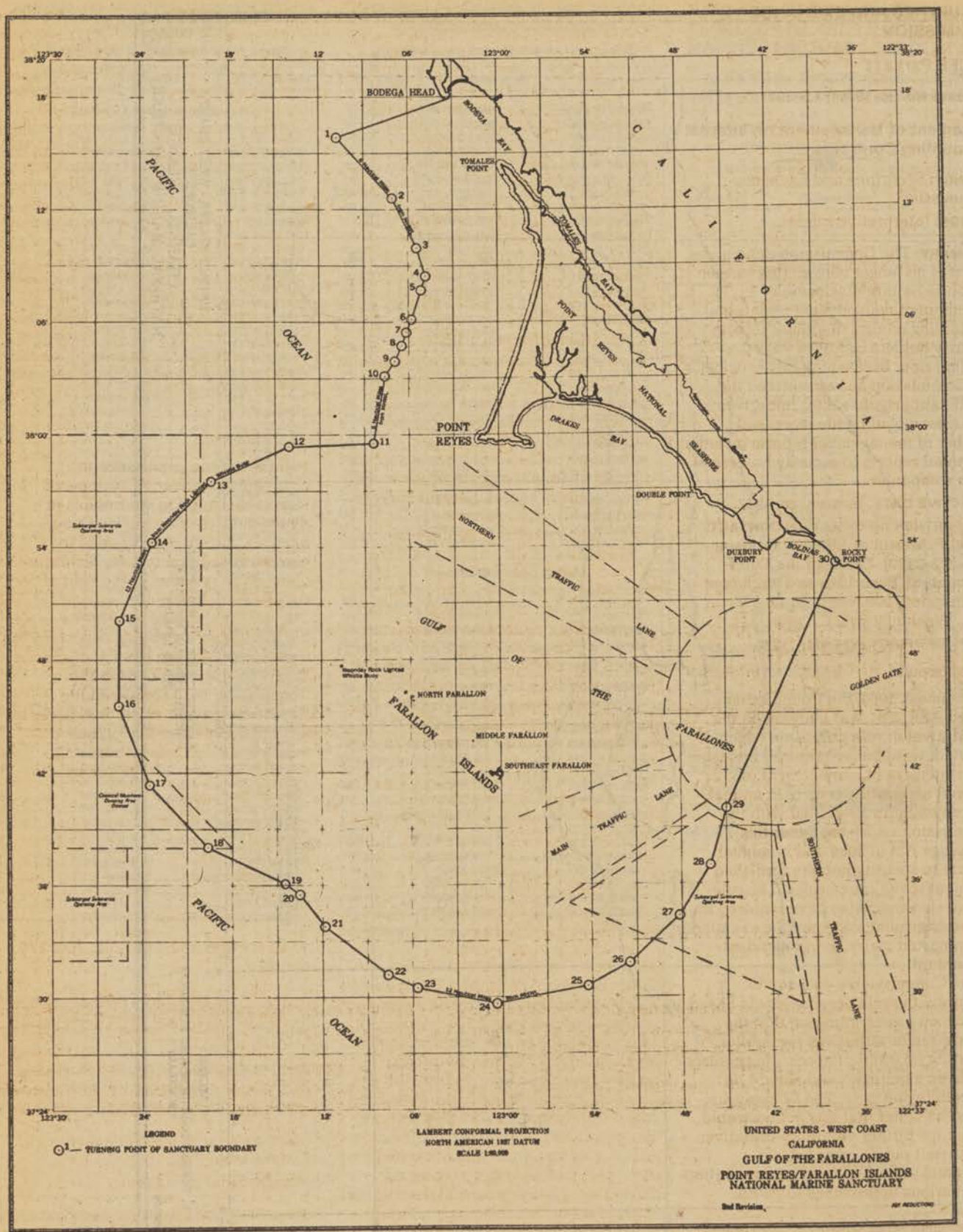

[FR Doc. 82-1475 Filed 2-3-82; 8:45 am]
BILLING CODE 3510-08-C

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 211

[Release No. 34-18451; AS-305]

Statement of Management on Internal Accounting Control

AGENCY: Securities and Exchange Commission.

ACTION: Interpretive release.

SUMMARY: The Commission announces that it is no longer considering further action to require disclosure of a statement of management on internal accounting control in annual reports to security holders or filings with the Commission. In reaching this conclusion the Commission has considered the significant private-sector initiatives in this area, including the increased number of management reports included in annual reports to security holders of large companies.

EFFECTIVE DATE: January 28, 1982.

