination and Availability of Disclosure

The second major issue, concerning under what circumstances and to whom the various elements of the disclosure package should be made available, has been addressed to some extent during the promulgation and subsequent amendments of Forms S-7, S-16, S-8, S-14, and S-15.¹⁶ The goals of the Commission in this area have been to: (1) Avoid duplicative disclosure wherever possible; (2) provide appropriate information for each type of market participant; and (3) foster readability and effective communication wherever possible. Duplicative disclosure stems from similar requirements imposed on registrants when they sell securities to the public, file periodic reports, or solicit proxies. All of these requirements seek to enhance the flow of company-specific disclosure within different, but not mutually exclusive, arenas and at different times. In many cases, the ability to take advantage of prior disclosure is increasingly attractive.

An early step towards examining Securities Act disclosure requirements, taking into consideration the availability of similar information as a result of Exchange Act reporting, was taken in

1967 when Form S-7 was adopted.¹⁷ Form S-7 was envisioned as a simplified form for registration of securities to be offered for cash by companies subject to the reporting requirements of the Exchange Act and having long records of earnings and stability of management and business.¹⁸

The benefits to be attained from such a shortened form and integration were expressed in terms of easing the burden on the issuer of preparing a registration statement and on the staff of processing it.¹⁹ However, the rationale and benefits of a system of integrated disclosure were not thoroughly analyzed and discussed. Instead, the Commission took advantage of the occasion of Form S-7's adoption to announce a subsequent

¹⁷ Securities Act Release No. 4886 (November 29, 1967) (32 FR 17934).

¹⁸ The eligibility requirements for use of Form S-7 at its initial adoption were the following: (a) The registrant meets either of the following conditions: (1) It has a class of equity securities registered pursuant to Section 12(b) of the Securities Exchange Act of 1934; or (2) it is organized under the laws of the United States or any State or Territory or the District of Columbia, has its principal business operations in the United States or its Territories and has a class of equity securities registered pursuant to Section 12(g) of the above Act.

(b) The registrant has been subject to and has complied in all respects, including timeliness, with the requirements of Sections 13 and 14 of the Securities Exchange Act of 1934 for a period of at least five fiscal years immediately preceding the filing of the registration statement on this form.

(c) The registrant has been engaged in business of substantially the same general character since the beginning of the last five fiscal years.

(d) A majority of the existing board of directors of the registrant have been directors of the registrant during each of the last three fiscal years.

(e) The registrant and its subsidiaries have not during the past ten years defaulted in the payment of any dividend or sinking fund installment on preferred stock, or in the payment of any principal, interest or sinking fund installment on any indebtedness for borrowed money, or in the payment of rentals under long term leases.

(f) The registrant and its consolidated subsidiaries had sales or gross revenues of at least \$50,000,000 for the last fiscal year and a net income, after taxes but before extraordinary items net of tax effect, of at least \$2,500,000 for the last fiscal year and of at least \$1,000,000 for each of the preceding four fiscal years.

(g) If the securities to be registered are common stock or securities convertible into common stock, the registrant earned in each of the last five fiscal years any dividends paid in each such year on all classes of securities. If the registrant paid a stock dividend in any of such fiscal years, the aggregate amount transferred from surplus to capital in respect of each such dividend was charged only to the earned surplus account and was equal to the aggregate fair market value of the stock issued as such dividend.

¹⁹ The simplifications evidenced by Form S-7 included the omission of such Form S-1 disclosure item requirements as: Parents of registrant; description of property; organization within five years; pending legal proceedings; directors and executive officers and their remuneration; options to purchase securities; principal holders of securities; and interest of management and others in certain transactions, i.e., for the most part, proxy statement disclosure.

review of the Exchange Act requirements which was designed to improve both the quality and timeliness of reports filed under that Act.

The Wheat Report, which was the product of the Commission's study, strongly recommended closer coordination of Exchange Act and Securities Act disclosures.²⁰ Many of the recommendations of the Report (including those related to registration of securities under the Securities Act) anticipated substantial improvement in Exchange Act reporting. Such improved Exchange Act reporting was suggested not only to better the information provided to the trading markets, but also to allow closer coordination between Securities Act and Exchange Act disclosures, resulting in the substitution of Exchange Act disclosure for information otherwise required in the Securities Act context. In the Study's view, the phrase "improvement in 1934 Act reporting", [had] at least three aspects: (1) More comprehensive reporting forms, (2) better administration and enforcement of requirements relating to the preparation and filing of such forms, and (3) better dissemination of the information contained in such forms."²¹

Since the enactment of the 1964 amendments and the suggestion of the Wheat Report that the Exchange Act forms contain more comprehensive disclosure, the quantity and quality of information in the Exchange Act reports have increased significantly. For instance, in 1965 the basic form for registration of a class of securities pursuant to Section 12 of the Exchange Act, Form 10, required only a brief general description of the business of the registrant, its property, directors and officers, their remuneration, principal holders of the registrant's securities, and other similar information.²² Today Form 10 requires extensive detailed disclosure pertaining to these topics in compliance with the requirements in Items 1 through 6 of Regulation S-K. In addition to the broad expansion of these requirements with today's action, the Form also requires such information as selected financial data and an analysis of the registrant's financial condition.²³

Besides the expansion of disclosure requirements in pre-existing Exchange

¹⁵ See Securities Act Releases Nos. 6231 and 6233 (September 2, 1980).

¹⁶ Forms S-14 (17 CFR 239.23) and S-8 (17 CFR 239.16b) were specifically designed to elicit disclosure appropriate for certain transactions. Form S-8 was adopted in Securities Act Release No. 3480 (June 16, 1953) (18 FR 3688) to facilitate registration by certain issuers of securities to be offered pursuant to stock purchase, savings or similar plans. This form was broadened to include employee stock options in Securities Act Release No. 4533 (August 30, 1962) (27 FR 9213). Form S-14 was intended to simplify the registration of securities issued in certain merger or acquisition transactions.

²⁰ A series of proposals were published in 1969 to implement the Wheat Report's recommendations in the 1934 Act context. See, e.g., Securities Exchange Act Release Nos. 8680, 8681, 8682, 8683 (September 15, 1969) (34 FR 14235-240).

²¹ Wheat Report, *supra* at 328.

²² See Securities Exchange Act Release No. 7544 (March 5, 1965) (30 FR 3422).

²³ Securities Act Release No. 6231 (September 2, 1980).

Act forms, the Commission also adopted another reporting form, Form 10-Q, for quarterly reports.²⁴ The adoption of Form 10-Q keeps filed financial information regarding publicly-held companies more current.²⁵

A further response implementing the recommendations of the Wheat Report was the adoption of Form S-16 in 1970.²⁶ This registration statement form contains minimal prospectus disclosure and places more reliance on information reported under the Exchange Act by simply incorporating by reference Exchange Act documents containing otherwise required information into the registration statement, not by relying upon reiteration and delivery of such information to investors. The issuer is still responsible for such information as if it had been set forth in the prospectus, since the premise is that the existing stock price reflects that information. Initially, this new short form registration statement was limited in its use for the most part to secondary offerings of securities of issuers meeting the Form S-7 eligibility requirements.

The Commission's rulemaking efforts have also focused on the increased use and availability of annual reports to security holders.²⁷ In 1974 minimum disclosure requirements were mandated in Rule 14a-3(b) (17 CFR 240.14a-3(b)) for annual reports to security holders which either accompanied or preceded the issuer's solicitation of proxies for election of directors at an annual meeting of shareholders. At the time

these amendments were adopted the Commission stated that "it is in the public interest that all security holders be provided with meaningful information regarding the business, management operations and financial position of the issuer and that the annual report to security holders is the most suitable vehicle presently available for providing this information."²⁸ The Commission also adopted rules to improve the dissemination of the annual report. Thus, the Commission could be assured that the most successfully disseminated document contained some minimal information content.²⁹

In 1976, the Commission continued its program to integrate and streamline disclosure under the two Acts in recognition of the improved quality of reports filed under the Exchange Act. Once again, the availability of Form S-7 was substantially broadened, both in terms of those issuers eligible to use it and those transactions for which it could be used.³⁰ These amendments underscored the Commission's resolve toward simplification and integration and permitted the improved information reported pursuant to the requirements of the Exchange Act continuous disclosure system to be relied upon in lieu of

Securities Act disclosure by a certain class of issuers.

At the same time that these amendments were adopted, the Commission published a concept release seeking public comments on the advisability of a methodology to be used in making Form S-16 available for certain primary offerings by a limited category of large companies.³¹ The release focused on the selection of appropriate criteria for delimiting the availability of this abbreviated prospectus.

However, before the concept could be set forth in proposal form, the Commission received the report of the Advisory Committee on Corporate Disclosure. Like the study group which produced the Wheat Report, the Advisory Committee conditioned its support for further integration and its recommendations as to ways of achieving this goal on additional improvements in the quality and dissemination of disclosures in Exchange Act reports.³² It also suggested that more staff emphasis be placed on review of Exchange Act reports.³³

The Advisory Committee also made specific recommendations as to how the Commission could accomplish the goal of integration. It recommended that the Commission adopt a single integrated disclosure form which would contain all the disclosure requirements necessary to comply with the registration, reporting and proxy requirements of both Acts.³⁴ For purposes of compliance with the Securities Act, it suggested that companies be divided into three levels.³⁵ Such classification would be appropriately reflected in the integrated disclosure form. More specifically, the Advisory Committee recommended that Form S-16 be made available for primary offerings by the top level of companies, and that a short form registration statement with the Form S-16-type incorporation by reference feature be adopted for exchange offers or transactions subject to Rule 145(a) (17 CFR 230.145(a)) under the Securities Act.³⁶

The rationale for this proposed system of integration was set forth as follows:

²⁴ Securities Act Release No. 5792 (December 20, 1976) (41 FR 56331).

²⁵ Advisory Committee Report, *supra* at 425.

²⁶ *Id.* at 427.

²⁷ The Committee called this single integrated form, Form CD (Coordinated Disclosure). *Id.* at 456-69.

²⁸ However, the Committee specifically noted in its Report that its classification of issuers may not be appropriate for use in short form registrations. *Id.* at 450.

²⁹ *Id.* at 420-21.

²⁴ Securities Exchange Act Release No. 9004 (November 14, 1970) (35 FR 17537). Before the adoption of Form 10-Q (17 CFR 249.308a), companies were only required to file semi-annual interim reports on Form 9-K. The Commission found in its analysis leading to the adoption of Form 10-Q that current reports on Form 8-K (17 CFR 249.308) were filed irregularly and were not used widely by investors or their advisors.

²⁵ The amendments to Form 10-Q proposed today would further prescribe requirements relating to the age, form and content of unaudited interim financial information and the management's discussion and analysis of such information. Cite to 10-Q release.

²⁶ Securities Act Release No. 5117 (December 23, 1970) (36 FR 777).

²⁷ The practice of sending annual reports to security holders apparently derived from early state corporate and tax laws which required that annual financial statements be filed with state officials or sent, sometimes only upon request, to all security holders or a certain proportion of security holders. See generally L. Loss, Securities Regulation 825 (2d ed. 1961). In 1942, the Commission adopted amendments to its proxy rules which required for the first time that annual reports "containing such financial statements for the last fiscal year as will, in the opinion of the management, adequately reflect the position and operations of the issuer" be sent to security holders when management solicited proxies relating to a meeting at which directors were to be elected. See Securities Exchange Act Release No. 3347 (December 18, 1942). This requirement, of course, resulted in expanded use and dissemination of such annual reports.

²⁸ Securities Exchange Act Release No. 11079 (October 31, 1974) (39 FR 40768).

²⁹ The Commission had already directed some attention in 1969 to improving the disclosures in the annual report filed with the Commission, Form 10-K (17 CFR 249.310). The Commission adopted amendments to divide Form 10-K into two parts, Part I, to be filed by companies subject to the proxy rules under Section 14 of the Exchange Act, and Part II, which would also have to be filed by companies subject only to Section 15(d) of that Act. The purpose was to coordinate proxy statement and annual report disclosure and thereby reduce some of the burdens of reporting under the Exchange Act. See Securities Exchange Act Release No. 8682 (September 15, 1969) (34 FR 14238).

³⁰ Securities Act Release No. 5791 (December 20, 1976) (41 FR 56304). These amendments to Form S-7 made this Form, and therefore Form S-16, available for the first time to companies required to file reports pursuant to Section 15(d) of the Exchange Act. However, to ensure that information concerning these issuers was widely available to the investing public, the Commission required them to furnish all of their security holders with a report containing the information called for by Rule 14a-3(b) and Part II of Form 10-K.

In addition to securities offerings for cash, exchange offers were also permitted on Form S-7 by these amendments.

At the same time that Form S-7's availability was broadened, the Commission rescinded Form S-9. Form S-9, which had been adopted in 1954, reduced the then existing disclosure requirements for Securities Act registration of non-convertible fixed interest debt securities where the issuer had been in business at least ten years, met an earnings requirement, and filed reports pursuant to Section 13(a) or 15(d) of the Exchange Act. Because virtually all issuers who had qualified to use Form S-9 could now qualify to use Form S-7, the Commission did not believe there was a continued need for Form S-9.

When a company is engaged in a public offering of its securities, the Committee believes that the necessity of providing information to offerees should vary with the type of company and the type of security involved, and the amount of information already available. Accordingly, it is the Committee's view that a further integration of the 1933 and 1934 Acts, by means of substitution of 1934 Act filed information for that traditionally required in a statutory prospectus, could be effectuated by varying the particular combination of (1) the information comprising the registration statement; (2) the information delivered to offerees; and (3) the information available on request.³⁷

This is basically the same rationale for the Securities Act disclosure system proposed for comment today.

The Commission responded to a specific recommendation of the Advisory Committee with the adoption in 1978 of amendments to Form S-16 which made it available to certain issuers for certain specified primary offerings.³⁸ The benefits to be gained from an integrated system of disclosure were highlighted in the adopting release: reducing the costs of registration, and hence the costs of raising capital; facilitating timely access to the markets by issuers anxious to make public offerings; making Exchange Act reports more meaningful; and eliminating needless duplication which results in increased costs to investors.³⁹ The Commission's proposing release stated that the expanded use of this abbreviated Form was considered appropriate only for those "transactions or issuers for which detailed disclosure in a registration statement is believed to be unnecessary for the protection of investors because of the wide availability of such information under other provisions of the federal securities acts."⁴⁰ In this regard, the Commission believed that the additional standards it imposed for primary offerings followed the theory suggested by the Advisory Committee—that Form S-16 be available for the primary offerings of securities by a "small top tier of companies . . . which usually provide high quality corporate communication documents, including 1934 Act reports, and whose corporate information is widely disseminated" because "members of this class of registrants are widely followed by debt and equity

analysts."⁴¹ For example, an eligibility criterion was adopted providing that an issuer may register securities offered to the public in a primary offering on the Form if the aggregate market capitalization of its voting stock held by non-affiliates were \$50 million or, if the issuer were a majority-owned subsidiary, its parent met this condition and fully guaranteed the securities. The origin of the \$50 million standard was a report by the Financial Analysts Federation to the Advisory Committee concluding, among other things, that New York City-Based brokerage firms, and especially institutions, generally follow companies having at least \$50 million in market capitalization.

The Commission's action in expanding the availability of Form S-16 to primary offerings was premised on the interest of professionals in the securities industry in certain issuers. The theory relied on them, as now, is that the operation of today's markets is such that investors are protected by the market's analysis of information about certain companies which is widely-available, both from the Commission's files and other sources, and that such analysis is reflected in the price of the securities offered. Therefore, with companies whose shares are actively traded, disclosure to potential investors in a prospectus may be strictly limited to essential matters concerning the issuer and the offering without loss of investor protection or market efficiency. However, even though the registration statement is abbreviated, it should incorporate by reference the issuer's Exchange Act information which otherwise would be included in the prospectus to ensure that the information previously furnished is accurate in all material respects. Thus, the system operates in an effective manner: interested investors have access to the detailed Exchange Act reports which generally confirm or supplement information previously in the market and all investors are presented with short, readable prospectuses.

D. The Proposals

The three proposed registration forms under the Securities Act attempt to address the two basic issues the Commission faces for Securities Act disclosure, identifying the necessary information package and determining how and to whom such information should be made directly available. The proposed system addresses these issues

by dividing issuers into three classes.⁴² The class or category to which an issuer belongs would determine what information would be required to be presented in the prospectus or otherwise delivered to potential investors, and what already-disseminated information could be relied on, by incorporation by reference, in place of actual delivery in or with the prospectus.

Proposed Forms A, B, and C are designed to work as a coordinated system. Using standard requirements wherever possible they will serve as the framework for the registration of securities under the Securities Act. Form A, as has been indicated, is analogous to existing Form S-16 and is to be used by companies widely followed by the market. Form B contemplates an option to allow companies to incorporate certain information and either to deliver the annual report to security holders or to provide substantially the same disclosure in the prospectus as is in the annual report. Form C is a streamlined Form S-1 and provides for minimal incorporation by reference.⁴³

The system proposed today is designed to be consonant with the purpose of Regulation S-K: to foster uniform and integrated disclosure. Indeed, many of the specific disclosure requirements refer directly to items in Regulation S-K.⁴⁴ Further, it is intended that the other uniform disclosure requirements of the three proposed Securities Act forms ultimately will be placed in one or more sections of a recognized Regulation S-K.⁴⁵ Although the items contained in the three Forms would represent the basis for Securities Act disclosure, items addressing specialized circumstances and industries also will be considered for inclusion in that Regulation.⁴⁶

⁴² As indicated previously, the classification of issuers is based on such factors as longevity of reporting pursuant to the requirements of the 1934 Act, dissemination and professional analysis of such information, and financial stability.

⁴³ An extensive discussion of the content required in registration statements on Forms A, B and C is set forth below.