FOR FURTHER INFORMATION CONTACT: David F. Martin or Edmund Coulson (202-272-2130), Office of the Chief Accountant, Securities and Exchange Commission, 500 North Capitol Street NW., Washington, D.C. 20549.

SUPPLEMENTARY INFORMATION:

I. Background

On June 6, 1980, the Commission issued ASR 278* that announced the withdrawal of rule proposals which, if adopted, would have required inclusion of a statement of management on internal accounting control in annual reports on Form 10-K filed with the Commission under the Securities Exchange Act of 1934 and in annual reports to security holders furnished pursuant to the proxy rules. The rule proposals would also have required that the management statement be examined and reported on by an independent accountant.

The Commission's decision to withdraw the rule proposals was based, in part, on a determination that the private-sector initiatives for public reporting on internal accounting control had been significant and should be allowed to continue. The Commission stated its belief that this action would encourage further voluntary initiatives and permit public companies a maximum of flexibility in experimenting with various approaches to public reporting on internal accounting control. The Commission urged similar experimentation concerning auditor association with such statements.

In conjunction with the withdrawal of the rule proposals, the Commission announced its intention to monitor registrants' voluntary disclosure of management statements on internal accounting control and reports of independent accountants on such statements and implementation of the broader recommendations of the Commission on Auditors' Responsibilities (Cohen Commission) concerning comprehensive management reports.

II. Activities After ASR 278

Since ASR 278 was issued, the Commission's staff has reviewed a sample of annual reports to security holders. The results of the review indicate a significant increase, particularly in larger companies, in the number of annual reports which include a management report. Several surveys conducted by private-sector organizations indicate similar results.

In addition to comments about the system of internal accounting control, many reports have included comments on topics recommended by the Cohen Commission, the Financial Executives Institute (FEI) and the Special Advisory Committee on Reports by Management of the American Institute of Certified Public Accountants (AICPA). The variety of reports demonstrates the willingness of public companies to experiment with a new form of reporting and to avoid boiler-plate reporting.

Certain private-sector groups have taken actions which indicate that the private sector continues to be generally supportive of the development of the concept of management reports and is seeking to improve internal accounting control systems. As noted in ASR 278, the AICPA and FEI have encouraged the development of management statements. In August 1981, the American Bar Association Section of Corporation, Banking and Business Law approved a Discussion Paper which encourages the use of company reports. In addition, the FEI has sponsored extensive research in the area of internal controls. This research resulted in the publication in 1980 of a research study and report titled "Internal Control in U.S. Corporations: The State of the Art" and, just recently, a report on "Criteria for Management Systems." The current research project is exploring criteria for management use and control of data processing systems. The Commission is encouraged by this kind of private sector research effort which should lead to continued improvements in corporate internal control systems.

The experimentation with public reporting by independent accountants on internal accounting control systems has not yet had time to develop. In July 1980, the AICPA's Auditing Standards Board issued Statement on Auditing Standards No. 30 (SAS 30), "Reporting on Internal Accounting Control," which sets forth guidance for auditors on how to review and report on a system of internal accounting control. As companies and their auditors become more familiar with the provisions of SAS 30 they may be able to integrate SAS 30 review procedures into annual audit procedures. Such integration may facilitate the conduct of these reviews and could result in increased reporting pursuant to SAS 30.

III. Conclusion

Although the importance to companies of effective systems of internal accounting control has not diminished, the Commission now believes that there is no need for a regulatory requirement for disclosures about such systems. In the light of developments since the issuance of ASR 278, the Commission now believes that the private sector should determine the need for and nature of such disclosure. In reaching this conclusion the Commission has considered the significant private-sector initiatives in this area, including the increased number of management reports to security holders of large companies.

By the Commission.

George F. Fitzsimmons,

Secretary.

January 28, 1982.

[FR Doc. 82-2903 Filed 2-3-82; 8:45 am]

BILLING CODE 8010-01-M

*Accounting Series Release 278, "Statement of Management on Internal Accounting Control," Securities Exchange Act Release No. 16877, June 6, 1980 (45 FR 40134).

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17 CFR Parts 230, 240, 250, 260, 270, and 275

[Release Nos. 33-6380, 34-18452, 35-22371, 39-693, IC-12194, and IA-791; File No. S7-879]

Final Definitions of "Small Business" and "Small Organization" for Purposes of the Regulatory Flexibility Act

AGENCY: Securities and Exchange Commission.

ACTION: Final rulemaking.