⁴⁴ With the additional items being adopted today, Regulation S-K now contains 11 major disclosure item requirements—the core of the new proposed integrated registration statement system.

⁴⁵ For the most part, the first six disclosure item requirements in proposed Forms A, B and C are identical. Numerous item requirements in Part II of these three forms are also substantially the same. Such uniformity of disclosure requirements would naturally lead to inclusion in Regulation S-K.

⁴⁶ The Commission will continue its ongoing evaluation and monitoring of the Guides for the Preparation and Filing of Registration Statements and Reports with an emphasis on coordination with the integration and standardization themes of today's adopted rules and forms and these proposals. See Securities Act Release No. 6163 (December 5, 1979) (44 FR 72604). It is anticipated

Footnotes continued on next page

³⁷ *Id.* at 432.

³⁸ Securities Act Release No. 5923 (April 11, 1978) (43 FR 16677).

³⁹ *Id.*

⁴⁰ Securities Act Release No. 5879 (November 2, 1977).

⁴¹ Securities Act Release No. 5923 (quoting the Advisory Committee Report at 433-34), *supra* note 38.

In the Commission's view, Form A would take full advantage of the market's having digested and synthesized material company-specific information. Form B, representing the transitional phase, strives for improved readability by streamlining disclosure requirements and allowing certain disclosure obligations to be satisfied either through the delivery of the annual report to security holders or by a presentation of comparable updated information in the prospectus. In addition, the primary source of Exchange Act disclosure, the Form 10-K, would be incorporated by reference and would always be available. Form C would be used by companies in the reporting system for less than three years and by companies having certain financial characteristics that would preclude the use of the top two Forms. It sacrifices readability, to some extent, in order to ensure that analysts and other participants in the market have access to the necessary building blocks of disclosure embodied in regulation S-K. The Commission believes that for certain companies, especially new issuers, there is no realistic alternative to full disclosure within the confines of the prospectus.

As is apparent from the above brief description of the content and eligibility requirements of Forms A, B, and C, there is substantial overlap with the present registration system under the Securities Act. Specifically, Forms A, B and C overlap with Forms S-1, S-2, S-7 and S-16 both in function and content. Accordingly, the Commission believes it is necessary to concurrently propose the rescission of these existing forms.

Synopsis

The following discussion of the proposed forms is included in order to assist all interested persons in their understanding of the proposed registration form system under the Securities Act published herein. However, attention is directed to the text of the proposed forms for a more complete understanding.

Eligibility Rules for Use of Forms A, B, and C

Footnotes continued from last page that staff recommendations concerning the Guides will be submitted to the Commission in the near future. The planned overall review of Regulation C will commence in 1981 and will further reflect the Commission's goal to review all of its Securities Act disclosure requirements with a view towards simplification and reduction in costs.

Form A

Proposed Form A is designed to be used by the same qualified issuers and for the same primary and secondary offerings as existing Form S-16 is now used. This means that Form A could be used by an issuer which meets the following conditions: (1) The issuer has a class of securities registered pursuant to Section 12 of the Exchange Act or is required to file reports pursuant to Section 15(d) of the Exchange Act; (2) the issuer has been subject to the requirements of those Sections, has filed all applicable reports for 36 months prior to filing the registration statement, has timely filed all required reports for the 12 months preceding the filing of the registration statement, and, if subject only to Section 15(d), has sent security holders a report containing the disclosure required by Rule 14a-3(b); (3) the issuer and its subsidiaries have not failed to pay a dividend or sinking fund installment on preferred stock or had a payment default on material indebtedness or on a material long-term lease within the past 36 months;⁴⁷ and (4) the issuer has had consolidated net income of at least \$250,000 for three of the last four years, including the most recent year. With regard to condition (3) above, which is also in proposed Form B, the Commission is soliciting comment on whether some exception should be made for material defaults⁴⁸ which have been "cured" prior to the filing of the registration statement and, if advisable, on how such an exception should be structured. In addition, like existing Form S-16, if proposed Form A is to be used for primary offerings of debt or equity securities to be offered for cash, the issuer must also meet a "float", i.e., the aggregate market value of its voting stock held by non-affiliates must be at least \$50 million.

The eligibility criteria for proposed Form A, as stated above, are based upon the understanding that information

⁴⁷ This condition reflects a difference from General Instruction A(c) of Form S-7, which refers simply to defaults, without limiting the scope to material defaults. The proposed change would codify current practice, to some degree, and would help reduce the need for case-by-case waiver determinations by the staff where a non-material default has occurred. However, any failure to pay dividends or sinking fund installments on preferred stock would preclude the use of the form absent a granted waiver request.

⁴⁸ This provision of Forms A and B refers to events which have become defaults under the governing instruments, i.e., after the expiration of any period of grace and compliance with any notice requirements.

about companies using the form is already known or is so readily available it need not be repeated in a prospectus. The Commission notes that the reliance on dissemination of Exchange Act information in the Securities Act context, the use of a short form prospectus allowed by Form S-16, and the volatility of the market have all contributed increasing pressure on the staff to reduce drastically processing time for registration statements on Form S-16. In some extreme instances, the staff is requested to declare the registration statement effective within twenty-four hours of filing. The Commission anticipates that market conditions will cause this pressure on the staff to continue. However, such short processing time may overly diminish the opportunity afforded underwriters to make independent verification of the disclosure in the registration statement, and may deprive investors of sufficient time to review Exchange Act information if they so choose. It also raises questions as to whether the eligibility criteria of Form S-16 are sufficiently stringent so that only those companies carefully followed by the market are eligible to come to the market so quickly. If such criteria were too low, there would be danger of companies availing themselves of quick access to a market which has not in fact followed the issuer closely enough to have assimilated publicly available Exchange Act information. The Commission's Directorate of Economic and Policy Analysis has developed a profile of Form S-16 issuers since May of 1978 which is attached as Appendix I. This profile provides empirical data which may be of assistance in formulating eligibility criteria.⁴⁹ The Commission urges commentators to address these eligibility criteria questions, particularly in the context of the data presented in Appendix I. In addition, commentators are specifically invited to respond to the following inquiries:

⁴⁹ The variables used to develop the profiles include such characteristics as: The issuer's standard industrial classification code number; the issuer's revenues and net income for the most recent fiscal year; the average weekly trading volume in the issuer's common stock; the number of shareholders; the offering amount; the amount of time it took it process the registration statement; etc.

(1) Should the eligibility criteria for proposed Form A be changed from those of existing Form S-16? Specifically, is the net income test of \$250,000 too low? Is the "float" test of \$50 million adequate to restrict use of Form A to qualified companies? If not, to what number should it be raised?

(2) Should there be a minimum time period between filing and effectiveness of a registration statement on Form A?

Primary offering use of proposed Form A would be limited to underwritten offerings. Unlike Form S-16, however, proposed Form A could be used by qualified issuers for primary offerings either pursuant to a firm commitment underwriting in which the underwriters are committed to take down at least 90% of the offering, or pursuant to a best efforts underwriting done on an "all-or-none" basis.⁵⁰ The Commission believes that the presence of an underwriter who has a degree of responsibility for an offering serves to enhance the likelihood that investor protection will not suffer because of abbreviated disclosure in the prospectus. The Commission invites specific comment with respect to this condition, particularly as to whether proposed Form A should (1) be limited to firm commitment underwritten primary offerings; (2) be available as proposed; (3) be available for all underwritten offerings, regardless of the type of best efforts arrangement involved; or (4) be available to qualified issuers regardless of whether the offering is underwritten at all.

At present, the only foreign private issuers⁵¹ authorized to use Forms S-7 and S-16 are those that are required to file with the Commission the same reports under Section 13(a) or 15(d) of the Exchange Act as domestic issuers, i.e., Forms 10-K, 10-Q, and 8-K. The financial statements of foreign private issuers included in such forms generally are required to be prepared in accordance with United States generally accepted accounting principles and Regulation S-X, or, if appropriate, material differences are to be reconciled thereto. These same requirements are applicable also to the annual report to

security holders which, as a condition to the use of Forms S-7 and S-16, must comply with Rule 14a-3(b) under the Exchange Act. Generally, the only foreign private issuers required to file such reports are certain North American issuers, i.e., Canadian and Mexican issuers,⁵² and foreign issuers deemed to be essentially United States companies.⁵³

Some foreign issuers have inquired whether they would be eligible to use Forms S-7 and S-16 if they voluntarily filed reports on Forms 10-K, 10-Q, and 8-K and prepared an annual report to security holders in compliance with Rule 14a-3 provided they otherwise met the requirements for use of Forms S-7 and S-16. The literal language of the existing instructions to Form S-7 precludes this procedure since the foreign issuers are not actually required to file such reports. The Commission is, however, of the view that foreign private issuers, who, on a voluntary basis, file the same reports with the Commission as domestic issuers should similarly be entitled to use the short forms for registration of securities under the Securities Act. Accordingly, the Commission is proposing to allow the use of Forms A and B by foreign issuers under these circumstances.

Like existing Form S-16, proposed Form A would also be available for use by qualified issuers to register securities (1) to be offered upon the conversion of outstanding convertible securities or upon the exercise of outstanding transferable warrants, if the issuer has a \$50 million non-affiliate float or if no commission is paid for soliciting the conversion or exercise; (2) to be offered upon the exercise of outstanding rights granted by the issuer; (3) to be offered pursuant to dividend or interest reinvestment plans; (4) to be offered for the account of any person other than the issuer, including standby underwriters and affiliates; (5) to be offered by certain closed-end management investment companies; and (6) to be offered by qualified foreign private issuers upon the exercise of outstanding rights.⁵⁴

⁵⁰ Form S-16 use is restricted to primary offerings pursuant to firm commitment underwritings in which the underwriters are committed to take down at least 90% of the offering. Consistent with the present staff position, an instruction has been included in Form A that would deem delayed delivery arrangements to be part of a firm commitment agreement.

⁵¹ Exchange Act Rule 3b-4(c) (17 CFR 240.3b-4(c)) defines a foreign private issuer as any foreign issuer other than a government or subdivision thereof.

⁵² See Rule 14a-3(b)(2) under the Exchange Act.

⁵³ See General Instruction to Form 20-F A(b)(1) (17 CFR 249.220-f(b)(1)).

⁵⁴ This provision for rights offerings by foreign private issuers is the same as that of existing Form S-16. Because proposed Form A would also be available for somewhat greater use by foreign issuers, however, this provision has been set forth as a separate item.

The first five of these uses of Form A are consistent with the provisions of existing Form S-16. With respect to the registration of securities to be offered pursuant to dividend or interest reinvestment plans, however, the Commission believes that it is appropriate at this time to announce that consideration is being given to allowing such registration statements to become effective automatically. The Commission took a similar step in February 1980 when amendments were adopted to Form S-8 to provide that original filings on that form become effective automatically 20 days after filing and post-effective amendments on Form S-8 become effective automatically upon filing.⁵⁵ The same considerations which made automatic effectiveness of registration statements on Form S-8 advisable, *i.e.*, time and cost savings to issuers and the fact that no significant improvement to the quality of disclosure would result from staff review, would appear to be equally applicable to registration statements on Form S-16 or proposed Form A relating to dividend or interest reinvestment plans. Accordingly, commentators are invited to direct comment to the advisability of pursuing this contemplated approach.

Form B

Proposed Form B would be available for the registration of securities to be offered by the middle tier of public companies. The conditions to the Form's use are modeled after but are not entirely the same as those for existing Form S-7. Specifically, proposed Form B would be available where (1) the issuer has a class of securities registered pursuant to Section 12 or is required to file reports pursuant to Section 15(d) of the Exchange Act; (2) the issuer has been subject to the requirements of those Sections, has filed all applicable reports for 36 months prior to filing the registration statement, and has timely filed all required reports for 12 months preceding the filing of the registration statement; (3) the issuer and its subsidiaries have not failed to pay a dividend or sinking fund installment on preferred stock or defaulted in the payment on any material indebtedness or material long-term lease within the past 36 months; and (4) the issuer has had earnings for two of the last three years, including the most recent year.⁵⁶

⁵⁵ Securities Act Release No. 6190 (February 22, 1980).

⁵⁶ The respects in which these conditions of proposed Form B differ from those of existing Form S-7 are (1) The provision concerning defaults is changed as described in note 47, *supra*; and (2) Form S-7 requires earnings of \$250,000 for three of the last four years.

The Commission notes that its staff receives a number of requests to waive the present Form S-7 requirement for timely filing of Exchange Act reports during the twelve months preceding the filing of the registration statement. Most of these requests involve rather insubstantial periods of lateness.⁵⁷ Although the Commission affirms its position that timely reporting is important to the trading markets, commentators are invited to address the appropriateness of this requirement in connection with Form B.

The last condition to the use of proposed Form B is that the issuer does not have any of the financial characteristics specified in General Instruction A(7). These characteristics are: (1) A decline of more than 50% in income from continuing operations over the last fiscal year; (2) any material uncertainty concerning either the issuer's financial position or results or operations which is or will be accompanied by a "subject to" opinion in the accountant's report (such as subject to realization of assets, claims under long-term contracts, or the favorable outcome of pending litigation); and (3) a downgraded bond rating during the last 12 months.

Form B represents a policy choice to favor the readability and communicability that results from use of annual reports to security holders rather than a prospectus providing the more detailed and complex information of Regulation S-K. However, companies not eligible to use Form A are, by their nature, not sufficiently followed to allow the omission of any reiteration in a prospectus about the company's business. Also, for those companies which may be financially troubled, but which are not sufficiently followed, the Commission does not believe that readability should be chosen over the more detailed presentation required by Form C. Notwithstanding this judgment, however, the Commission recognizes that it may be exceedingly difficult, if not impossible, to develop criteria which indicate when a company may be financially troubled or experiencing difficulty. The three criteria proposed in Form B are not intended to be definitive but rather to stimulate comment as to whether any such criteria can be developed. Moreover, commentators are also specifically asked to address the question of whether there are any characteristics of a company otherwise

⁵⁷ The Commission believes that recently revised Rule 12b-25 (17 CFR 240.12b-25) may address situations where a report cannot be filed timely without unreasonable effort or expense. See Securities Act Release No. 6203 (April 2, 1980) (45 FR 23652).

eligible to use Form A that should require it as well use Form C.

Commentators are also asked to consider in this regard whether market criteria, such as the dollar value of voting stock held by non-affiliates, would also be useful characteristics for determining eligibility to use proposed Form B. A deficiency in the extent to which information about a company has been analyzed and assimilated by the market may be as much a reason for a prospectus to contain full Regulation S-K level disclosure as is an indicator of troubled financial condition.

Form C

Proposed Form C would be the basic full form for registering offerings of securities under the Securities Act.⁵⁸ This Form would be available to all issuers who either do not qualify to use or choose not to use any other Securities Act registration statement form.

Under the three tier system as proposed, only proposed Form C is contemplated to be used to register securities to be issued in an exchange offer for securities of another person.⁵⁹ Comment is specifically invited as to (1) whether either proposed Form A or proposed Form B, or both, should also be so available and (2) what level of prospectus disclosure with respect to the target company is appropriate where a Form C issuer is exchanging its shares for those of a company qualified to use proposed Form A or Form B.

A general instruction has been included in proposed Forms B and C referring to Guide 4 which interprets Section 6(a) of the Securities Act to limit the types of deferred or extended offerings which may be registered.⁶⁰ The Commission requests comments as to the appropriateness of the proposed forms for continuous primary offerings of all types, including those at the market. Commentators are also invited to indicate what additional eligibility criteria or disclosure requirements they believe would be appropriate for such offerings.

Disclosure Items

As previously described, proposed Forms A, B, and C are designed to work

⁵⁸ Form S-18 would, of course, still be available to register securities sold to the public by a non-reporting corporation for an aggregate cash price not exceeding \$5 million and the Commission will continue its ongoing program to assist, and to reduce the burdens upon, small business.

⁵⁹ Of course, Form S-15 would be available for certain exchange offers. In addition, the Commission anticipates a review of Form S-14 with a view to possible revision.

⁶⁰ Guide 4 is a subject of the review announced in Securities Act Release No. 6163, discussed in note 46, *supra*.

as a coordinated system. Form A would serve as the initial repository of the uniform disclosure requirements. In this respect, Forms B and C refer to Form A for much of their content.

The following chart is included to

assist in the understanding of the proposed forms. The second column of the chart indicates the derivation of the various disclosure items. The third, fourth and fifth columns indicate where disclosure items are uniform among the

three forms and also indicate where material is to be presented in the prospectus or otherwise delivered to investors as opposed to incorporated by deference.

Content of Proposed Forms A, B, and C

Item	Source	Form A	Form B	Form C
Part I.—Prospectus Content				
1. Distribution Spread.....	Form S-7, modified.....	X.....	X (modified).....	X (modified).....
2. Summary.....	New (includes Item 10 of Regulation S-K).....	X.....	X.....	X.....
3. Plan of Distribution.....	Forms S-7, S-16.....	X.....	X.....	X.....
4. Use of Proceeds.....	Form S-1, modified.....	X.....	X.....	X.....
5. Selling Security Holders.....	Form S-16, modified.....	X.....	X.....	X.....
6. Description of Securities to be Registered..	Forms S-1, S-7, S-16, modified.....	X.....	X.....	X.....
7. Information with Respect to the Issuer.....	New.....	All periodic reports are incorporated by reference.	X—Form B has option to deliver annual report to security holders containing this information. Also, periodic reports are incorporated by reference.	X.
(a) Business.....		Incorporated by reference from periodic reports.	14a-3 (and periodic reports are incorporated by reference).	Item 1, S-K.
(b) Financial Statements.....		Incorporated by reference from periodic reports (Note: If rules 3-07 or 3-08 of S-X are applicable financial statements must be in prospectus).	Uniform but schedules and non-consolidated financial statements are incorporated by reference.	Uniform.
(c) Segments.....		Incorporated by reference from 10-K.	Item 1, S-K.....	Item 1, S-K.
(d) Beneficial Ownership.....		Incorporated by reference from 10-K.	Incorporated by reference from 10-K.	Item 6, S-K incorporated by reference in some cases from 10-K.
(e) Market and Dividend Data.....		Incorporated by reference from 10-K.	Item 9, S-K, modified incorporated by reference from annual report to security holders in some cases.	Item 9, S-K, modified.
(f) Management's Discussion.....		Incorporated by reference from 10-K and 10-Q.	Item 11, S-K incorporated by reference from annual report to security holders in some cases.	Item 11, S-K.
(g) Supplementary Financial Data.....		Incorporated by reference from 10-K.	Item 12, S-K incorporated by reference from annual report to security holders in some cases.	Item 12, S-K.
8. Additional Information.....	New—based on Forms S-7, S-16.	X.....	X.....	X.....
(a) Quarterly Financials.....		(Form 10-Q is incorporated by reference as are all periodic reports).	X (option to deliver Form 10-Q).....	X.....
(b) Subsequent Material Changes.....		X.....	X.....	X.....
(c) Availability of 1934 Act Reports.....		X.....	X.....	X.....
(d) National Exchange Listing.....		X.....	X.....	X.....
(e) Undertaking to Provide Periodic Reports That Are Incorporated by Reference Upon Request.....		X.....	X.....	X.....
Part II.—Information Not Required in Prospectus				
9. Incorporated by Reference.....	New.....	All 34 Act periodic reports—10-K, 10-Q, 8-K.	Same as Form A plus certain portions of annual report to security holders if used.	Part III and Item 4 of Part I of Form 10-K if necessary.
10. Other Expenses of Issuance and Distribution.....	Forms S-7, S-16.....	X.....	X.....	X.....
11. Interest of Experts Named.....	Forms S-7, S-16.....	X.....	X.....	X.....
12. Indemnification of Directors and Officers.....	Form S-7.....	X.....	X.....	X.....
13. Other Documents Filed; Exhibits.....	Form S-7 and New Item 7 of S-K.....	X.....	X.....	X.....
14. Recent Sales of Unregistered Securities.....	Form S-1.....			X.....
15. Undertakings.....	Form S-7 modified.....	1st 3 same, 4th deleted about sending shareholders annual report to security holders if issuer 15(d) co.	1st 3 same, plus adds one—re delivering annual report to security holders with prospectus if used for incorporating by reference.	Same as Form A.
Signatures.....	Forms S-1, S-7, S-16.....	X.....	X.....	X.....

Form A

Form A, like existing Form S-16, requires only minimal prospectus disclosure and relies heavily, through

incorporation by reference, on the high quality and widespread dissemination of Exchange Act information for the balance of the standard disclosure

package. For the most part, the disclosure that would be included in the prospectus is limited to summary information concerning the issuer and

specific data concerning the offering. Information concerning the offering is the type of disclosure that has not been disseminated to the public and, therefore, should be included in all prospectuses.

Proposed Item 1, "Distribution Spread", was derived from the Form S-7 requirement. The Commission notes that this Item may have to be modified if Form A, when adopted, may be used for other than firm commitment or "all-or-none" best efforts underwritten primary offerings.⁶¹ In this regard, the corresponding items in Forms B and C would require a presentation reflecting minimum and maximum proceeds that may be received if securities are to be offered on a best efforts basis other than an "all-or-none" type of agency arrangement.

The summary presentation required by proposed Item 2 has its genesis in the existing practice of many issuers and in Guide 59, "Summary of Disclosure in the Prospectus."⁶² The purpose of the summary is to provide the reader with a succinct picture of the registrant and the offering. In no way is the proposed presentation meant to replace the disclosure found elsewhere in the registration statement or in Exchange Act filings; rather, it is intended to create a starting or reference point in the reading of the prospectus.

Under the proposed formulation of the summary, the text of every prospectus would begin with a brief description of the business conducted by the issuer and the material terms and features of the offering. In addition, the forepart of the prospectus would include selected financial data disclosed in accordance with item 10 of Regulation S-K,⁶³ which

was adopted today, plus information concerning net income and net income per share for five fiscal years and for any applicable interim periods.

The new Regulation S-K Item 10 requirement is designed to present significant five year trend data relating to an issuer's revenues, income from continuing operations, liquidity, and capital resources. Item 10 also allows issuers flexibility to include additional information which they believe would enhance an understanding of and would highlight trends in their financial condition and results of operations. The Commission believes that while net income and net income per share are not necessarily trend related information if there have been discontinued operations or extraordinary events, they nevertheless should be required in the summary because many investors want and expect that information in a section of financial highlights. Item 10 information therefore is appropriate adaptable for use in a prospectus summary. The Commission wishes the summary to be a useful tool and specifically invites comment concerning what, if any, other financial information, such as an indicator of gross profit margin, would be appropriate to require in the summary.

In this regard, the Commission notes that the proposed Summary Information item does not include a requirement to present historical and pro forma ratios of earnings to fixed charges and earnings to combined fixed charges and preferred stock dividends. This ratio information is currently the subject of a separate project of the Office of the Chief Accountant.⁶⁴ When this project is considered, the Commission will consider the advisability of adding a ratio requirement to the Summary Information item in the proposed forms.

Instructions to the summary would provide that if the issuer has made a material disposition of assets outside the normal course of business after the end of the most recent fiscal year for which information is included in the

share. Registrants may include additional items which they believe would enhance an understanding of and would highlight trends in their financial condition and results of operations.

"3. Those registrants which are required to provide five year summary information in accordance with SFAS 33 may combine such information with the selected data and may modify the information presented to conform to the requirements to SFAS 33.

"4. All references to the registrant in the summary and in these instructions shall mean the registrant and its consolidated subsidiaries."

⁶⁴ That office is now considering the comments it received in response to the concept release which addressed the utility and computation of this ratio. Securities Act Release No. 6196 (March 7, 1980) (45 FR 16498).

summary or if an acquisition has occurred or is expected to occur that would require the filing of information pursuant to Rules 3-07 and 3-08 of Regulation S-X,⁶⁵ the issuer shall furnish a pro forma condensed balance sheet and a pro forma summary of operations giving effect to the disposition or acquisition for appropriate periods.⁶⁶ In addition, if the offering involved the redemption of outstanding preferred stock or indebtedness, the summary would have to include earnings per share data to show what the earnings would have been for the latest fiscal year and interim period if the redemption had taken place at the beginning of the respective period. The Commission believes that the combination of this disclosure is necessary in order that an investor may more easily assess the nature of the offering and the interests being purchased. Similarly, an additional summary provision would require the disclosure of a material dilution of the purchasers' interest or of the existing shareholders' interest.⁶⁷ In this regard, the Commission requests commentators to address whether a measure of dilution of book value is appropriate in the context of the prospectus summary.

As an adjunct to the above discussion, the Commission invites commentators to indicate whether a table of capital structure should be required in the proposed forms and, if so, whether it should be similar to that required by Item 5 of Form S-1. A capitalization table item has not been included in the proposed forms because it is believed that the information that would be presented therein is readily apparent from other sources such as the financial statements.

Item 3, "Plan of Distribution," would not be changed from the same item in Forms S-16 and S-7. In the Commission's view, this is preferable to but is not significantly different from the Form S-1 item.

Compliance with the disclosure requirements respecting the use of proceeds from the offering has concerned the Commission for some

⁶⁵ See discussion of Rules 3-07 and 3-08 accompanying note 72 *infra*.

⁶⁶ This release is also proposing a technical amendment to Rule 170 (17 CFR 230.170) under the Securities Act which would allow condensed pro forma financial statements in the prospectus summary even though an offering was not on a firm commitment or best-efforts "all-or-none" basis. This is necessary since the summary requirements would be the same in all three forms.

⁶⁷ The Commission notes that this provision concerning material dilutions would be generally inapplicable to offerings on Form A. The prospectus summary item, however, is designed to be standard among forms and would eventually be placed in Regulation S-K.

⁶¹ See eligibility discussion, *supra*.

⁶² Guide 59, by its terms, is only applicable to Forms S-1 and S-2. However, in practice many issuers have opted to use it as a standard for other forms.

⁶³ Item 10 of Regulation S-K reads:

"Furnish in comparative columnar form a summary of selected financial data for the registrant, for

"(1) each of the last five fiscal years of the registrant (or for the life of the registrant and its predecessor, if less), and

"(2) any additional fiscal years necessary to keep the summary from being misleading.

"Instructions

"1. The purpose of the summary of selected financial data shall be to supply in a convenient and readable format selected data which highlights significant trends in the registrant's financial condition and results of operations.

"2. Subject to appropriate variation to conform to the nature of the registrant's business, the following items shall be included in the summary: net sales or operating revenues; income (loss) from continuing operations; income (loss) from continuing operations per common share; total assets; long-term obligations (including long-term debt, capital leases and redeemable preferred stock as defined in ASR 268) and cash dividends declared per common

time. Because of the nature of this disclosure, the prospectus is the primary disseminating document of such information into the market. Too often the disclosure in response to this item has become boilerplate. For this reason, the Commission proposes certain modifications to the Form S-1 item for use in all three tiers.⁶⁸

The proposed Item, which is designated Item 4 in all three Forms, would not include the first sentence of Instruction 1 to Item 3 of Form S-1 which states that "[d]etails of proposed expenditures are not to be given; for example, there need be furnished only a brief outline of any program of construction or addition of equipment." Apparently, issuers have been reading this sentence to allow disclosure of minimal substance. The Commission believes that the language of the item itself, which refers to the "principal purposes" of the proceeds and "approximate amounts intended to be used for each purpose," is sufficiently limited in scope. In addition, the instructions have been refined to require disclosure of the terms of any indebtedness to be discharged from a material part of the proceeds. Additional changes have been made to Instruction 5 concerning assets to be acquired from the proceeds which would only require the name of the seller and an explanation of cost determining principles if the seller were an affiliate of the issuer or an associate of such affiliate. Again, the Commission wishes to call attention to the importance of meaningful disclosure in this area. Accordingly, commentators are requested to submit suggestions that will assist the Commission in upgrading the use of proceeds information.

All three forms would be available for secondary transactions. Therefore, the selling security holders provision, Item 5 in all three Forms, is the same for all tiers and is similar to that in Form S-16.

The "Description of Securities to be Registered", Item 6 of Form A, is derived from the items in Forms S-1, S-7, and S-16 with minor changes and would be present in all three forms. Unlike Form S-16, all three forms would require a description of the securities to be registered even though they are of a class registered pursuant to Section 12 under the Exchange Act. The Commission believes that such information should be presented in the prospectus rather than incorporated by

reference from the Exchange Act registration statement.

In addition, because the presence of charter or bylaw provisions or contractual arrangements designed to restrict the rights or alienability of the subject security or to thwart either changes in control of the issuer or acquisitions above a certain percentage of the class of securities being registered may affect the nature, liquidity and value of the securities being offered or may restrict or prevent registration on an exchange, the Commission believes that a description of such provisions as well as the overall effects, advantages, disadvantages and operation of such provisions should be required in this section of the prospectus. Therefore, subparagraph (a)(5) has been incorporated into proposed Item 6. For some time, the Commission has been concerned with anti-takeover proposals in the context of proxy statements⁶⁹ and believes that the same concerns are relevant when an initial investment decision is being made. Subparagraph (a)(5) also would require that a legal opinion be set forth or summarized indicating whether a given anti-takeover provision is both lawful and enforceable.

Item 7, "Additional Information", of Form A⁷⁰ is based on the corresponding items in Forms S-7 and S-16. A statement would be required indicating that certain information has been incorporated by reference and, at the issuer's option, a statement could also be included stating that specifically described portions which are not incorporated by reference are not part of the registration statement. Detailed descriptions of all material incorporated by reference would have to be provided in Part II of the registration statement and, at the issuer's option, could also be presented in the prospectus.

Perhaps the most important aspect of Item 7 is the requirement for a description of any and all material changes in the issuer's affairs which have occurred since the end of the latest fiscal year and which have not been described in a report on Form 10-Q or 8-

K.⁷¹ This Item tracks the present language of Form S-16 and would provide the necessary disclosure link to Exchange Act information which would be incorporated by reference. However, unlike Form S-16, this proposed additional information requirement would not provide that information concerning a material change could be omitted if it had previously been disclosed in a proxy or information statement. This is because the proposed forms only incorporate by reference to periodic reports and not to proxy material.

The corresponding Additional Information item in Form S-16 indicates that financial information may be required in the prospectus if the documents incorporated by reference do not include financial statements which reflect the results of a significant business combination accounted for as a pooling of interests or a change in accounting principles necessitating a substantial restatement of the financial statements. The relevant provisions in form A reflect today's adoption of Rules 3-07 and 3-08 of Regulation S-X⁷² which set forth the requirements concerning the type of financial information necessary for significant business combinations, whether they be accounted for as a pooling of interests or as a purchase transaction. These rules are in response to the concerns expressed by the Commission in Securities Act Release No. 4950 (February 20, 1969) regarding compliance with the requirements of Item 27 of Schedule A of the Securities Act.⁷³ The Commission believes that the information required by these S-X rules is essential to an understanding of the

⁶⁸ Item 7(a)(3) of Form B, which relates to the option of delivering the annual report to security holders, requires this information to be placed in the prospectus whether or not it has been previously reported. No such express requirement is included in the second option (Item 7(b)) of Form B since it is implicit that such information would appear in the prospectus because the business information would need to be as of the effective date of the registration statement. See Instruction to Item 7(b)(1) of Form B.

⁶⁹ Securities Act Release No. 6234 (September 2, 1980).

⁷⁰ Item 27 of Schedule A states: "If the proceeds, or any part of the proceeds, of the security to be issued is to be applied directly or indirectly to the purchase of any business, (the registration statement shall include) a profit and loss statement of such business certified by an independent public or certified accountant, meeting the requirements of paragraph (26) of this schedule, for the three preceding fiscal years, together with a balance sheet, similarly certified, of such business, meeting the requirements of paragraph (25) of this schedule of a date not more than ninety days prior to the filing of the registration statement or at the date such business was acquired by the issuer if the business was acquired by the issuer more than ninety days prior to the filing of the registration statement."

⁶⁸ This Item would also be a standard item and would eventually appear in Regulation S-K. In this regard, Instruction 3 relates to other than firm commitment or "all-or-none" best efforts arrangements and would, therefore, not be applicable to Form A offerings.

⁶⁹ See Securities Act Release No. 5906 (February 15, 1978) wherein the Commission indicated that the Advisory Committee's recommendations urging the staff to review closely proxy materials containing anti-takeover proposals would be implemented administratively and would be the subject of specific instructions to the staff of the Division of Corporation Finance. These instructions were subsequently made public in Securities Exchange Act Release No. 15230 (October 13, 1978) [43 FR 49863].

⁷⁰ Variations of the Additional Information item are also in Forms B and C. See Item 7(a)(3) and Item 8 of Form B and Item 8 of Form C.

issuer's operations and, when applicable, should be included in the prospectus. In addition, since such information is not designed to be presented by itself, historical financial statements of the issuer and its subsidiaries consolidated (as required by Regulation S-X) would have to be presented in the prospectus whenever Rule 3-07 or 3-08 information would be necessary. This represents the only case where Form A would require the presentation of historical financial statements within the prospectus. In this regard, however, the Commission requests specific comment on whether an issuer should be required to file on Form B or C when Rules 3-07 or 3-08 are applicable.

In addition, the Form A Additional Information item indicates that financial information may have to be filed as an exhibit to the registration statement with regard to a material disposition of assets outside the normal course of business where such information had not been previously filed in an Exchange Act periodic report. Likewise, if there had been a change in accounting principles necessitating a substantial restatement of financial statements which had not been previously filed in a report, such restated financial statements would be a required exhibit of Form A. If either of these two exhibits had to be filed, the prospectus would include a brief description of the subject transaction or change in accounting principles and a statement that relevant financial information has been filed as an exhibit. In this way, just as the reader knows he has access to the issuer's latest financial statements, he would be put on notice that this additional information was available.

Pursuant to subparagraph (c) of Item 7, the issuer would include an undertaking to provide without charge a copy of any information that has been incorporated by reference, and any financial information exhibit required by the additional information requirement described above, to any requesting person who has been delivered a prospectus. So that each investor will have easy access to the entire disclosure package, the name, address and telephone number of the person to whom a written request for such information is to be directed would be included in the prospectus.

The first item in Part II of the registration statement, Item 8, contains the requirements as to the documents to be incorporated by reference into the registration statement. Although incorporation from the issuer's latest Form 10-K and subsequent periodic

reports filed under Section 13(a) or 15(d) of the Exchange Act would be mandated, a registration statement filed on Form A, unlike Form S-16, would need not incorporate from any information in a proxy or information statement. The Commission believes that direct incorporation of proxy material would be unnecessary since Part III of the new Form 10-K will include, through incorporation by reference in most cases, relevant proxy information. Furthermore, the Additional Information item would require disclosure respecting any material changes in the issuer's affairs, including significant business combinations.

Comments at the time Form S-16 was amended to allow primary offering use⁷⁴ prompted the Commission to propose certain amendments to Form S-16 which it hoped would alleviate somewhat the concerns of underwriters over potential Section 11 liability for issuers' Exchange Act filings which they had not helped prepare, but which are incorporated by reference into Securities Act registration statements.⁷⁵ Specifically, the Commission proposed amendments to Form S-16 which would: (1) Deem the effective date of documents incorporated by reference into registration statements on that Form to be the date of the document's initial filing with the Commission; (2) deem a statement in a document incorporated by reference into the registration statement on that Form not to be part of the registration statement if the statement has been modified or superseded in the registration statement or in subsequently filed documents which are incorporated by reference into a registration statement on that Form; and (3) provide that the making of a modifying or superseding statement shall not be deemed an admission that the modified or superseded statement constituted a violation of the federal securities laws. These proposed amendments were in response to the concern that, because Section 11 imposes liability for statements misleading or untrue when the registration statement becomes effective, liability could be asserted based on Exchange Act documents accurate when filed but subsequently outdated. In addition, they dealt with what underwriters feared would be a reluctance by issuers to accept

recommendations to change disclosure in Exchange Act filings because the issuers would not want to admit a deficiency in the original filing.