SUMMARY: The Securities and Exchange Commission is adopting final definitions of the terms "small business" and "small organization" as those terms will be

used in connection with future Commission rulemaking proceedings under the Securities Act of 1933, the Securities Exchange Act of 1934, the Public Utility Holding Company Act of 1935, the Trust Indenture Act of 1939, the Investment Company Act of 1940 and the Investment Advisers Act of 1940 regarding disclosure, reporting and regulatory requirements applicable to business concerns and other organizations which are subject to these statutes. The definitions are being adopted specifically for purposes of the Regulatory Flexibility Act, which requires the Commission to consider the impact of its regulations on small entities.

EFFECTIVE DATE: March 8, 1982.

FOR FURTHER INFORMATION CONTACT:

General

Ann Stansbury, Esquire, Special Counsel, Office of General Counsel, Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C. 20549, (202–272–2427).

Offices With Particular Responsibilities

Daniel Abdun-Nabi, Esquire, Division of Corporation Finance (Definitions applicable to the Securities Act of 1933, the reporting and disclosure provisions of the Securities Exchange Act of 1934, and the Trust Indenture Act of 1939) (202)–272–2644)

Jonathan Kallman, Esquire, Division of Market Regulation (Definitions applicable to brokers, dealers, clearing agencies, exchanges, bank municipal securities dealers, securities information processors, and transfer agents) (202–272–2843)

James E. Lurie, Special Counsel, Division of Corporate Regulation (Definitions applicable to public utility holding company systems) (202–523–5683)

Elizabeth T. Tsai, Esquire, Division of Investment Management (Definitions applicable to investment companies and investment advisers) (202–272–2032)

SUPPLEMENTARY INFORMATION: On March 20, 1981, in Release 33–6302 (46 FR 19251) the Commission proposed rules to define the terms "small business" and "small organization," for the purposes of Chapter Six of the Administrative Procedure Act, 5 U.S.C. 601 et seq., (the Regulatory Flexibility Act, Pub. L. No. 96–354, 94 Stat. 1164 (September 19, 1980)), as those terms may apply to organizations and entities that are issuers of securities or otherwise engaged in securities or other business activities subject to disclosure and reporting requirements or regulation by the Commission pursuant to the Securities Act of 1933, 15 U.S.C. 77a et seq., (the "Securities Act"), the Securities Exchange Act of 1934, 15 U.S.C. 78a et seq., (the "Securities Exchange Act"), the Public Utility Holding Company Act of 1935, 15 U.S.C. 79a et seq., (the "Holding Company Act"), the Trust Indenture Act of 1939, 15 U.S.C. 77aaa et seq., (the "Trust Indenture Act"), the Investment Company Act of 1940, 15 U.S.C. 80a et seq., (the "Investment Company Act"), or the Investment Advisers Act of 1940, 15 U.S.C. 80b–1 et seq., (the "Advisers Act"). The Regulatory Flexibility Act (the "RFA") requires that the Commission, among other things, consider the economic impact of Commission rulemaking action on entities that qualify as "small" under applicable standards as set forth in the RFA, the Small Business Act [1] or the regulations promulgated by the Small Business Administration ("SBA").[2] In view of the apparent absence of appropriate standards in those statutes and regulations for defining small entities subject to its regulation, the Commission proposed for public comment pursuant to the RFA definitions that it considered appropriate to the regulation of issuers and other entities in the securities industry or otherwise subject to regulation under statutes administered by the Commission.[3] After consultation with the Office of Advocacy of the SBA and considering the comments received from the public on the proposed definitions, the Commission is now adopting final definitions, which are discussed in more detail below. Although the definitions will be generally applicable in Commission rulemaking, the rules also provide, as permitted by the RFA, that the Commission may, in particular instances, if the circumstances so warrant, define a particular entity in a manner different from that set forth in the rules. In any such case, appropriate notice will be provided that the Commission intends to use or is using a different definition.

[1] 15 U.S.C. 631 et seq.

[2] 13 CFR Part 121.

[3] The RFA provides that an agency, after consultation with the Office of Advocacy of the SBA and an opportunity for public comment, may establish one or more definitions of "small entity" that are applicable to the activities of the agency. *See* Securities Act Release No. 6302 (March 20, 1981), 22 SEC Doc. 546 (April 7, 1981), for a discussion of the reasons why the Commission considered the SBA definitions inappropriate.

Description of the Final Definitions

Securities Act—Issuers Engaged in Small Business Financing; The Securities Exchange Act—Reporting Requirements, Tender Offers, Issuer Repurchases, Proxy Rules, and Short Swing Profits.