The Commission believes that further consideration of the proposed amendments to Form S-16 is warranted in connection with the proposed Securities Act disclosures system. Therefore, the Commission has included these proposals as provisions in the relevant incorporation by reference items⁷⁶ in all three proposed forms. Although the original proposals to Form S-16 are being withdrawn, the Commission believes that additional public comment in the context of this release is necessary to assist it in determining whether the proposals represent a reasonable and prudent approach to the liability problems relating to incorporated documents.

The balance of the items in Part II of Form A will, with minor exceptions, be standard in all three forms. These are: Item 9, Other Expenses of Issuance and Distribution; Item 10, Interest or Experts Named; Item 11, Indemnification of Directors and Officers; Item 12, Other Documents Filed as a Part of the Registration Statement; and Exhibits. It should be noted that the exhibit item is keyed to recently adopted Item 7 of Regulation S-K.⁷⁷ Although disclosure relating to provisions for indemnifying officers and directors is not presently required in Part II of Form S-16, it is called for in Forms S-1 and S-7. The Commission believes that this is important information which may not be succinctly explained elsewhere in its disclosure system and therefore should be included in all three proposed forms. In contrast to existing Forms S-1, S-7 and S-16, the Commission is not proposing to include an item relating to the accounting treatment of proceeds from the stock to be registered⁷⁸ because the accounting literature appears to sufficiently address this area.

Form B

As stated previously, Form B relies on Form A for much of its content. The major difference from Form A is the delivery of information either in the form of an annual report to security holders or in the prospectus itself.

Item 7 is the cornerstone of Form B. This Item permits the issuer the option of delivering its annual report to security holders along with the prospectus or including specified information within the prospectus. The option allowing the

⁷⁴ See comments available in File No. S7-725. See also the rulemaking petition filed May 3, 1978 by the Corporate Finance Committee of the Securities Industry Association and the Commission's letter of response dated May 28, 1978 from George A. Fitzsimmons, Secretary.

⁷⁵ Securities Act Release No. 5923 (April 11, 1978).

⁷⁶ Besides Item 8 of Form A, see Item 9 of Forms B and C.

⁷⁷ Securities Act Release No. 6230 (August 27, 1980).

⁷⁸ See, e.g., Item 29 of Form S-1.

annual report to be delivered is made possible because of the improved nature of the disclosure within security holder reports required by Rule 14a-3, as it was amended today.⁷⁹

In the Commission's opinion, the option of delivering the annual report to security holders with the prospectus would be most helpful and cost effective in the registration of securities used in transactions which do not involve large numbers of offerees or which will be made at the market or over an exchange. For example, companies could avail themselves of this inexpensive method to register securities that might otherwise be the subject of private placements or of fairness hearings required under Section 3(a)(10) of the Securities Act.⁸⁰ In doing so, a company could sell securities without the discount that is commonly attendant to the sale of restricted securities.

If the issuer elects the alternative of delivering its annual report, it would also be presented with an additional option respecting the delivery of updated quarterly financial information. Item 7(a)(2) would require that the issuer provide financial and other information in the form required by Part I of Form 10-Q as of the end of the most recent fiscal quarter which ended after the end of the latest fiscal year for which certified financial statements were included in the latest report to security holders and more than forty-five days prior to the effective date of the registration statement. This requirement coincides with the 135 day financial statement age standard of new Rule 3-12 of Regulation S-X.⁸¹ Three means are set forth by which such updating may be provided: (1) By including such information in the prospectus; (2) by providing without charge to each person to whom a prospectus is delivered a copy of the issuer's latest Form 10-Q; or (3) by providing without charge to each person to whom a prospectus is delivered a copy of the issuer's latest quarterly report to security holders which included the required financial information. Thus, if the issuer so chooses, duplication of previously

reported quarterly information may be avoided.

Under Item 7(a)(3), issuers opting to deliver their annual reports to security holders in satisfaction of the Form's requirements would have to describe material changes in their affairs (other than those relating to business combinations or acquisitions or changes in accounting principles or material dispositions of assets for which financial information is required) much in the same manner as in Form A, except that prospectus disclosure could be omitted only⁸² if such information had previously been reported in a report on Form 10-Q delivered with the prospectus in the manner described in the previous paragraph. A major departure from Form A would occur if the issuer has effected or were about to effect a transaction for which information is required by Rule 3-07 or Rule 3-08 of Regulation S-X,⁸³ i.e., has had an accounting principles change that requires a substantial restatement of the financial statements in the annual report or has effected or is about to effect a material disposition of assets that requires financial information to be set forth. In such case the Form B option to deliver the annual report to security holders would be unavailable. The Commission believes that if such a transaction has been or is about to be consummated, all financial information and other required information should be included in the prospectus in order to avoid possible confusion on the part of the reader. Moreover, it is also recognized that the occurrence of this type of event may require that substantial attention be given to various aspects, of disclosure, particularly the description of business, segment information, and management's discussion and analysis of the issuer's financial condition and results of operations.

Item 7(b) would provide the framework of the prospectus content if the option to deliver the annual report were not elected or were unavailable. The Commission is striving in Item 7 of Form B for an equivalent level of disclosure whether accomplished through the delivery of the annual report to security holders or of a prospectus which stands alone. Specifically, Item 7(b) would require a description of business in reasonable detail and to the same extent as would be required in the preparation of an annual report to

security holders as required by Rule 14a-3 or Rule 14c-3 under the Exchange Act. An instruction is included that would allow the issuer's most recent annual report to security holders to be used as a guide, but it would insist that the issuer take into account changes in its business which occurred between the most recent annual report to security holders and the effective date of the registration statement.

In general, the remaining requirements would encompass the Regulation S-X and Regulation S-K requirements required in annual reports to security holders by revised Rule 14a-3. Financial statements of the registrant and its subsidiaries consolidated, including any information required by Rules 3-07 and 3-08 of Regulation S-X, would be presented in the prospectus. Industry segment information would be the same as that required in the annual report, i.e., in accordance with the provisions of paragraphs (b), (c)(1)(i) and (d) of Item 1 of Regulation S-K. Market and related information would be the same or equivalent to the information required by new Item 9 of Regulation S-K, depending upon the securities being registered. Management's discussion and analysis would key to new Item 11 of Regulation S-K and, if applicable, to proposed Item 2 of Part I of Form 10-Q. New Item 12 of Regulation S-K, Supplementary Financial Information, would also be addressed. Finally, Item 7(b)(7) would make clear that if the issuer engages in oil and gas related operations which exceed the criteria for exemption specified in Rule 3-18(k) of Regulation S-X,⁸⁴ information of the type required in Form 10-K would have to be presented with regard to such operations.

As is described above, the historical financial statements that would be required to be delivered by Form B,

⁸⁴ The exemption for oil and gas disclosure under Rule 3-18(k) reads:

Exemption. This paragraph shall not apply to filings under the federal securities laws by any registrant meeting all of the conditions described below for each of the two most recent fiscal years, based on its annual consolidated financial statements:

(i) Gross revenues from sales or transfers of oil and gas (as defined in subparagraph (4)(ii) of this paragraph) do not exceed 10 percent of total revenues;

(ii) Income after taxes (but before extraordinary items) from oil and gas producing activities, including amounts applicable to investees accounted for under the equity method, does not exceed 10 percent of consolidated income before extraordinary items; and

(iii) The "Present Value of Estimated Future Net Revenues" (see subparagraph (8)(ii) of this paragraph), including amounts attributable to investees accounted for under the equity method, plus the net capitalized costs of unproved properties, do not exceed 10 percent of total assets.

⁷⁹ Securities Act Release No. 6231 (September 2, 1980).

⁸⁰ Section 3(a)(10) provides for an exemption from registration for securities issued in an exchange transaction where the terms and conditions of such issuance are approved after a hearing upon their fairness.

⁸¹ In general, Rule 3-12 states that if financial statements in a filing are as of a date more than 135 days prior to the date the filing is expected to become effective, the financial statements shall be supplemented with condensed financial statements through the end of the last fiscal quarter on a comparative basis. Such condensed financial statements are to be given in the same degree of detail as in Part I of Form 10-Q.

⁸² Under Form A, such information could be omitted if it were previously disclosed in a Form 10-Q or 8-K, even though neither periodic report would be delivered with the prospectus.

⁸³ For a discussion of Rules 3-07 and 3-08, see the text accompanying note 72 *supra*.

either in the prospectus or in the annual report to security holders, are for the issuer and its subsidiaries consolidated. The Commission invites comments on whether any other financial statements contemplated by Regulation S-X should be delivered and, if so, which statements.

Statements respecting incorporation by reference, availability of reports and listing on a national securities exchange would be required by Item 8, Other Information, and would be the same as those in Form A. Additionally, Item 8 would elicit an undertaking from the issuer to provide without charge on the written request of any person to whom a prospectus is delivered a copy of the issuer's latest Form 10-K and the latest Form 10-Q if such Form is not delivered with the prospectus.

Item 9, Incorporation by Reference, in Part II would be identical to the corresponding provision in Form A with one exception. If the issuer elected the Item 7(a) option and delivered the annual report to security holders with the prospectus, certain portions of the annual report would have to be incorporated by reference. This would include: the business description, certified financial statements; industry segment information; selected financial information; and management's discussion and analysis of financial statements. In this way, the disclosure package under both alternatives in Form B would be equivalent to one another. In addition, an undertaking in Part II to deliver the annual report to security holders to each person to whom the prospectus is delivered would be necessary if the Item 7(a) option were used.

Form C

The format of Form C is relatively simply. In essence, it represents a streamlined version of Form S-1. The core informational requirements for the forepart of the prospectus would be the same as Forms A and B. Item 7, Information with Respect to the Issuer, is structured along the lines of Forms S-1 and 10-K. The descriptions of business, properties and legal proceedings would be furnished in accordance with Items 1, 2 and 5 of Regulation S-K, respectively. The financial statements would be those required by Regulation S-X, and schedules required by S-X would be filed as schedules to the registration statement. Market price information, management's discussion and analysis, and supplementary financial information would derive from the relevant new Items 9, 11, and 12 in Regulation S-K.

Under Item 7(b), information called for by Item 3, Directors and Executive Officers, Item 4, Management Remuneration and Transactions,⁸⁵ and Item 6, Security Ownership of Certain Beneficial Owners and Management, of Regulation S-K would have to be included in the prospectus for those issuers which have had a change in control within the last three years or have not been reporting companies for the last three years. The Commission believes that this requirement is necessary to ensure adequate dissemination of management and ownership information for these types of companies. All other Form C issuers, except those which voluntarily include such information within the prospectus, would incorporate this information by reference from the pertinent portions of their latest Form 10-K: Item 4 of Part I, and all of Part III.

Item 14 of Part II would require the disclosure of sales of unregistered securities during the past three years. This Item would be the same as Item 25 of Form S-1.

Audit Committees

The Commission has endorsed the concept of audit committees for over forty years.⁸⁶ More recently, in 1972, the Commission recommended the establishment of such committees, "in order to assist in affording the greatest possible protection to investors who rely upon * * * financial statements."⁸⁷ In 1974, the Commission adopted an amendment to Schedule 14A (17 CFR 240.14a-101) of the proxy rules requiring disclosure of the existence and composition of the audit committee of the board of directors.⁸⁸ Finally, in 1978, the Commission further amended Schedule 14A to require disclosure of the functions performed by issuers' audit committees and the number of meetings held by such committees.⁸⁹

Comment is requested specifically on whether this same, or some similar, disclosure should be required in Forms A, B, and C. In the case of reporting companies, this information is disclosed, as discussed above, in election of director proxy statements. Therefore, comment also is requested on whether

⁸⁵ Foreign issuers would disclose management remuneration in accordance with Guide 63, Disclosure Relating to Management Remuneration by Certain Foreign Private Issuers. See Securities Act Release No. 6157 (November 29, 1979).

⁸⁶ Accounting series Release No. 19 (December 5, 1940).

⁸⁷ Accounting Series Release No. 123 (March 13, 1972).

⁸⁸ Accounting series Release No. 165 (December 20, 1974) (40 FR 1010).

⁸⁹ Securities Exchange Act Release No. 15384 (December 6, 1978).

this disclosure requirement should be limited to first time issuers.

Impact of the Proposed Integrated Disclosure System on Foreign Issuers

Although most of the actions taken today relate only to domestic issues,⁹⁰ the Commission believes that a similar integrated disclosure system may be feasible for foreign private issuers that file reports on Form 20-F (17 CFR 249.220-f).

Because the registration and reporting requirements of foreign issuers are significantly different from those to which domestic issuers are subject and involve a complicated interrelationship of statutory sections, rules, and forms, this summary may assist commentators in responding to the inquiries listed below.

A. The Exchange Act

Much of the complexity in this area is caused by two principles the Commission adopted in its early years. First, a distinction is made between foreign companies that voluntarily enter the United States securities markets and those companies whose securities are traded in the United States without any voluntary acts or encouragement by the issuer. This distinction is accomplished by deeming all foreign companies having either listed securities on a United States exchange or made a public offering of securities registered under the Securities Act of 1933 as voluntarily entering the United States market. All other foreign companies whose securities are traded in the United States are deemed not to have taken any voluntary acts to enter the United States market. Second, certain North American companies (Canadian and Mexican companies), which have voluntarily entered the United States markets, are treated the same as United States companies for reporting purposes.

Thus, foreign issuers with a class of securities registered pursuant to Section 12(b) of the Exchange Act or with a reporting obligation pursuant to Section 15(d) of the Exchange Act fall within the voluntary classification. Of this group of issuers, North American issuers must file the same disclosure documents as domestic issuers. All other foreign

⁹⁰ In a concurrent release, the Commission has adopted provisions in Regulation S-X that codify the existing policy concerning the use of financial statements presented in accordance with foreign generally accepted accounting principles and reconciliations to United States generally accepted accounting principles. See Securities Act Release No. 33-6234 (September 2, 1980). As discussed previously in this release, the Commission is proposing to extend the use of Forms A and B to foreign private issuers that voluntarily file the same reports as domestic issuers.

issuers in this class generally can file on Form 20-F and Form 6-K (17 CFR 249.306)⁹¹ and are exempt from the proxy solicitation and information statement provisions of Section 14 and from the insider reporting and short-swing trading profits provisions of Section 16 of the Exchange Act.⁹²

Foreign issuers with more than \$1 million of assets and a class of equity securities with 500 holders world-wide are required to register that class of securities pursuant to Section 12(g) of the Exchange Act. No distinction is made between North American and other foreign issuers in this category; all foreign issuers can generally use Forms 20-F and 6-K and will be exempt from the proxy rules. Moreover, many issuers in this category can instead rely on the exemptions from registration specified in Rule 12g3-2.⁹³ Two of such exemptions are especially relevant. First, paragraph (a) of Rule 12g3-2 provides an exemption from Section 12(g) for the securities of a foreign company that meets the tests of \$1 million assets and 500 shareholders of record world-wide but has less than 300 United States shareholders of record. Second, paragraph (b) of the Rule provides another exemption, frequently called the information-supplying exemption. Essentially the securities of a foreign company will be exempt from Section 12(g), regardless of the number of United States shareholders, if the company furnishes to the Commission for public inspection copies of the material investor information it makes public in its local jurisdiction or sends to its shareholders either voluntarily or pursuant to foreign law or exchange requirements.

This entire scheme is subject to the concept of "essentially United States companies" which are treated for reporting purposes as domestic registrants. Essentially United States companies are those with (1) more than 50 percent of their voting securities held of record by United States residents and (2) either their business administered principally in the United States or United States residents constituting at

least 50 percent of the members of their board of directors.⁹⁴

B. The Securities Act

North American issuers required to file the same reports under the Exchange Act as domestic registrants are permitted to use Forms S-7 and S-16 provided the other conditions to the use of those Forms are met.⁹⁵ The Commission, however, has not yet extended the availability of the short forms to any other foreign issuers except for certain rights offerings. Foreign issuers reporting on Form 20-F that otherwise meet the eligibility requirements for the use of Form S-7 may use Form S-16 to register rights offerings to shareholders provided the Form 20-F is either delivered with the prospectus or made available upon request.⁹⁶ This would also be true with regard to proposed Form A. In all other situations, however, foreign private issuers must presently use Form S-1, and under the proposals would have to use Form C, to register their offerings of securities.⁹⁷

C. Requests for Comments

In view of the improving disclosure standards of many foreign countries, the increasing efforts to harmonize international disclosure and accounting guidelines, and the recent adoption of the Form 20-F which substantially increased the disclosure requirements of foreign issuers, the Commission believes that it should consider the feasibility of developing an integrated disclosure system for foreign issuers. Although the results of such a system should be similar to those of the integrated disclosure system for domestic issuers, the design and operation of the systems may differ because of the differing reporting structure for foreign issuers under the Exchange Act.

At this time, the Commission is not proposing a specific system for foreign issuers, but rather is requesting comments on the general concept of such a system. The diversity of foreign disclosure standards⁹⁸ and the major departure from the Commission's traditional policy such a system would

represent make design of any such system especially difficult. Consequently, the Commission believes that information concerning investors in foreign securities, their methods of making investment decisions, and the markets, both domestic and foreign, for foreign securities would be of assistance. Therefore, the Commission is requesting public comments regarding the above discussion, as well as on the specific inquiries listed below.

1. Commentators are invited to address the application of the proposed integration system for domestic users to foreign private issuers reporting on Form 20-F including, but not limited to, the criteria for the eligibility of such issuers to use Forms A and B. Additionally, comments are requested as to whether a separate classification and form(s) should be developed for foreign private issuers.

2. Public comment is sought on whether the Commission's rules and forms should maintain the present distinction made between North American issuers and all other foreign private issuers and, if not, whether any other distinctions should be made or whether private issuers from all foreign countries should be able to use the same forms.

3. Comment is solicited on whether the existence outside the United States of the primary market for the securities of foreign private issuers creates any special difficulties in applying the proposed system to foreign registrants.

4. Commentators are invited to comment on whether foreign laws impede or restrict the information that can be filed with the Commission.

5. The Commission is soliciting comment on whether the investors in foreign securities significantly differ in composition from those investing in the securities of United States issuers and, if such differences exist, whether there are any ramifications for the requirements relating to the disclosure and dissemination of information regarding foreign issuers.

6. In view of the above inquiries, specific comment is solicited with regard to the relative importance to investors, analysts and others of the information contained in a Form S-1 registration statement that is not in a filing on Form 20-F.

General and Specific Inquiries

Any interested persons wishing to submit written comments on the proposed forms, as well as on other matters which might have an impact on the proposals contained herein, are invited to do so. Moreover, commentators are urged to address any

⁹¹ Form 20-F is a consolidated registration and annual report form. Form 6-K is an interim report for furnishing the same type of information required to be furnished by Rule 12g3-2(b) (17 CFR 240.12g3-2(b)) discussed below. These forms require less information than Forms 10-K, 10-Q, and 8-K. See Securities Exchange Act Release No. 16371 (November 29, 1979).

⁹² See Rule 3a12-3 (17 CFR 240.3a12-3).

⁹³ See Securities Exchange Act Release No. 8066 (April 15, 1967) for a detailed discussion of the operation of this rule.

⁹⁴ See Rule 3a12-3, and Form 20-F General Instructions A(a)(2) and (b)(2).

⁹⁵ See the discussion *supra* concerning proposals to slightly enlarge this category with regard to Forms A and B.

⁹⁶ See Form S-16, General Instructions, A(3) and Securities Act Release No. 6156 (November 29, 1979).

⁹⁷ Some of the forms designed for special types of offerings or special categories of issuers are available for use by foreign issuers, e.g., Form S-11 for securities of certain real estate companies.

⁹⁸ See, e.g., Lafferty and Cairns, "Financial Times World Survey of Annual Reports 1980".

alternatives or modifications which may assist the Commissioner in its reformulation of the Securities Act disclosure system.

The Commission also solicits comment as to whether the proposals would have an adverse effect on competition or would impose a burden on competition which is not necessary or appropriate in furtherance of the purposes of the Securities Act.

Text of Proposed Forms

17 CFR Chapter II is proposed to be amended as follows:

1. By proposing registration statement Forms A, B, and C set forth below:

PART 239—FORMS PRESCRIBED UNDER THE SECURITIES ACT OF 1933 Securities and Exchange Commission Form A—Registration Statement Under the Securities Act of 1933

(Exact name of issuer as specified in its charter)

(State or other jurisdiction of incorporation or organization)

(Primary Standard Industrial Classification Code number)

(I.R.S. Employer Identification No.)

(Address, including zip code, and telephone number, including area code, of issuer's principal executive offices)

(Name, address, and telephone number of agent for service)

(Approximate date of commencement of proposed sale to the public)

Calculation of Registration Fee

Title of each class of securities to be registered	Amount to be registered	Proposed maximum offering price per unit	Proposed maximum aggregate offering price	Amount of registration fee
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General Instructions

A. Rule as to Use of Form A

(1) Any issuer which meets the following conditions may use this form for registration under the Securities Act of 1933 of securities offered in the transactions specified in (2) below.

(a) The issuer (i) has a class of securities registered pursuant to Section 12(b) of the Securities Exchange Act of 1934; or (ii) is organized under the laws of the United States or any State or Territory or the District of Columbia, has its principal business operations in the United States or its Territories and has a class of equity securities registered pursuant to Section 12(g) of the above Act or is required to file reports pursuant to Section 15(d) of the above Act.

(b) The issuer (i) has been subject to the requirements of Section 12 or 15(d) of the Securities Exchange Act of 1934 and has filed all the material required to be filed pursuant to Sections 13, 14 or 15(d) (including Forms 10-K, 10-Q and, if necessary, Forms 8-K), as applicable, for a period of at least thirty-six calendar months immediately preceding the filing of the registration statement on this Form; (ii) has filed in a timely manner all reports required to be filed during the twelve calendar months preceding the filing of the registration statement and, if the issuer has utilized Rule 12b-25(b) of the Securities Exchange Act of 1934 with respect to a report, that report has actually been filed within the time period prescribed by that Rule; and (iii) if subject only to the requirements of Section 15(d) of the Securities Exchange Act of 1934, has sent to all security holders of each class of securities to which the registration statements declared

effective pursuant to the Securities Act of 1933 relate a report containing the information called for by Rule 14a-3(b) within the twelve calendar months preceding the filing of the registration statement.

(c) The registrant and its subsidiaries have not during the past thirty-six calendar months (i) failed to pay any dividend or sinking fund installment on preferred stock; or (ii) defaulted on any installment on material indebtedness for borrowed money, or on any rental on a material long-term lease.

(d) The issuer and its subsidiaries consolidated had an annual net income, after taxes but before extraordinary items and cumulative effect of a change in accounting principle, of at least \$250,000 for three of the last four fiscal years, including the most recent fiscal year.

(e) An issuer shall be deemed to have met conditions (b), (c) and (d) above if (i) its predecessor and it, taken together, do so, provided that the succession was primarily for the purpose of changing the state of incorporation of the predecessor or forming a holding company and that the assets and liabilities of the successor at the time of succession were substantially the same as those of the predecessor; or (ii) if all predecessors met the conditions at the time of succession and the issuer has continued to do so since the succession.

(f) This Form may be used for the registration of securities of a majority-owned subsidiary which are fully guaranteed as to principal and interest by its parent if the parent meets the above conditions, notwithstanding the failure of the subsidiary issuer to meet such conditions. In such an

instance, the guarantor shall be a co-issuer with the issuer.

(g) A foreign private issuer (as defined in Rule 3b-4(c) of the Securities Exchange Act of 1934, 17 CFR 240.3b-4(c)), which satisfies all of the provisions in this instruction for the use of Form A except the provisions in paragraph (1)(a)(ii) of this Instruction relating to incorporation and principal business may use this Form provided such foreign issuer is required to file or otherwise files the same reports with the Commission under Section 13(a) or 15(d) of the above Act as a domestic issuer, and provided further that all of its security holders resident of the United States, including those holding under American Depositary Receipts or similar arrangements, of each class of securities to which the registration statements declared effective pursuant to the Securities Act of 1933 relate, have been sent a report containing the information called for by Rule 14a-3(b).

(2) Securities offered in the following transactions may be registered on this Form.

(a) Primary Offerings by Certain Issuers.

Debt or equity securities to be offered for cash by or on behalf of the issuer provided the issuer meets the conditions specified in (i), (ii), or (iii) below and also meets the conditions specified in (iv) below:

(i) The aggregate market value of the voting stock held by nonaffiliates of the issuer is \$50 million or more; or

(ii) The aggregate market value of the voting stock of the issuer's parent held by nonaffiliates is \$50 million or more, the issuer is a majority-owned subsidiary and its parent has fully guaranteed the securities as to principal and interest; or

(iii) The aggregate market value of the voting stock of the issuer's parent held by nonaffiliates is \$50 million or more, the issuer is a majority-owned subsidiary; and

A. The issuer has outstanding securities held by nonaffiliates, with an aggregate principal amount or market value of at least \$250 million, the offer or sale of which has been registered pursuant to the provisions of Section 6 of the securities Act of 1933, 15 U.S.C. 77f; and

B. The issuer has at least 1,000 security holders to whom the issuer has furnished an annual report for its most recent fiscal year containing certified financial statements in compliance with the requirements of Rule 14a-3 (17 CFR 240.14a-3) or Rule 14c-3 (17 CFR 240.14c-3). An annual report of the issuer's parent that contains separate certified financial statements of the issuer may be used to satisfy this requirement; and

(iv) The offering is or will be pursuant to a best efforts underwriting which is either done on an "all-or-none" basis, or a firm commitment underwriting in which the underwriters are committed to take and to pay for all or not less than 90% of the securities being offered.

Instruction. The aggregate market value of the issuer's or its parent's outstanding common stock shall be computed by reference to the price at which the stock was sold, or the average of the bid and asked

prices of such stock, as of a specified date within 60 days prior to the date of filing. (See the definition of "affiliate" in Rule 405, 17 CFR 230.405).

Contracts for the delayed delivery of securities included in the offering which are solicited by the principal underwriters shall be deemed part of a firm commitment to purchase by such underwriters.

(b) *Conversions or Warrants.* Securities to be offered upon the conversion of outstanding convertible securities or upon the exercise of outstanding transferable warrants issued by the issuer of the securities to be offered, or by an affiliate of such issuer, provided:

(i) No Commission or other remuneration is paid for soliciting the conversion of the convertible securities or the exercise of the warrants; or

(ii) The issuer (or the parent, if the issuer is a majority-owned subsidiary and the parent fully guarantees the securities) has one or more classes of outstanding voting stock and the aggregate market value of the voting stock held by its nonaffiliates is \$50 million or more determined in accordance with the instruction to paragraph (2)(a) above.

(c) *Rights Offerings.* Securities to be offered upon the exercise of outstanding rights granted by the issuer of the securities to be offered, provided such rights are granted on a pro rata basis to all existing security holders of the class of securities to which the rights attach.

(d) *Transactions Involving Dividend or Interest Reinvestment Plans.* Securities of the issuer offered solely to its existing security holders pursuant to a plan established to allow such persons to reinvest dividends or interest paid them on securities issued by the issuer, plus additional cash amounts contributed by the participants of the plan, provided that if any securities to be registered are purchased by the registrant for the account of plan participants, the purchase price for such securities shall not exceed either the current market price at the time of the purchase or an amount determined in accordance with a pricing formula specified in the plan and based upon average or current market prices at the time of the purchase.

(e) *Transactions Involving Secondary Offerings.* Outstanding securities to be offered for the account of any person other than the issuer, including securities acquired by standby underwriters in connection with the call or redemption by the issuer of warrants or a class of convertible securities, if securities of the same class are listed and registered in a national securities exchange or are quoted on the automated quotation system of a national securities association. In addition, Form A may be used by affiliates to register securities for resale pursuant to the conditions specified in General Instruction E to Form S-8 (17 CFR 239.16b).

(f) *Secondary Offerings by Certain Closed End Management Investment Companies.* Form A may be used by closed end management investment companies for the registration of securities under the Securities Act of 1933 only for the purposes specified in paragraphs (2)(d) and (2)(e) above and subject to the applicable requirements of

Section 18(d) of the Investment Company Act of 1940 provided that such company: (i) Is registered as a closed end management investment company under the Investment Company Act of 1940; (ii) has been subject to and has filed all material required to be filed pursuant to Sections 20(a), 30(a) and 30(b) of such Act for a period of a least thirty-six calendar months immediately preceding the filing of the registration statement on this Form; (iii) has filed in a timely manner all reports required to be filed during the twelve calendar months preceding the filing of the registration statement; and (vi) meets the requirements of paragraphs (1)(c) through (e) of the Rule as to the Use of this Form.

(g) *Rights Offerings by Foreign Private Issuers.* A foreign private issuer (as defined in Rule 3b-4(c) of the Exchange Act, 17 CFR 240.3b-4(c)) which satisfies all of the provisions of paragraph (1) of the Rule as to Use of this Form, except the provisions in General Instruction A(1)(a) relating to incorporation and principal business operations, General Instruction A(1)(g) relating to the filing with the Commission of the same type of reports filed by domestic issuers, and in General Instruction A(1)(b)(iii) relating to a report containing the information called for by Rule 14a-3(b), may register rights offerings on this form, provided such foreign issuer:

(i) Furnishes previously or furnishes with the prospectus to all its security holders resident of the United States, including those holding under American Depositary Receipts or similar arrangements, copies of its latest annual report to security holders, if in the English language, and such annual report to security holders or the prospectus contains the issuer's undertaking to send promptly to any such United States holder, upon written request, a copy of the issuer's latest annual report filed with the Commission under the Exchange Act on Form 20-F; or

(ii) Furnishes with the prospectus a copy of its latest annual report filed with the Commission under the Exchange Act on Form 20-F.

B. Application of General Rules and Regulations

Attention is directed to the General Rules and Regulations under the Securities Act, particularly those comprising Regulation C (17 CFR 230.400 to 230.494). That Regulation contains general requirements regarding the preparation and filing of registration statements. Rules 405, 411, 412, 439, and 473 should be especially noted. Notwithstanding Rules 404(c) and 421(c), no table of contents or cross-reference sheet need be included in the prospectus or the registration statement.

C. Documents Comprising Registration Statement

The registration statement shall consist of the facing sheet of the Form, a prospectus containing the information called for by Part I, the information, list of exhibits, and undertaking specified in Part II, signatures, consents of experts, exhibits, and any other information or documents filed or required to be filed as a part of the registration statement.

Part 1. Information Required in Prospectus

Item 1. Distribution Spread

The information called for by the following table shall be given, in substantially the tabular form indicated, on the outside front cover page of the prospectus as to all securities to be registered (estimated, if necessary).

	Price to public	Underwriting discounts and commissions	Proceeds to issuer or other persons
Per unit.....			
Total.....			

Instructions. 1. The term "commissions" is defined in paragraph (17) of Schedule A of the Securities Act. Only commissions paid by the issuer or selling security holders in cash are to be included in the table. Commissions paid by other persons, and other considerations to the underwriters, shall be set forth following the table with a reference thereto in the second column of the table. Any finder's fee or similar payments shall be appropriately disclosed.

2. If it is impracticable to state the price to the public, the method by which it is to be determined shall be explained. In addition, if the securities are to be offered at the market, or if the offering price is to be determined by a formula related to market prices, indicate the market involved and the market price as of the latest practicable date.

3. If any of the securities to be registered are to be offered for the account of security holders, refer on the first page of the prospectus to the information called for by Item 5.

Item 2. Summary Information

Immediately following the cover page of the prospectus, set forth a summary containing the following:

(a) A brief description of the business conducted by the issuer;

(b) A brief description of the material terms and features of the offering;

(c) For the five fiscal years and for any interim periods for which statements of income would be required by Rule 3-02 of Regulation S-X, selected financial data prepared in accordance with Item 10 of Regulation S-K and data concerning net income and net income per share; and

(d) If the proposed offering involves material dilution of the purchasers' interests or of existing shareholders' interests, then such material dilution should be set forth in appropriate tabular form.

Instructions

1. If the issuer has made a material disposition of assets outside the normal course of business after the end of the most recent fiscal year for which information is included in the summary or if an event has occurred or is expected to occur which would require the filing of information pursuant to Rules 3-07 or 3-08 or Regulation S-X, then the issuer shall furnish, as part of or in

addition to the summary, a pro forma condensed balance sheet giving effect to the disposition or acquisition as of the end of the most recent fiscal year and a pro forma summary of operations giving effect to the disposition or acquisition as of the beginning of the most recent fiscal year and through any interim periods shown in the summary.

2. If the offering involves the redemption of outstanding preferred stock or indebtedness, earnings per share data should be furnished to show what the earnings would have been for the latest fiscal year and any subsequent interim period if the redemption had taken place at the beginning of the respective period (or date of issuance of the redeemed security if later).

Item 3. Plan of Distribution

(a) If the securities are to be offered through underwriters, give the names of the principal underwriters, and state the respective amounts underwritten. Identify each such underwriter having a material relationship to the issuer and state the nature of the relationship. State briefly the nature of the obligation of the underwriter(s) to take the securities.

Instruction. All that is required as to the nature of the underwriters' obligation is whether the underwriters are or will be committed to take and to pay for all of the securities if any are taken, or whether it is merely an agency or the type of "best efforts" arrangement under which the underwriters are required to take and pay for only such securities as they may sell to the public. Conditions precedent to the underwriters' taking the securities, including "marketouts," need not be described except in the case of an agency or "best efforts" arrangement.

(b) State briefly the discounts and commissions to be allowed or paid to dealers, including all cash, securities, contracts or other consideration to be received by any dealer in connection with the sale of the securities. If any dealers are to act in the capacity of sub-underwriters and are to be allowed or paid any additional discounts or commissions for acting in such capacity, general statement to that effect will suffice without giving the additional amounts to be sold.

(c) Outline briefly the plan of distribution of any securities to be registered which are to be offered otherwise than through underwriters.

(1) If any securities are to be offered pursuant to dividend or interest reinvestment plans the terms of which provide for the purchase of some securities on the market, state whether the issuer or the participant pays fees, commissions, and expenses incurred in connection with the plan. If the participant will pay such fees, commissions, and expenses, state the anticipated cost to participants by transaction or other convenient reference.

(2) If the securities are to be offered through the selling efforts of brokers or dealers, describe the plan of distribution and the terms of any agreement, arrangement, or understanding entered into with broker(s) or dealer(s) prior to the effective date of the registration statement, including volume limitations on sales, parties to the agreement, and the conditions under which the

agreement may be terminated. If known, identify the broker(s) or dealer(s) who will participate in the offering and state the amount to be offered each.

(d) State the name of the exchange on which the securities are to be offered, if any; if the securities are to be offered in the over-the-counter market, so state. If the registered securities are to be offered in connection with the writing of exchange-traded call options, briefly describe such transactions.

Item 4. Use of Proceeds to Issuer

State the principal purposes for which the net proceeds to the issuer from the securities to be offered are intended to be used, and the approximate amount intended to be used for each such purpose.

Instructions. 1. If any substantial portion of the proceeds has not been allocated for particular purposes, a statement to that effect shall be made together with a statement of the amount of proceeds not so allocated and how the registrant expects to employ such funds not so allocated.