In the release proposing the definitions of "small business" and "small organization" for purposes of the Regulatory Flexibility Act (the "RFA") [4] the Commission proposed to amend its rules under the Securities Act of 1933 [5] (the "Securities Act") by adding new Rule 157 [6] which would define those terms to mean any issuer, other than an investment company, that is engaged in small business financing and whose total assets on the last day of its most recent fiscal year were $2.5 million or less. Smalll business financing is defined to mean any issuer that is engaged or proposed to engage in the offer and sale of its securities that does not exceed the dollar limitation prescribed by Section 3(b) of the Securities Act.

Similarly, for purposes of the RFA, the Commission proposed a definition of "small business" and "small organization" which, when used in reference to entities that are subject to the reporting provisions of the Securities Exchange Act of 1934,[7] ("the Securities Exchange Act"), pursuant to Sections 12, 13, 14, 15(d) and 16 of that Act, would mean an issuer that on the last day of its most recent fiscal year had assets of $2.5 million or less.

The asset tests proposed in the definitions under both the Securities Act and the Securities Exchange Act were intended to reflect an inflationary adjustment to the $1 million asset test, established for reporting purposes in the 1964 Amendments.[8]

The proposed Securities Act definition included a size of the offering standard in addition to an asset test primarily because the Securities Act is transaction oriented; *i.e.*, the registration of securities under the Securities Act is required only when certain transactions are proposed or occur.[9] Moreover there

[4] Release No. 33–6302, 34–17645 (March 20, 1981) (46 FR 19251).

[5] 15 U.S.C. 77a–77aa, as amended.

[6] 17 CFR 230.157.

[7] 15 U.S.C. 78a–78jj, as amended.

[8] 78 Stat. 565 (U.S. Code Cong & Ad. News 2798 (1964)). In the proposing release the Commission noted that an inflationary adjustment to the $1 million asset test established in Section 12(g) of the Securities Exchange Act would result in a $2,470,000 asset threshold in 1979.

[9] Congress has consistently recognized that a Securities Act exemption based on the size of the

Continued

exists substantial factual data indicating a significant direct relationship between the size of the offering and the size of the issuer.[10] It was anticipated that this standard would assure that any evaluation of the impact of compliance regarding proposed or adopted rules under the Securities Act would include only an analysis of those issuers for which fixed costs become disproportionately expensive.

The Commission received eleven comments regarding the proposed standards. Several of these commentators urged that the total asset criterion should be raised, with the recommendations ranging from $4 million to $15 million. In several cases no justification was presented for the standards recommended.

The SBA, in its comments on the proposed standards, supported increasing the total asset threshold to $15 million on the ground that while the total number of shareholders affected by such a standard would be relatively small, the number of issuers which would fall within the definition of "small business" would significantly increase. This, the SBA argues, would bestow substantial regulatory cost savings upon issuers without significantly diluting investor protection for large numbers of shareholders. In making this recommendation, however, the SBA does not maintain that any direct or indirect correlation exists between the ability of an issuer to bear the costs of regulation and the total number of shareholders which would be affected by a specified size standard. Since the basic concept underlying the RFA is that uniform regulations often have a disproportionately greater economic impact upon small businesses, and thus upon their competitive position,[11] the Commission is of the view that definitional standards should be established at levels below which there would exist a disproportionate economic impact in the uniform application of its regulations.

In reaching the $3 million total asset figure, the Commission examined, among other factors, the Congressional rationale for including a $1 million asset test in Section 12(g) of the Securities Exchange Act when it amended that Act in 1964.[12] The legislative history of the 1964 amendments reveals that although the amount of assets would seem to be no more than a secondary criterion, "it may ultimately have relevance in defining a limit where burdens may be disproportionate to needs."[13] Thus, it seems appropriate that an inflationary adjustment to the $1 million asset test is relevant in defining the extent to which the compliance burdens could be met by issuers involved. Additionally, the Commission believes that with the definitional standards established at such levels, the regulatory flexibility analyses required by the RFPA would have maximum utility and greatest significance. One commentator, the Texas Independent Producers & Royalty Owners Association, suggested that a figure of $4 million would more accurately reflect the inflation adjustment desired. As indicated earlier, the Commission noted in the proposing release that an inflationary adjustment to the Section 12(g) $1 million total asset standard would result in a $2,470,000 asset threshold in 1979. An update of this analysis through 1981 suggest that a more appropriate standard would be one which approximates $3 million.