2. Include a statement as to the use of the actual proceeds if they are not sufficient to accomplish the purposes set forth and the order of priority in which they will be applied. However, such statement need not be made if the underwriting arrangements are such that, if any securities are sold to the public, it can be reasonably expected that the actual proceeds of the issue will not be substantially less than the estimated aggregate proceeds to the issuer as shown under Item 1.

3. If any material amounts of other funds are to be used in conjunction with the proceeds, state the amounts and sources of such other funds.

4. If any material part of the proceeds is to be used to discharge indebtedness, describe the terms of such indebtedness. If the indebtedness to be discharged was incurred within one year, describe the use of the proceeds of such indebtedness.

5. If any material amount of the proceeds is to be used to acquire assets, otherwise than in the ordinary course of business, briefly describe and state the cost of the assets. If the assets are to be acquired from affiliates of the issuer or their associates, give the names of the persons from whom they are to be acquired and set forth the principle followed in determining the cost to the issuer.

Item 5. Selling Security Holders

If any of the securities to be registered are to be offered for the account of security holders, name each such security holder, indicate the nature of any position, office, or other material relationship which he has had within the past three years with the issuer or any of its predecessors or affiliates, and state the amount of securities of the class owned by him, the amount to be offered for his account, and the percentage of the class (if one percent or more) to be owned by him after completion of the offering.

Item 6. Description of Securities To Be Registered

(a) *Capital Stock to be Registered.* If capital stock is to be registered, state the title of the class and furnish the information listed in (1)-(5) below. A complete legal description of the securities need not be given.

(1) Outline briefly: (A) Dividend rights; (B) voting rights; (C) liquidation rights; (D) preemptive rights; (E) conversion rights; (F) redemption provisions; (G) sinking fund provisions; and (H) liability to further calls or to assessment by the issuer.

(2) If the rights of holders of such stock may be modified otherwise than by a vote of a majority or more of the shares outstanding, voting as a class, so state and explain briefly.

(3) If preferred stock is to be registered, outline briefly any restriction on the repurchase or redemption of shares by the issuer while there is any arrearage in the payment of dividends or sinking fund installments. If there is no such restriction, so state.

(4) If the rights evidenced by the securities to be registered are materially limited or qualified by the rights of any other class of securities, include such information regarding such other securities as will enable investors to understand the rights evidenced by the securities to be registered. No information need be given, however, as to any class of securities all of which will be redeemed and retired, provided appropriate steps to ensure such redemption and retirement will be taken prior to or upon delivery by the issuer of the securities to be registered.

(5) Briefly describe and discuss any charter or by-law provision or any contractual or other arrangement which (A) restricts the alienability of any securities to be registered; (B) pertains to the classification of the board of directors; (C) operates or could operate to increase the number of shares needed to elect a director, assuming all directors were to be elected at a single meeting; (D) provides that upon the occurrence of any event or condition the securities being registered or other securities within the same class will not have equal voting rights; (E) provides that holders of any other class or series will have a right to disapprove action approved by the holders of the securities to be registered; (F) discriminates against any existing or prospective substantial stockholder of any class of equity securities of the registrant; or (G) has the intent or effect of delaying, deterring or preventing a change in control of the registrant. Such discussion shall describe the purposes, effects, operation, advantages and disadvantages of any such provision or arrangement. A legal opinion, naming counsel, shall be set forth or shall be summarized indicating whether or not such provision or arrangement is both lawful and enforceable in accordance with its terms; and, if such opinion is qualified or conditional, all such qualifications or conditions shall be described.

(b) *Debt Securities to be Registered.* If debt securities are to be registered, state the title of such securities and outline briefly such of the matters listed in (1)-(8) below as are relevant. A complete legal description of the securities need not be given. For purposes solely of this item, debt securities which differ from one another only as to the stated interest rate or the term of maturity shall be regarded as securities of the same class.

(1) Provisions with respect to interest, conversion, maturity, redemption, amortization, sinking fund, or retirement;

(2) Provisions with respect to the kind and priority of any lien securing the issue,

together with a brief identification of the principal properties subject to such lien;

(3) Provisions with respect to the subordination of the rights of holders of the securities registered to other security holders or creditors of the issuer;

(4) Provisions restricting the declaration of dividends or requiring the maintenance of any ratio of assets, the creation or maintenance of reserves, or the maintenance of properties;

(5) Provisions permitting or restricting the issuance of additional securities, the withdrawal of cash deposited against such issuance, the incurring of additional debt, the release or substitution of assets securing the issue, the modification of the terms of the security, and similar provisions. In the case of secured debt, there should be stated: (i) The approximate amount of unbonded bondable property available for use against the issuance of bonds, as of the most recent practicable date, and (ii) whether the securities being registered are to be issued against such property, the deposit of cash, or otherwise. Provisions permitting the release of assets upon the deposit of equivalent funds or the pledge of equivalent property, the release of property no longer required in the business, obsolete property, or property taken by eminent domain, the application of insurance moneys, and similar provisions need not be described.

(6) The name of the trustees and the nature of any material relationship with the issuer or with any of its affiliates; the percentage of securities of the class necessary to require the trustee to take action; and what indemnification the trustee may require before proceeding to enforce the lien.

(7) The general type of event which constitutes a default and whether or not any periodic evidence is required to be furnished as to the absence of default or as to compliance with the terms of the indenture.

(8) Provisions relating to material limitations on or qualifications of the rights evidenced by the securities to be registered. See Item 6(a)(4).

Instruction to Item 6(b). Section 305(a)(2) of the Trust Indenture Act of 1939 shall not be deemed to require the inclusion in the registration statement or in the prospectus of any information not required by this Form.

(c) *Warrants, Rights and Convertible Securities.* If the securities described are to be offered pursuant to warrants, rights, or convertible securities, state: (1) The amount of securities called for by such warrants, convertible securities, or rights; (2) the period during which and the price at which the warrants, convertible securities or rights are exercisable; (3) the amount of warrants, convertible securities or rights outstanding; and (4) any other material terms of such securities.

(d) *Other Securities.* If securities other than capital stock or debt are to be registered, outline briefly the rights evidenced thereby.

Item 7. Additional Information

(a) A statement shall be made that certain information has been incorporated by reference. The issuer may also state, if it so chooses, that specifically described portions of documents which are not incorporated by reference are not a part of the registration

statement. In such case, the description of portions which are incorporated by reference or which are excluded shall be made with clarity and in reasonable detail. The detailed description of all material incorporated by reference may, at the issuer's option, either be included both in the prospectus in response to Item 7 and in Part II of the registration statement or only in Part II.

(b) Describe any and all material changes in the issuer's affairs which have occurred since the end of the latest fiscal year for which certified financial statements were included in the latest annual report to security holders and which have not been described in a report on Form 10-Q (17 CFR 249.308a) or Form 8-K (17 CFR 249.308) filed under the Securities Exchange Act of 1934.

If the registrant has effected or is about to effect a transaction for which information is required by Rules 3-07 or 3-08 of Regulation S-X (17 CFR Part 210), the prospectus must include financial statements meeting the requirements of Regulation S-X for the issuers and its subsidiaries consolidated, including any information required by Rules 3-07 and 3-08.

If there has been a change in accounting principles where such change requires a substantial restatement of financial statements which have not been previously filed in any periodic Exchange Act report, such restated financial statements shall be filed as an exhibit to the registration statement. If any financial information required because of a material disposition of assets outside the normal course of business has not been previously filed in any periodic Exchange Act report, such information shall also be filed as an exhibit to the registration statement. A statement that such information has been filed as an exhibit and a brief description of the subject accounting change or disposition shall be furnished in the prospectus.

(c) Include an undertaking to provide without charge to each person to whom a prospectus is delivered, on the written request of any such person, a copy of any and all of the information which has been incorporated by reference in the registration statement, including any exhibit to the registration statement required by paragraph (b) of this item. Exhibits to such information need not be included in the undertaking. Indicate the name, address, and telephone number of the person to whom such a written request is to be directed.

(d) State that reports, proxy statements, and other information filed by the issuer can be inspected and copied at the public reference facilities maintained by the Commission in Washington, D.C., and at certain of its Regional Offices, and state the current address of each facility (see 17 CFR 200.11(b) and 17 CFR 200.80(c)(1)), and that copies of such material can be obtained from the Public Reference Section of the Commission, Washington, D.C. 20549 at prescribed rates.

(e) Name any national securities exchange on which the issuer's securities are listed and state that reports, proxy statements, and other information concerning the issuer can be inspected at such exchanges.

Part II. Information Not Required in Prospectus

Item 8. Incorporation of Certain Information by Reference

(a) Documents Incorporated by Reference.

The following documents shall be specifically incorporated by reference into the registration statement, by means of a statement to that effect in Part II filed with the Commission:

(1) the issuer's latest Form 10-K filed pursuant to Section 13(a) or 15(d) of the Securities Exchange Act of 1934 which contains certified financial statements for the issuer's latest fiscal year for which a Form 10-K (17 CFR 249.310) was required to have been filed; and

(2) all other reports filed pursuant to Section 13(a) or 15(d) of the Securities Exchange Act of 1934 since the end of the fiscal year covered by the annual report referred to in (a)(1) above.

(b) Effective Date of Documents Incorporated by Reference.

(1) Only for purposes of determining pursuant to Section 11(a) of the Securities Act when a document incorporated by reference pursuant to this Item 8 "became effective," the effective date shall be the date of the document's initial filing with the Commission.

(2) For all other purposes under the Act, including Section 13, the effective date shall be the effective date of the registration statement.

(c) Modified or Superseded Documents.

(1) Any statement contained in a document incorporated or deemed to be incorporated by reference shall be deemed to be modified or superseded for purposes of the prospectus to the extent that a statement contained in the prospectus or in any other subsequently filed document which also is or is deemed to be incorporated by reference modifies or replaces such statement.

(2) The modifying or superseding statement may, but need not, state that it has modified or superseded a prior statement or include any other information set forth in the document which is not so modified or superseded. The making of a modifying or superseding statement shall not be deemed an admission that the modified or superseded statement, when made, constituted an untrue statement of a material fact, an omission to state a material fact necessary to make a statement not misleading, or the employment of a manipulative, deceptive, or fraudulent device, contrivance, scheme, transaction, act, practice, course of business or artifice to defraud, as those terms are used in the Act, the Securities Exchange Act of 1934, the Public Utility Holding Company Act of 1935, the Investment Company Act of 1940, or the rules and regulations thereunder.

Any statement so modified shall not be deemed in its unmodified form to constitute part of the registration statement or prospectus for purposes of the Act. Any statement so superseded shall not be deemed to constitute a part of the registration statement or the prospectus for purposes of the Act.

Instruction. If any accountant, engineer, or any person whose profession gives authority to a statement made by him is named as having prepared or certified any part of the

material incorporated by reference or is named as having prepared or certified a report or valuation for use in connection with any of the material so incorporated, the written consent of such person shall be included in the registration statement. The written consent of persons so named in future material incorporated by reference shall be filed by amendment to the registration statement no later than the date on which such material is filed with the Commission unless express consent to such incorporation by reference is contained in the material incorporated by reference. Attention is directed to Rules 435-439.

Instruction for Items 9 through 11. Items 9 through 11 below need be answered only if the registration statement involves a primary offering of securities in accordance with the criteria in General Instruction A 2(a).

Item 9. Other Expenses of Issuance and Distribution

Furnish a reasonably itemized statement of all expenses in connection with the issuance and distribution of the securities to be registered, other than underwriting discounts and commissions. If any of the securities to be registered are to be offered for the account of security holders, indicate the portion of such expenses to be borne by such security holders.

Instruction. Insofar as practicable, registration fees, federal taxes, state taxes and fees, trustees' and transfer agents' fees, costs of printing and engraving, and legal, accounting, and engineering fees shall be separately itemized. Include as a separate item any premium paid by the issuer or any selling security holder on any policy which insures or indemnifies directors or officers against any liabilities they may incur in connection with the registration, offering, or sale of the securities to be registered. The information may be given as subject to future contingencies. If the amounts of any items are not known, estimates designated as such shall be given.

Item 10. Interest of Experts Named in Registration Statement

If any expert named in the registration statement as having prepared or certified any part thereof was employed for such a purpose on a contingent basis or, at the time of such preparation or certification or at any time thereafter, had a substantial interest in the issuer or any of its parents or subsidiaries or was connected with the registrant or any of its subsidiaries as a promoter, underwriter, voting trustee, director, officer, or employee, furnish a brief statement of the nature of such contingent basis, interest, or connection.

Item 11. Indemnification of Directors and Officers

State the general effect of any charter provisions, bylaws, contract, arrangement, or statute under which any director or officer of the issuer is insured or indemnified in any manner against any liability which he may incur in his capacity as such.

Item 12. Other Documents Filed as a Part of the Registration Statement; Exhibits

The following documents shall be filed as a part of the registration statement and shall be listed in Part II:

(a) Statements of eligibility and qualification of persons designated to act as trustee under an indenture to be qualified under the Trust Indenture Act of 1939;

(b) Subject to the rules regarding incorporation by reference, the exhibits as required by Item 7 of Regulation S-K (17 CFR 229.20); and

(c) Exhibits required by Item 7(b) of this Form.

Instruction. List all exhibits filed with the registration statement and appropriately letter or number each exhibit for convenient reference. Exhibits incorporated by reference may bear the designation given in the previous filing. Where exhibits are incorporated by reference, the reference shall be made in the list of exhibits.

Item 13. Undertaking

(a) The following undertaking, with appropriate modifications to suit the particular case, shall be included in the registration statement if the securities to be registered are to be offered in a continuous offering over an extended period of time:

"The undersigned issuer hereby undertakes: (1) To file any prospectus required by Section 10(a)(3) as a post-effective amendment to this registration statement;

"(2) that for the purpose of determining any liability under the Act each such post-effective amendment and each filing of the issuer's annual report pursuant to Section 13(a) or 15(d) of the Securities Exchange Act of 1934 shall be deemed to be a new registration statement relating to the securities offered therein and the offering of such securities at that time shall be deemed to be the initial bona fide offering thereof; (3) that all such new registration statements will comply with the applicable forms, rules, and regulations of the Commission in effect at the time such post-effective amendments or annual reports are filed; and (4) to remove from registration by means of a post-effective amendment any of the securities being registered which remain unsold at the termination of the offering."

(b) The following undertaking, with appropriate modifications to suit the particular case, shall be included in the registration statement if the securities to be registered are to be offered to existing security holders pursuant to warrants or rights and any securities not taken by security holders are to be reoffered to the public:

"The undersigned issuer hereby undertakes to supplement the prospectus, after the expiration of the subscription period, to set forth the result of the subscription offer, the transactions by the underwriters during the subscription period, the amount of unsubscribed securities to be purchased by the underwriters, and the terms of any subsequent reoffering thereof. If any public offering by the underwriters is to be made in terms differing from those set forth on the cover page of the prospectus, a post-effective amendment will be filed to set forth the terms of such offering."

(c) The following undertaking, with appropriate modifications to suit the particular case, shall be included in the registration statement if the securities to be

registered are to be offered at competitive bidding:

"The undersigned issuer hereby undertakes to file an amendment to the registration statement reflecting the results of bidding, the terms of the reoffering and related matters to the extent required by the applicable form, not later than the first use, authorized by the issuer after the opening of bids, of a prospectus relating to the securities offered at competitive bidding, unless no further public offering of such securities by the issuer and no reoffering of such securities by the purchasers is proposed to be made."

Signatures

Pursuant to the requirements of the Securities Act of 1933, the issuer has duly caused this registration statement to be signed on its behalf by the undersigned, thereunto duly authorized, in the City of _____, State of _____, on _____, 19____.

(Issuer) _____

By (Signature and Title) _____

Pursuant to the requirements of the Securities Act of 1933, this registration statement has been signed by the following persons in the capacities and on the dates indicated.

(Signature) _____

(Title) _____

(Date) _____

Instructions. 1. The registration statement shall be signed by the issuer, its principal executive officer or officers, its principal financial officer, its controller or principal accounting officer, and by at least a majority of the board of directors or persons performing similar functions. If the issuer is a foreign person, the registration statement shall also be signed by its authorized representative in the United States.

2. The name of each person who signs the registration statement shall be typed or printed beneath his signature. Any person who occupies more than one of the specified positions shall indicate each capacity in which he signs the registration statement.

Securities and Exchange Commission

Form B—Registration Statement Under the Securities Act of 1933

(Exact name of issuer as specified in its charter)

(State or other jurisdiction of incorporation or organization)

(Primary Standard Industrial Classification Code number)

(I.R.S. Employer Identification No.)

(Address, including zip code, and telephone number, including area code, of issuer's principal executive offices)

(Name, address, and telephone number of agent for service)

(Approximate date of commencement of proposed sale to the public)

Calculation of Registration Fee

Title of each class of securities to be registered	Amount to be registered	Proposed maximum offering price per unit	Proposed maximum aggregate offering price	Amount of registration fee
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Form B—General Instructions

A. Rule as to Use of Form B.

Any issuer which meets the following conditions may use this Form for registration of securities under the Securities Act of 1933:

(1) The issuer (a) has a class of securities registered pursuant to Section 12(b) of the Securities Exchange Act of 1934; or (b) is organized under the laws of the United States or any State or Territory or the District of Columbia, has its principal business operations in the United States or its Territories and has a class of equity securities registered pursuant to Section 12(g) of the above Act or is required to file reports pursuant to Section 15(d) of the above Act.

(2) The issuer (a) has been subject to the requirements of Section 12 or 15(d) of the Securities Exchange Act of 1934 and has filed all the material required to be filed pursuant to Sections 13, 14 or 15(d) (including Forms 10-K, 10-Q and, if necessary, Form 8-K), as applicable, for a period of at least thirty-six calendar months immediately preceding the filing of the registration statement on this Form; and (b) has filed in a timely manner all reports required to be filed during the twelve calendar months preceding the filing of the registration statement and if the issuer has utilized Rule 12b-25(b) of the Securities Exchange Act of 1934 with respect to a report, that report has *actually* been filed within the time prescribed by that Rule.

(3) The registrant and its subsidiaries have not during the past thirty-six calendar months (a) failed to pay any dividend or sinking fund installment on preferred stock, or (b) defaulted on any installment on material indebtedness for borrowed money or on any rental on a material long-term lease.

(4) The issuer and its subsidiaries consolidated had earnings, after taxes but before extraordinary items and the cumulative effect of a change in accounting principle, for two of the last three fiscal years, including the most recent fiscal year.

(5) An issuer shall be deemed to have met conditions (2), (3), and (4) above if (a) its predecessor and it, taken together, do so, provided that the succession was primarily for the purpose of changing the state of incorporation of the predecessor or forming a holding company and that the assets and liabilities of the successor at the time of succession were substantially the same as those of the predecessor; or (b) if all predecessors met the conditions at the time of succession and the issuer has continued to do so since the succession.

(6) This form may be used for the registration of securities of a majority-owned subsidiary that are fully guaranteed as to principal and interest by its parent if the parent meets the above conditions,

notwithstanding the failure of the subsidiary issuer to meet such conditions. In such an instance, the parent guarantor shall be a co-issuer with the issuer. The annual report to security holders referred to in Item 7(a) of this Form pertains to the report of the parent if such report contains certified financial statements of the issuer.

(7) The issuer does not have any of the following: (a) A decline in income from continuing operations of more than 50% for the past fiscal year as compared to the prior fiscal year; (b) any material uncertainty concerning either its financial position or results of operations which is or will be accompanied by a "subject to" opinion in the independent accountants' report (such as subject to realization of assets, claims under long-term contracts, or the favorable outcome of pending litigation); or (c) any downgrading during the twelve month period preceding the date of filing of a bond rating assigned by a nationally recognized statistical rating agency.

(8) A foreign private issuer (as defined in Rule 3b-4(c) of the Securities Exchange Act of 1934, 17 CFR 240.3b-4(c)), which satisfies all of the provisions in paragraph (1) of this Instruction relating to incorporation and principal business may use this Form provided such foreign issuer is required to file or otherwise files the same reports with the Commission under Section 13(a) or 15(d) of the Act as a domestic issuer.

(9) Issuers are directed to Guide 4 of the Guides for Preparation of Registration Statements (Securities Act Release No. 4938, December 9, 1968 (33 FR 18671), as amended) which interprets Section 6(a) of the Securities Act to limit the types of deferred or extended offerings which may be registered, including those at the market.

B. Application of General Rules and Regulations

Attention is directed to the General Rules and Regulations under the Act, particularly Regulation C (17 CFR 230.400). That Regulation contains general requirements regarding the use of registration forms and the preparation and filing of the registration statement. The definitions contained in Rule 405, should be especially noted.

C. Documents Comprising Registration Statement

The registration statement shall consist of the facing sheet of the Form, a prospectus containing the information specified in Part I; the information, list of exhibits, and undertakings specified in Part II; and signatures, consents of experts, exhibits, and any other information or documents filed or required to be filed as a part of the registration statement.

D. Form and Content of Prospectus

(1) The information set forth in the prospectus should be presented in a clear, concise, and understandable fashion. Avoid unnecessary and irrelevant details, repetition, or the use of unnecessary technical language. The prospectus shall contain the information called for by all of the items of Part I of the Form, except that no reference need be made to inapplicable items, and negative answers to any item may be omitted.

(2) Unless clearly indicated otherwise, information set forth in any part of the prospectus need not be duplicated elsewhere in the prospectus. Where it is deemed necessary or desirable to call attention to such information in more than one part of the prospectus, this may be accomplished by appropriate cross reference.

E. Omission of Information Regarding Foreign Subsidiaries

Information required by any item or other requirement of this Form with respect to any foreign subsidiary may be omitted to the extent that the required disclosure would be detrimental to the registrant. However, financial statements, otherwise required, shall not be omitted pursuant to this instruction. Where information is omitted pursuant to this instruction, a statement shall be made that such information has been omitted and the names of the subsidiaries involved shall be separately furnished to the Commission. The Commission may, in its discretion, call for justification that the required disclosure would be detrimental.

F. Filing of Other Financial Statements in Certain Cases

The Commission may, upon the request of the issuer, and where consistent with the protection of investors, permit the omission of one or more of the financial statements herein required or the filing in substitution thereof of appropriate statements of comparable character. The Commission may also by informal written notice require the filing of other financial statements in addition to, or in substitution for, the statements herein required in any case where such statements are necessary or appropriate for an adequate presentation of the financial condition of any person whose financial statements are required, or whose statements are otherwise necessary for the protection of investors.

G. Preparation of Part II

Part II of the registration statement shall contain the numbers and captions of the items in Part II of the Form but the text of the items and the instructions thereto are to be omitted. The answers to the items are to be so prepared as to indicate to the reader the coverage of the items without the necessity of referring to the text of the items or the instructions thereto. If the information required by any item of Part II is completely disclosed in the prospectus, such item may be answered by a reference to the specified page or caption of the prospectus which contains such information. If any item of Part II is

inapplicable or the answer thereto is in the negative, a statement to that effect shall be made in answer to the item.

Part I. Information Required in the Prospectus

Item 1. Distribution Spread

[Same as Item 1, Proposed Form A.]

Item 2. Summary Information

[Same as Item 2, Proposed Form A.]

Item 3. Plan of Distribution

[Same as Item 3, Proposed Form A except that this Form B includes the following additional provision.]

4. If the securities are to be offered on a best efforts basis, the cover page should also set forth the termination date of the offering, any minimum required purchase and any arrangements to place the funds received in an escrow, trust, or similar arrangement. The following tabular presentation of the total maximum and minimum securities to be offered should be combined with the table required above:

	Price to public	Underwriting discounts and commissions	Proceeds to issuer or other persons
Total minimum			
Total maximum			

Item 4. Use of Proceeds to Issuer

[Same as Item 4, Proposed Form A.]

Item 5. Selling Security Holders

[Same as Item 5, Proposed Form A.]

Item 6. Description of Securities to be Registered

[Same as Item 6, Proposed Form A.]

Item 7. Information with Respect to the Issuer

Provide the information called for by either paragraph (a) or paragraph (b) of this item. However, if (1) the issuer has effected or is about to effect a transaction for which information is required by Rule 3-07 or Rule 3-08 of Regulation S-X; or (2) the financial statements in the issuer's latest annual report to security holders do not reflect the results of a change in accounting principles where such change requires a substantial retroactive restatement of financial statements; or (3) the financial statements in the issuer's latest annual report to security holders do not reflect the results of a material disposition of assets outside the normal course of business, the registrant shall not provide prospectus information in the manner allowed by subparagraph (a) below.

(a) If the issuer elects to deliver this prospectus together with the issuer's latest annual report to security holders, which at the time of original preparation met the requirements of either Rule 14a-3 or Rule 14c-3:

(1) Indicate that the prospectus is accompanied by the issuer's latest annual report to security holders.

(2) Provide financial and other information with respect to the issuer in the form required by Part I of Form 10-Q (17 CFR 239.308a) as of the end of the most recent fiscal quarter

which ended after the end of the latest fiscal year for which certified financial statements were included in the latest report to security holders and more than forty-five days prior to the effective date of this registration statement (or as of a more recent date) by one of the following means:

- (i) Including such information in the prospectus; or
- (ii) Providing without charge to each person to whom a prospectus is delivered a copy of the issuer's latest form 10-Q; or
- (iii) Providing without charge to each person to whom a prospectus is delivered a copy of the issuer's latest quarterly report which was delivered to its shareholders and which included the required financial information.

Instruction. Form 10-Q(s) which are to accompany the prospectus should be filed and quarterly reports to security holders which are to accompany the prospectus should be delivered to the staff ten days prior to the expected effective date of the registration statement.

(3) Describe any and all material changes in the issuer's affairs which have occurred since the end of the latest fiscal year for which certified financial statements were included in the latest annual report to security holders and which were not described in a Form 10-Q delivered with the prospectus in accordance with subparagraph (a)(2)(ii) of this item.

(b) If the issuer does not elect to deliver its latest annual report to security holders:

(1) Describe the business of the issuer, its subsidiaries and its predecessors in reasonable detail at least to the same extent as would be required in the preparation of an annual report as required by Rule 14a-3 or Rule 14c-3 under the Securities Exchange Act of 1934.

Instruction. The description in the prospectus should be in comparable detail to the presentation used in the issuer's most recent annual report to security holders but the issuer should take into account changes in its business which have occurred between the date of the most recent annual report to security holders and the effective date of the registration statement.

(2) Include financial statements meeting the requirements of Regulation S-X (17 CFR Part 210) for the registrant and its subsidiaries consolidated, including any information required by Rules 3-07 and 3-08 of Regulation S-X.

(3) Provide information relating to industry segments, classes of similar products or services, foreign and domestic operations, and export sales in accordance with the provisions of paragraphs (b), (c)(1)(i) and (d) of Item 1 of Regulation S-K (17 CFR 229.20).

(4) Provide information required by Item 9 of Regulation S-K or equivalent information depending on the type of security being registered.

(5) Furnish management's discussion and analysis of the issuer's financial condition and results of operations in accordance with Item 11 of Regulation S-K and, if applicable, in accordance with Item 2 of Part I of Form 10-Q. A single presentation of the information required by this Item should be made.

(6) Furnish supplementary financial information in accordance with Item 12 of Regulation S-K.

(7) If the issuer engages in oil and gas related operations which exceed the criteria for exemption specified in Rule 3-18(k) of Regulation S-X, furnish the disclosure with respect to those operations which is required by Regulation S-X and Regulation S-K to be presented in Form 10-K (17 CFR 249.310).

Item 8. Other Information

(a) A statement shall be made that certain information has been incorporated by reference, including but not limited to specified portions of the documents which accompany the prospectus to the extent that those portions have been incorporated or have been duplicated in filed documents. The issuer may also state, if it so chooses, that specifically described portions of documents accompanying the prospectus are not incorporated by reference and are not a part of the registration statement. In such case, the description of portions which are incorporated by reference or which are excluded shall be made with clarity and in reasonable detail. The detailed description of all material incorporated by reference, at the issuer's option, either may be included both in the prospectus and in Part II of the registration statement in response to Item 10 or may be included only in Part II.

(b) State that reports, proxy statements, and other information filed by the issuer can be inspected and copied at the public reference facilities maintained by the Commission in Washington, D.C., and at certain of its Regional Offices, and state the current address of each such facility (see 17 CFR 200.11(b) and 17 CFR 200.80(c)(1)), and that copies of such material can be obtained from the Public Reference Section of the Commission, Washington, D.C. 20549 at prescribed rates.

(c) Name any national securities exchange on which the issuer's securities are listed, and state that reports, proxy statements, and other information concerning the issuer can be inspected at such exchanges.

(d) Include an undertaking to provide without charge to each person to whom a prospectus is delivered, on the written request of any such person, a copy of any and all of the information which has been incorporated by reference (and is not delivered with the prospectus) in the registration statement, other than exhibits to such information. Indicate the name and address of the person to whom such a written request is to be directed.

Part II. Information Not Required in Prospectus

Item 9. Incorporation of Certain Information by Reference

[Same as Item 8, Proposed Form A, but with the following addition.]

(a)(3). If the issuer uses the option available in Item 7(a) of this Form:

(i) Description of business furnished in accordance with the provisions of Rule 14a-3(b)(5) under the Securities Exchange Act of 1934 (17 CFR 240.14a-3(b)(5));

(ii) Certified financial statements furnished in accordance with the provisions of Rule 14a-3(b);

(iii) Information relating to industry segments, classes of similar products or services, foreign and domestic operations, and export sales furnished in accordance with the provisions of paragraphs (b), (c)(1)(i) and (d) of Item 1 of Regulation S-K (17 CFR 229.20);

(iv) Market for common stock and related security holder matters furnished in accordance with Item 9 of Regulation S-K;

(v) Selected financial data furnished in accordance with Item 10 of Regulation S-K; and

(vi) Management's discussion and analysis of financial condition and results of operations furnished in accordance with Item 11 of Regulation S-K.

Item 10. Other Expenses of Issuance and Distribution

[Same as Item 9, Proposed Form A.]

Item 11. Interest of Experts Named in Registration Statement

[Same as Item 10, Proposed Form A.]

Item 12. Indemnification of Directors and Officers

[Same as Item 8, Proposed Form A.]

Item 13. Other Documents Filed as a Part of the Registration Statement; Exhibits

[Same as Items 12 (a) and (b), Proposed Form A.]

Item 15. Undertakings

[Same as Item 13, Proposed Form A, except this Form B also includes the following additional provision.]

(d) The registration statement shall contain an undertaking substantially as follows:

"The undersigned issuer hereby undertakes to deliver or cause to be delivered with the

prospectus, to each person to whom the prospectus is sent or given, the issuer's latest annual report to security holders furnished pursuant to and meeting the requirements of Rule 14a-3 or Rule 14c-3."

However, if the issuer elects the option provided in Item 7(b) of this Form, then this undertaking may be omitted.

Signatures

[Same as Signature provisions in Proposed Form A.]

Securities and Exchange Commission

Form C—Registration Statement Under the Securities Act of 1933

(Exact name of issuer as specified in its charter)

(State or other jurisdiction of incorporation or organization)

(Primary Standard Industrial Classification Code No.)

(I.R.S. Employer Identification No.)

(Address, including zip code, and telephone number, including area code, of issuer's principal executive offices)

(Name, address, and telephone number of agent for service)

(Approximate date of commencement of proposed sale to the public)

Calculation of Registration Fee

Title of each class of securities to be registered	Amount to be registered	Proposed maximum offering price per unit	Proposed maximum aggregate offering price	Amount of registration fee
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Form C—General Instructions

A. Rule as to Use of Form C.

Form C shall be used for registration under the Securities Act of 1933 of securities of all issuers for which no other form is authorized or prescribed, except that this Form shall not be used for securities of foreign governments or political sub-divisions thereof.

B. Application of General Rules and Regulations.

Attention is directed to the General Rules and Regulations under the Act, particularly those comprising Regulation C (17 CFR 230.400). That regulation contains general requirements regarding the preparation and filing of the registration statement. The definitions contained in Rule 405 should be especially noted.

C. Documents Comprising Registration Statement.

The registration statement shall consist of the facing sheet of the Form; a prospectus containing the information called for by Part

I, the information, list of exhibits, financial statement schedules, and undertakings specified in Part II; and the signatures, consents of experts, exhibits, and any other information or documents filed or required to be filed as a part of the registration statement.

D. Form and Content of Prospectus.

(1) The information set forth in the prospectus should be presented in clear, concise, understandable fashion. Avoid unnecessary and irrelevant details, repetition or the use of unnecessary technical language. The prospectus shall contain the information called for by all of the items of Part I of the Form, except that no reference need be made to inapplicable items, and negative answers to any item may be omitted.

(2) Unless clearly indicated otherwise, information set forth in any part of the prospectus need not be duplicated elsewhere in the prospectus. Where it is deemed necessary or desirable to call attention to

such information in more than one part of the prospectus, this may be accomplished by appropriate cross reference. In lieu of restating information in the form of notes to the financial statements, references should be made to other parts of the prospectus where such information is set forth.

E. Omission of Information Regarding Foreign Subsidiaries.

Information required by any item or other requirement of this Form with respect to any foreign subsidiary may be omitted to the extent that the required disclosure would be detrimental to the registrant. However, financial statements, otherwise required, shall not be omitted pursuant to this instruction. Where information is omitted pursuant to this instruction, a statement shall be made that such information has been omitted and the names of the subsidiaries involved shall be separately furnished to the Commission. The Commission may, in its discretion, call for justification that the required disclosure would be detrimental.

F. Exchange Offers

If any of the securities being registered are to be offered in exchange for securities of any other issuer, the prospectus shall also include the information which would be required by Item 7 if the securities of such other issuer were registered on this Form. There shall also be included the information concerning such securities of such other issuer which would be called for by Item 6 if such securities were being registered. In connection with this instruction, reference is made to Rule 409.

G. Deferred or Extended Offerings

Issuers are directed to Guide 4 of the Guides for Preparation of Registration Statements (Securities Act Release No. 4936, December 9, 1968 (33 FR 18671), as amended) which interprets Section 6(a) of the Securities Act to limit the types of deferred or extended offerings which may be registered, including those at the market.

H. Preparation of Part II

(1) Part II of the registration statement shall contain the numbers and captions of the items in Part II of the Form, but the text of the items may be omitted provided the answers are so prepared as to indicate to the reader the coverage of the items without the necessity of referring to the text of the items or the instructions thereto. If the information required by any item of Part II is completely disclosed in the prospectus, reference may be made to the specific page or caption of the prospectus which contains such information.

(2) If the information required by Part II has been given in a registration statement, application for registration or annual report filed with the Commission pursuant to any act administered by the Commission and no additional information is needed to make the information previously filed accurate, complete, and up-to-date, the required information may be incorporated by a specific reference to the page or pages of the previous filing which contains such information.

Part I. Information Required in Prospectus**Item 1. Distribution spread**

[Same as Item 1, Proposed Form A.]

Item 2. Summary Information

[Same as Item 2, Proposed Form A.]

Item 3. Plan of Distribution

[Same as Item 3, Proposed Form B.]

Item 4. Use of Proceeds to Issuer

[Same as Item 4, Proposed Form A.]

Item 5. Selling Security Holders

[Same as Item 5, Proposed Form A.]

Item 6. description of Securities to be Registered

[Same as Item 6, Proposed Form A.]