Several commentators suggested that the definitions under both the Securities Act and the Securities Exchange Act should include a revenue test in addition to the asset test proposed. The recommendations ranged from $10 million to $15 million in revenues. As noted above, the legislative history of the 1964 amendments to the Securities Exchange Act established an asset threshold as relevant and appropriate in defining the extent to which compliance burdens could be met by the issuers involved. Additionally, several commentators responding to the Commission's release regarding the advisability of classifying issuers for purposes of the Securities Exchange Act [14] expressed the view that an asset test represents a simple and functional criterion for measuring an issuer's size in relation to the cost of complying with reporting obligations.[15] Moreover, the Commission does not anticipate that a revenue criterion would bestow any significant benefits upon small businesses in the context of the RFA, although additional criteria or modified asset standards which take into account the number of shareholders affected may have significance in the context of the Commission's proposed classification system.[16] In light of the foregoing, the Commission does not believe it is either necessary or desirable to adopt a revenue standard in the final definitions.

Accordingly, the Commission is adopting new Rule 157 under the Securities Act, which defines the terms "small business" and "small organization" for purposes of the RFA as any issuer, other than an investment company, whose total assets on the last day of its most recent fiscal year were $3 million or less and that is engaged in small business financing; *i.e.*, any issuer that engages or proposes to engage in the offer and sale of its securities in an amount that does not exceed the dollar limitation prescribed by Section 3(b) of the Securities Act.

Additionally, the Commission is adopting new Rule 0–10 under the Securities Exchange Act,[17] which defines "small business" and small organization for purposes of the RFA to mean any "issuer" or any "person" whose total assets on the last day of its most recent fiscal year were $3 million or less. The Commission may consider the advisability of similar adjustments in the future, if appropriate.

As indicated in the proposing release, the Commission has for some time been taking steps to facilitate the integration of the disclosure systems of both the Securities Act and the Securities Exchange Act so that investors and the marketplace are provided meaningful, nonduplicative information, while the costs of compliance are decreased.[18] The integration effort is based on the idea that, generally, there is no distinction between information that is material for

transaction, rather than solely on the size of the issuer, is appropriate. As an example, Section 3(b) of the Securities Act authorizes the Commission to exempt transactions from registration if it finds that registration is not necessary in the public interest because of the small dollar amount involved or the limited character of the public offering. The dollar ceiling under Section 3(b) has been raised on several occasions, most recently, from $2 million to $5 million pursuant to Section 301 of the Small Business Investment Incentive Act of 1980 (the "Incentive Act") [Pub. L. No. 96–477 (October 21, 1980)]. This Congressional action was intended to provide the Commission with increased flexibility in developing exemptions targeted to smaller issuers. Additionally, Congress adopted the transaction size approach when it enacted, in the Incentive Act, new Section 4(6) of the Securities Act.

[10] Rule 242: A Monitoring Report on the First Six Months of Its Use (December, 1980); Form S–18: A Monitoring Report on Its Use in 1979 (March, 1980).

[11] Senate Report No. 96–878, Senate Committee on the Judiciary, 96th Congress, 2d Sess., July 30, 1980.

[12] 78 Stat. 565 (U.S. Code Cong. & Ad. News 2798 (1964)).

[13] Report of the Special Study of Securities Markets of the Securities and Exchange Commission, House Document No. 95, Pt. 3, House Committee on Interstate and Foreign Commerce, 88th Cong., 1st Sess. (1963) at 18.

[14] Release No. 34–16866 (June 2, 1980) (45 40145).

[15] Summary of Comments relating to Classification of Exchange Act Reporting Companies, File No. S7–837.

[16] Securities Exchange Act Release No. 18189 (October 20, 1981) (46 FR 52382). In this release the Commission proposed for comment a new rule and rule amendments which would exempt a class of smaller issuers from the registration and reporting provisions under the Securities Exchange Act. Where appropriate the Commission will consider the views of the commentators in establishing a Securities Exchange Act classification system.

[17] 17 CFR 240.0–10.

[18] Release Nos. 33–6331 to 33–6338 (August 6 1981) (46 FR 41902).

the distribution of securities in transactions covered by the Securities Act on the one hand, and for periodic reporting under the Securities Exchange Act on the other hand, by companies whose securities are traded in the markets.

As a result of this effort, there will be instances in which amendments to rules, forms and schedules under the Securities Exchange Act that are a part of the integrated disclosure system will also affect disclosures under the Securities Act. The Commission does not intend to imply, however, that an issuer that is subject to the reporting requirements of the Securities Exchange Act may furnish less disclosure in a limited size offering than would normally be furnished to the marketplace under the Securities Exchange Act. Therefore, any impact analysis of rules under the Securities Exchange Act that are a part of the integrated disclosure system will normally be expected to satisfy the similar analysis under the Securities Act.

Trust Indenture Act—Issuers Engaged in Small Business Financing

In its consideration of the proposed definition of "small business" and "small organization" for purposes of the RFA to be applicable to rulemaking under the Trust Indenture Act of 1939, the Commission noted that the Trust Indenture Act definitions, exemptions, requirements, and procedures for qualification of indentures and trustees are closely related to the Securities Act. Consequently, the Commission believed that the considerations affecting small entities under the Trust Indenture Act should be determined in tandem with those under the Securities Act. The Commission therefore proposed to adopt, under the Trust Indenture Act, a rule defining "small business" and "small organization" in a manner which was identical to proposed Rule 157.

The commentators raised no objection to a Trust Indenture Act definition which corresponds to the Securities Act definition and in fact several commentators specifically endorsed the concept. However, the comments raised with respect to the asset test in proposed Rule 157 were made specifically applicable to the proposed definition under the Trust Indenture Act.

The Commission, based on the need for consistency between the Securities Act and Trust Indenture Act definitions, and for the reasons specified above, has determined to amend 17 CFR Part 260 by adopting § 260.0–7 which, for the purposes of the Trust Indenture Act, defines "small business" and "small organization" to mean an issuer whose total assets on the last day of its most recent fiscal year were $3 million or less and that is engaged or proposing to engage in small business financing. An issuer is considered to be engaged or proposing to be engaged in small business financing under this section if it is conducting or proposing to conduct an offering of securities which does not exceed the dollar limitation prescribd by § 260.4a–2.[19]

The Securities Exchange Act—Brokers, Dealers and Other Regulated Entities

As noted above, the Commission is also adopting definitions of the terms "small business" and "small organization" for purposes of the RFA with respect to certain entities in the securities industry whose activities are regulated by the Commission pursuant to the Securities Exchange Act. Those entities include brokers, dealers, clearing agencies, exchanges, bank municipal securities dealers, securities information processors and transfer agents. The definitions with respect to brokers and dealers have been revised in response to the views expressed by the commentators. The Commission did not receive any adverse comments on the other definitions [20] and is adopting the definitions as proposed.[21]

The definitions in Rule 0–10 as adopted incorporate the concept of affiliation and provide that a broker-dealer, clearing agency, exchange, bank municipal securities dealer, securities information processor or transfer agent is not a small business or small organization if that entity is affiliated with any person (other than a natural person) that is not a small business or small organization as defined in Rule 0–10. A person is said to be "affiliated" with another if that person controls, is controlled by, or is under common control with such other person. "Control" is defined as, among other things, the right to vote 25 percent or more of the voting securities of an entity and the right to receive 25 percent or more of the net profits of such entity.

As indicated in the proposal release, the Commission believes that it is appropriate to take into account the structure of business organizations in the securities industry when defining the terms "small business" and "small organization." The Commission believes that an ownership or profit-sharing interest of 25 percent or more is an appropriate threshold for determining when the financial resources of affiliates of a securities firm or a securities service firm should be considered in determining the size of that firm for purposes of the RFA and Commission rulemaking. The Standard Oil Company of California objected to the 25 percent threshold because of its belief that equating "control" with a 25 percent interest in an entity would create an unnecessary and undesirable exception to generally accepted terminology.[22] The Commission notes, however, that the threshold as established in Rule 0–10 applies exclusively to the securities industry for limited purposes in the course of Commission rulemaking proceedings affecting only members of that industry and their affiliates.

As indicated above, the Commission is adopting revised definitions of "small business" and "small organization" with respect to brokers and dealers. Proposed Rule 0–10, as published for public comment, would have defined as small those brokers or dealers that are permitted to maintain a certain specified minimum level of net capital, had fewer than five employees at the end of the preceding calendar year, and are not associated with any entities that are not small businesses or small organizations under Rule 0–10. The commentators, however, generally opposed this definition and the use of net capital and number of employees as size standards, and contended that the threshold levels were set too low.[23]

In light of the comments received, the Commission has substantially revised the definitions for broker-dealers and has determined to adopt those definitions as revised. As adopted,

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[19] 17 CFR 260–4a–2 provides:

"The provisions of the Trust Indenture Act of 1939 shall not apply to any security which has been or is to be issued under an indenture which limits the aggregate principal amount of securities at any time outstanding thereunder to $5,000,000 or less, but this exemption shall not be applied within a period of thirty-six consecutive months to more than $5,000,000 aggregate amount of securities of the same issuer."