Item 7. Information With Respect to the Issuer

(a) Provide the following information with respect to the issuer:

(1) Information required by Item 1 of Regulation S-K (17 CFR 229.20). Description of Business;

(2) Information required by Item 2 of Regulation S-K, Description of Property;

(3) Information required by Item 5 of Regulation S-K, Legal Proceedings;

(4) Information required by Item 9 of Regulation S-K or equivalent information depending on the type of security being registered;

(5) Financial statements meeting the requirements of Regulation S-X (17 CFR Part 210) [Schedules required under Regulation S-X shall be filed as "Financial Statement Schedules" pursuant to Item 14, Exhibits and Financial Statement Schedules, of this Form];

(6) Information required by Item 11 of Regulation S-K, Management's Discussion and Analysis of Financial Condition and Result of Operations, and, if applicable, information required by Item 2 of Part I of Form 10-Q (Management's Discussion and Analysis of Quarterly Data) [A single presentation of the information required by this subparagraph should be made]; and

(7) Information required by Item 12 of Regulation S-K, Supplementary Financial Information.

(b) Issuers who (1) have had a change in control (as defined by Rule 405(f)) within the last three years; or (2) have not been subject to the reporting requirements of Sections 13(a) or 15(d) of the Securities Exchange Act of 1934 for the last three years; or (3) are foreign issuers which are required to report on Form 20-F (17 CFR 249.220f) shall provide the following information in addition to that required by paragraph (a) of this item:

(1) Information required by Item 3 of Regulation S-K, Directors and Executive Officers;

(2) Information required by Item 6 of Regulation S-K, Security Ownership of Certain Beneficial Owners and Management; and

(3) Information required by Item 4 of Regulation S-K, Management Remuneration and Transactions.

Instruction. Any issuer not required to include the information required by subparagraph (b) of this item in its prospectus may do so at its option, in which case incorporation by reference to the Form

10-K (17 CFR 249.310) would not be required. See Item 9.

Item 8. Additional Information

If the issuer is subject to the reporting requirements of Sections 13(a) or 15(d) of the Securities Exchange Act of 1934:

(a) A statement shall be included on the outside front cover page or on the inside front cover page of the prospectus that the issuer is subject to the informational requirements of the Securities Exchange Act of 1934 and in accordance therewith files reports and other information with the Securities and Exchange Commission. If Item 7(b) is inapplicable to the registrant and the information called for by Item 7(b) is not included in the prospectus, provide a statement that the information, as of particular dates, concerning directors and officers, their remuneration, options granted to them, the principal holders of securities of the issuer and any material interest of such persons in transactions with the issuer is disclosed either in proxy statements or in information statements filed under Section 14 of the Securities Exchange Act of 1934 or in Forms 10-K (17 CFR 249.310). Include, if applicable, an undertaking to provide without charge to each person to whom a prospectus is delivered, upon written request of such person, a copy of any Item 7(b) information that has been incorporated by reference. Indicate the name, address, and telephone number of the person to whom such a written request is to be directed.

(b) The statement shall also indicate that such reports, proxy statements, and other information can be inspected and copied at the public reference facilities maintained by the Commission in Washington, D.C. and at certain of its Regional Offices, stating the current address of each such facility (see 17 CFR 200.11(b) and 17 CFR 200.80(c)(1)), and that copies of such material can be obtained from the Public Reference Section of the Commission at Washington, D.C. 20549 at prescribed rates. In addition, name any national securities exchange on which the issuer's securities are listed, and state that reports, proxy statements, and other information concerning the issuer can be inspected at such exchanges.

Part II. Information Not Required in Prospectus**Item 9. Incorporation by Reference**

(a) If information called for by Item 7(b) of this Form is not required to be included in the prospectus, and it is not included therein, Item 4 of Part I, Security Ownership of Certain Beneficial Owners and Management, and all of Part III of the issuer's latest Form 10-K (17 CFR 249.310) shall be incorporated by reference into the registration statement by means of a statement to that effect in Part II filed with the Commission.

(b) *Effective Date of Documents Incorporated by Reference.*

(1) Only for purposes of determining pursuant to Section 11(a) of the Securities Act when a document incorporated by reference pursuant to this Item 8 "became effective," the effective date shall be the date of the document's initial filing with the Commission.

(2) For all other purposes under the Act, including Section 13, the effective date shall

be the effective date of the registration statement.

(c) *Modified or superseded documents.*

(1) Any statement contained in a document incorporated or deemed to be incorporated by reference shall be deemed to be modified or superseded for purposes of the prospectus to the extent that a statement contained in the prospectus or in any other subsequently filed document which also is or is deemed to be incorporated by reference modifies or replaces such statement.

(2) The modifying or superseding statement may, but need not, state that it has modified or superseded a prior statement or include any other information set forth in the document which is not so modified or superseded. The making of a modifying or superseding statement shall not be deemed an admission that the modified, or superseded statement, when made, constituted an untrue statement of a material fact, a statement false or misleading with respect to any material fact, an omission to state a material fact necessary to make a statement not misleading, or the employment of a manipulative, deceptive, or fraudulent device, contrivance, scheme, transaction, act, practice, course of business or artifice to defraud, as those terms are used in the Act, the Securities Exchange Act of 1934, the Public Utility Holding Company Act of 1935, the Investment Company Act of 1940, or the rules and regulations thereunder.

Any statement so modified shall not be deemed in its unmodified form to constitute part of the registration statement or prospectus for purposes of the Act. Any statement so superseded shall not be deemed to constitute a part of the registration statement or the prospectus for purposes of the Act.

Item 10. Other Expenses of Issuance and Distribution

[Same as Item 9, Proposed Form A.]

Item 11. Interest of Experts Named in Registration Statement

[Same as Item 10, Proposed Form A.]

Item 12. Identification of Directors and Officers

[Same as Item 11, Proposed Form A.]

Item 13. Other Documents Filed as a Part of the Registration Statement; Exhibits and Financial Statement Schedules

[Same as Item 12, Proposed Form A, except this Form C substitutes the following provision for paragraph (c) of the Form A item.]

(c) Financial statement schedules required by Regulation S-X and Item 7(a)(5) of this Form. These schedules shall be lettered or numbered in the manner described for exhibits in paragraph (a).

Item 14. Recent Sales of Unregistered Securities

Furnish the following information as to all securities of the registrant sold by the registrant within the past three years which were not registered under the Securities Act of 1933. Include sales of reacquired securities, as well as new issues, securities issued in exchange for property, services, or other securities, and new securities resulting from the modification of outstanding securities.

(a) Give the date of sale and the title and amount of securities sold.

(b) Give the names of the principal underwriters, if any. As to any securities sold not publicly offered, name the persons or identify the class of persons to whom the securities were sold.

(c) As to securities sold for cash, state the aggregate offering price and the aggregate underwriting discounts or commissions. As to any securities sold otherwise than for cash, state the nature of the transaction and the nature and aggregate amount of consideration received by the registrant.

(d) Indicate the section of the Act or the rule of the Commission under which exemption from registration was claimed and state briefly the facts relied upon to make the exemption available.

Instructions. 1. Information need not be set forth as to notes, drafts, bills of exchange, or bankers' acceptances which mature not later than one year from the date of issuance.

2. If the sales were made in a series of transactions, the information may be given by such totals and periods as will reasonably convey the information required.

Item 15. Undertakings

[Same as Item 13, Proposed Form A.]

Signatures

[Same as Signature provision in Proposed Form A.]

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

2. By amending § 230.170 to read as follows (► ◄ arrows indicate addition):

§ 230.170 Prohibition of use of certain financial statements.

Financial statements which purport to give effect to the receipt and applicant of any part of the proceeds from the sale of securities for cash shall not be used unless such securities are to be offered through underwriters and the underwriting arrangements are such that the underwriters are or will be committed to take and pay for all of the securities, if any are taken, prior to or within a reasonable time after the commencement of the public offering, or if the securities are not so taken to refund to all subscribers the full amount of all subscription payments made for the securities. ► However, the above sentence is not applicable to financial statements that are required by the prospectus summary item of a registration statement form. ◄ The caption of any such financial statement shall clearly set forth the assumptions upon which such statement is based. The caption shall be in type at least as large as that used generally in the body of the statement.

(Secs. 6, 7, 10, 19(a), 48 Stat. 78, 81, 85; secs. 205, 209, 48 Stat. 906, 908; secs. 8, 68 Stat. 685; sec. 1, 79 Stat. 1051; sec. 308(a)(2), 90 Stat. 57; 15 U.S.C. 77f, 77g, 77j, 77(s)(a))

Authority

These forms are being proposed pursuant to Sections 6, 7, 10 and 19(a) of the Securities Act of 1933.

By the Commission.

George A. Fitzsimmons,

Secretary.

September 2, 1980.

BILLING CODE 8010-01-M

APPENDIX I

PART 1

PROFILE OF FORM S-16 OFFERINGS AND ISSUERS
MAY 1978 - JUNE 1980

Prepared by the Directorate of Economic and Policy Analysis

T.1 - TYPE OF SECURITY

	May 1978 - Jan. 1979		Feb. 1979 - Sept. 1979		Oct. 1979 - June 1980	
	Number of Offerings	Percent of Offerings	Number of Offerings	Percent of Offerings	Number of Offerings	Percent of Offerings
DEBT	24	40.0%	64	50.0%	156	45.5%
STOCK	34	56.7	49	38.3	174	50.7
OTHER	2	3.3	15	11.7	13	3.8
TOTALS	60	100.0%	128	100.0%	343	100.0%

T.2 - INDUSTRY OF ISSUER

EXTRACTIVE	2	4.0%	3	3.1%	11	4.5%
MANUFACTURING	13	26.0	31	32.3	103	41.7
TRANSPORTATION	5	10.0	1	1.0	5	2.0
COMMUNICATION	1	2.0	4	4.2	12	4.9
UTILITIES	16	32.0	26	27.1	51	20.6
FINANCE	5	10.0	22	22.9	29	11.7
MISCELLANEOUS	8	16.0	9	9.4	36	14.6
TOTAL	50	100.0%	96	100.0%	247	100.0%

T.3 - TIME IN REGISTRATION

0-1 Week	5	8.6%	25	19.7%	69	20.2%
1-2 Weeks	15	25.9	43	33.9	111	32.5
2-3 Weeks	13	22.4	25	19.7	62	18.1
3-4 Weeks	11	19.0	22	17.3	36	10.5
4-6 Weeks	8	13.8	5	3.9	37	10.8
6-8 Weeks	2	3.4	4	3.1	13	3.8
8+ Weeks	4	6.9	3	2.4	14	4.1
TOTAL	58	100.0%	127	100.0%	342	100.0%

NOTE: (1) The total number of offerings varies from table to table due to the occasional incidence of missing data which caused some of the offerings to be excluded from certain tables. Offerings are grouped into time periods based upon filing date. Tabulations exclude extended offerings (i.e., employee savings and thrift plans, stock purchase plans, dividend reinvestment plans and American depository receipts), rights and warrants offerings, identified wholly owned subsidiaries, and secondary offerings. The number of offerings and the number of issuers do not coincide because issuers who made more than one offering during the period are accounted for as single issuers.

(2) In many cases, the time in registration depends upon the registrant's own time schedule.

FORMS-16 Tables (continued)

T.4 - AMOUNT OF OFFERING

(\$000's, except for number of offerings)

	MAY 78 - JAN. 79	FEB. 79 - SEPT. 79	OCT. 79 - JUNE 80
<u>DEBT ISSUES</u>			
NO. OF OFFERINGS	24	64	156
MEDIAN	100,000	100,000	99,200
MEAN	115,493	124,683	108,027
MINIMUM	24,610	8,505	2,500
MAXIMUM	500,000	498,125	600,000
STANDARD DEVIATION	92,587	94,050	90,430
<u>EQUITY ISSUES</u>			
NO. OF OFFERINGS	34	49	174
MEDIAN	23,550	25,000	15,000
MEAN	31,732	42,516	33,742
MINIMUM	164	126	8
MAXIMUM	135,250	328,000	334,028
STANDARD DEVIATION	32,642	57,621	53,426
<u>OTHER ISSUES</u>			
NO. OF OFFERINGS	2	15	13
MEDIAN	110,038	100,000	60,000
MEAN	110,038	128,179	167,600
MINIMUM	21,249	35,000	349
MAXIMUM	198,828	250,000	732,087
STANDARD DEVIATION	125,567	61,915	258,181

T.5 - ANNUAL REVENUES OF ISSUERS ^{1/}

(\$000,000's, except for number of offerings)

	MAY 78 - JAN. 79	FEB. 79 - SEPT. 79	OCT. 79 - JUNE 80
NO. OF ISSUERS	50	96	237
MEDIAN	580	869	773
MEAN	1,298	1,947	1,861
MINIMUM	27	6	9
MAXIMUM	6,339	21,076	44,488
STANDARD DEVIATION	1,623	3,214	3,835

^{1/} Most recent fiscal year prior to offering.

FORM S-16 TABLES (continued)

T.6 - ANNUAL EARNINGS OF ISSUERS 2/

(\$000,000's, except number of offerings)

	MAY 78 - JAN. 79	FEB. 79 - SEPT. 79	OCT. 79 - JUNE 80
NO. OF ISSUERS	50	96	237
MEDIAN	60	85	66
MEAN	92	162	155
MINIMUM	0	1	(121)
MAXIMUM	395	3,111	8,767
STANDARD DEVIATION	92	342	583

T.7 - ANNUAL TRADING VOLUME OF ISSUERS' COMMON STOCK

(000's, except number of offerings)

NO. OF ISSUERS	49	91	238
MEDIAN	5,271	5,920	4,415
MEAN	8,242	8,306	7,507
MINIMUM	31	3	3
MAXIMUM	39,292	46,182	47,610
STANDARD DEVIATION	8,602	8,561	8,688

T.8 - SHAREHOLDERS OF ISSUERS' COMMON STOCK 3/

NO. OF ISSUERS	46	83	210
MEDIAN	30,340	22,001	16,772
MEAN	46,155	55,522	55,439
MINIMUM	2,630	1,025	826
MAXIMUM	251,516	580,572	2,939,090
STANDARD DEVIATION	58,533	90,030	207,748

2/ Most recent fiscal year prior to offerings.

3/ Excludes companies not listed by Moody's Investors Services, Inc.

Source: Moody's Investors Service, Inc. (various manuals) and
 Registered Offerings Statistical File
 Directorate of Economic and Policy Analysis
 Securities and Exchange Commission

PROFILE OF TWENTY-FIVE LARGEST AND TWENTY-FIVE
SMALLEST FORM S-16 ISSUERS RANKED ON THE BASIS
OF ANNUAL REVENUE
MAY 1978 - JUNE 1980

T.1 - TYPE OF SECURITY

	May 1978 - Twenty-Five Largest	Jan. 1979 Twenty-Five Smallest	Feb. 1979 - Twenty-Five Largest	Sept. 1979 Twenty-Five Smallest	Oct. 1979 - Twenty-Five Largest	June 1980 Twenty-Five Smallest
DEBT	13	5	17	6	18	0
STOCK	11	19	4	16	6	23
OTHER	1	1	4	3	1	2
TOTAL	25	25	25	25	25	25

T.2 - INDUSTRY OF ISSUER

EXTRACTIVE	0	2	0	2	0	5
MANUFACTURING	9	4	14	7	14	13
TRANSPORTATION	1	4	0	0	0	0
COMMUNICATION	1	0	1	1	3	1
UTILITIES	7	9	3	9	1	1
FINANCE	2	3	5	5	3	2
MISCELLANEOUS	5	3	2	1	4	3
TOTAL	25	25	25	25	25	25

T.3 - TIME IN REGISTRATION

0 - 1 week	2	4	9	3	10	0
1 - 2 Weeks	7	5	9	6	5	4
2 - 3 Weeks	8	3	3	4	2	6
3 - 4 Weeks	4	3	3	7	3	3
4 - 6 Weeks	3	5	1	2	2	5
6 - 8 Weeks	0	2	0	2	2	2
8+ Weeks	1	3	0	1	1	5
TOTAL	25	25	25	25	25	25

NOTE: (1) Offerings are grouped into time periods based upon filing date. Tabulations exclude identified wholly owned subsidiaries and issuers of extended offerings (i.e., employee savings and thrift plans, stock option plans, stock purchase plans, dividend re-investment plans and American depository receipts), rights and warrants offerings, and secondary offerings.

(2) In many cases, the time in registration depends upon the registrant's own time schedule.

FORM S-16 Tables (continued)

T.4 - AMOUNT OF OFFERING (\$000's)

	May 78 - Twenty-Five Largest	Jan. 79 Twenty-Five Smallest	Feb. 79 - Twenty-Five Largest	Sept. 79 Twenty-Five Smallest	Oct. 79 - Twenty-Five Largest	June 80 Twenty-Five Smallest
MEDIAN	99,500	21,249	150,000	25,000	150,000	1,970
MEAN	98,473	26,890	162,163	40,802	172,029	35,457

T.5 - ANNUAL REVENUES OF ISSUERS ^{1/} (\$000,000's)

MEDIAN	1,505	227	3,526	214	6,622	53
MEAN	2,349	247	5,454	212	9,353	49

T.6 - ANNUAL EARNINGS OF ISSUERS ^{1/} (\$000,000's)

MEDIAN	119	32	230	28	420	4
MEAN	148	33	429	31	709	7

T.7 - ANNUAL TRADING VOLUME OF ISSUERS' COMMON STOCK (000's)

MEDIAN	6,723	2,812	13,982	1,181	15,269	1,429
MEAN	11,869	6,869	15,576	2,165	16,437	2,059

T.8 - SHAREHOLDERS OF ISSUERS' COMMON STOCK

MEDIAN	42,072	16,137	59,712	8,891	75,782	1,831
MEAN	70,569	23,775	122,988	18,962	215,548	2,130

^{1/} For the most recent fiscal year prior to offering.

SOURCE: Moody's Investors Services, Inc. (various manuals) and
Registered Offerings Statistical File
Directorate of Economic and Policy Analysis
Securities and Exchange Commission