[20] The only comment that the Commission received on these proposed definitions was from the Small Business Administration, which noted that the proposed definitions for regulated entities under the Securities Exchange Act appeared to be adequate to meet the requirements of the RFA.

[21] *See* paragraphs (d) through (h) of Rule 0–10, *infra*.

[22] That commentator suggested, among other things, that the threshold might be lowered to 20 percent.

[23] The Securities Industry Association proposed that the Commission measure firm size by reference to total capital (defined as net worth plus subordinated liabilities). The Small Business Administration suggested that the Commission choose a size standard from among the possible measures after consultation with the National Association of Securities Dealers, Inc. One broker-dealer suggested a size standard of 19 or fewer employees; another suggested a size standard of $2 million in equity capital and fewer than 30 employees.

paragraph (c) of Rule 0–10 would define as a small business or a small organization, for purposes of Commission rulemaking, a broker or dealer that had total capital of less than $500,000 on the date in the prior fiscal year as of which its audited financial statements were prepared pursuant to 17 CFR 240.17a–5(d) or, if not required to file such statements, a broker or dealer that had total capital of less than $500,000 on the last business day of the preceding fiscal year (or in the time it has been in business, if shorter); and (2) is not affiliated with any person (other than a natural person) this is not a small business or small organization as defined in the Rule. "Total capital" for purposes of the rule consists of net worth plus subordinated liabilities, including those subordinated liabilities that do not qualify for purposes of determining a firm's net capital under Rule 15c3–1 (17 CFR 240.15c3–1).

Determination of the size of a firm under Rule 0–10, for most broker-dealers, would be based on the total capital that firm reported to the Commission on its annual audited financial statements as of a particular date in the prior fiscal year. Most broker-dealers are required to file audited financial statements with the Commission pursuant to Rule 17a–5(d) under the Securities Exchange Act (17 CFR 240.17a–5(d)). For those firms that are not required to file annual audited financial statements,[24] or that have been in existence for less than one year, size would be determined on the basis of the level of the firm's total capital on the last business day of the preceding fiscal year or, if shorter, during the life of firm.

The Commission believes that $500,000 in total capital is an appropriate benchmark for determining whether a firm is small for purposes of the RFA.[25] All firms are generally aware of their total capital and information concerning the distribution of brokers and dealers according to specified levels of total capital is readily available to the Commission. Total capital appears to be preferable to other possible size standards, such as gross revenues or net capital, because it appears to be less volatile in the face of short-term shifts in factors affecting economic profitability. Data compiled by the Commission's Directorate of Economic Policy Analysis from the reports filed pursuant to Rule 17a–5 by broker-dealers for 1979[26] indicates that approximately 4100 broker-dealers had total capital of less than $500,000.[27] A substantial majority of broker-dealers that are registered with the Commission may qualify as "small" under Rule 0–10, including some firms that engage in underwriting and general brokerage.[28] The Commission does not believe that the RFA mandates establishing a definition of "small" within an industry by reference to the very largest firms in that industry. While there has been in recent years some concentration of firms, the securities industry has usually characterized itself as a competitive industry with a substantial number of national and regional firms competing with one another in various lines of business. The Commission also believes that the definition adopted with regard to broker-dealers is appropriate, since it may serve as a basis for the possible "tiering" of regulations applicable to those entities.[29]

Although the Commission is adopting definitions with regard to the above mentioned entities, the Commission welcomes future comment from interested persons and the public concerning the operation and appropriateness of those definitions. The Commission, in consultation with the Small Business Administration, will consider any changes to such definitions as experience dictates.[30]

Public Utility Holding Companies

The Commission has concluded that it is desirable to adopt a special definition of the terms "small business" and "small organization" for purposes of the RFA to apply to rulemaking under the Public Utility Holding Company Act. In this connection, the Commission does not believe that the Small Business Act and regulations promulgated by the SBA provide size standards that are appropriate for public utility holding companies.[31] Moreover, the Commission believes that the size standards currently in use in connection with federal programs to assist small manufacturing or service enterprises are not appropriate for measuring the impact of rules on small entities that are in "holding company" systems under the Holding Company Act.

Under the Holding Company Act, the Commission exercises comprehensive authority over the issuance of securities or the acquisition of securities or utility assets by registered holding companies and their subsidiaries, intrasystem transactions, and accounting requirements, among other things. A "holding company" is defined under the Holding Company Act as any company which owns 10 percent or more of the voting securities of a public utility company, which is defined as an electric or gas utility company.[32] While the Holding Company Act also provides

[24] Rule 17a–5(d)(iii), for instance, specifically excludes certain brokers that are members of a national securities exchange from those provisions of the rule that require the filing of audited financial statements with the Commission. *See* 17 CFR 240.17a–(d)(iii).

[25] Rule 0–10 as proposed for public comment would have primarily focused, through a particular provision of the Commission's regulation regarding broker-dealer minimum net capital requirements, on the business activities of broker-dealers. The commentators expressed concern that such a focus would have excluded, for instance, broker-dealers that carried customer accounts or cleared their own transactions and, under any other measure of size, would be considered "small" entities. In light of the Commission's determination to expand the scope of the definition to include such broker-dealers, the Commission, as discussed in text, *infra*, believes that total capital is a better economic proxy than net capital for measuring firm size outside of the context of a particular segment of the brokerage community.

[26] *See generally*, Securities and Exchange Commission, staff Report on the Securities Industry in 1979 (1980).

[27] As proposed for comment, Rule 0–10 would have restricted the class of broker-dealers potentially qualifying as small to certain broker-dealers that are permitted to maintain a certain level of minimum net capital pursuant to Rule 15c3 – 1(a)(2) or –1(a)(3), 17 CFR 240.15c3–1 (a)(2)–(a)(3). The Commission estimates that approximately 1,850 broker-dealers maintain minimum net capital pursuant to those provisions.

[28] The approximately 925 firms that would appear not to qualify as "small" accounted for approximately 91 percent of the underwriting profits and 96 percent of the securities commissions earned by broker-dealers in 1979 as reported on the Rule 17a–5 reports for that year.

[29] The SIA recommended that the Commission define as small those broker-dealers having total capital of less than $5 million, thereby defining as small all but approximately 140 SIA members or 200 registered broker-dealers. While that standard might in a few instances be appropriate, the Commission believes that the definition adopted today will generally provide a better basis for tiering regulations. The "tiering" of regulations will, of course, be considered in the context of each rulemaking proceeding subject to the RFA, at which time the Commission may consider whether alternative definitions of a "small' broker-dealer are appropriate.

[30] The Small Business Administration suggested that the Commission periodically evaluate the definitions being adopted today.

[31] The SBA's small business size standards, contained in 13 CFR Part 121 (1980), do not include a standard which is appropriate or practicable to apply in the context of rulemaking under the Holding Company Act. Only one subsection thereof, 13 CFR 121.33–10(d)(11), deals expressly with electric or gas utility companies. That subsection classifies as "small," for purposes of SBA loans, a conceren primarily engaged in the generation, transmission and/or distribution of electric energy for sale whose total output (including that of its affiliates) for the preceding fiscal year did not exceed 4 million megawatt hours. The SBA has proposed for comment amendments to its size standard regulations. Small Business Size Standards; Revision to Method of Establishing Size Standards and Definitions of Small Business, 45 FR 15442 (March 10, 1980). The proposed standards are all stated in terms of number of employees. *Id.* at 15443. Although electric and gas services are listed in the heading of Major Group 49 therein, there are no proposed size standards for electric or gas utilities. *Id.* at 15449.

[32] Sections 2(a)(7)(A) and 2(a)(5).

definitions of "electric utility company" and "gas utility company," the basic regulated unit for purposes of the Holding Company Act is the "holding company system," which is defined to include the holding company and each subsidiary company which is a member of that system,[33] whether it is a utility subsidiary or a non-utility subsidiary.

The Commission further believes that it is appropriate to assess the burdens of regulation under the Holding Company Act for purposes of the RFA by reference to the size of the holding company system as a whole, rather than by reference to its member companies, for three reasons. First, the holding company system is a single control group. Under the standards of the Holding Company Act, subsidiaries of the registered holding companies are wholly-owned or are specialized joint ventures with co-owners of comparable size and character. They would not, within the meaning of Section 3 of the Small Business Act, be considered "independently owned." Second, while most holding companies own more than one public utility subsidiary, the Holding Company Act requires that all such subsidiaries constitute but a single integrated public utility system.[34] And third, the regulatory provisions of the Holding Company Act generally apply to the holding company and to each of its subsidiaries; that is, to the entire holding company system. Accordingly, the rule establishes a definition of the terms "small business" and "small organization" for purposes of the RFA with respect to "holding company systems."

Rule 110, 17 CFR 250.110, defines the terms "small business" or "small organization" as a holding company system whose consolidated revenues from electric or gas utility operations did not exceed $1,000,000 in its last fiscal year. The Commission believes that it is appropriate to measure the size of a holding company system by reference to its consolidated gross utility revenues, a standard familiar to the industry and for which data are currently available. In establishing this size standard, the Commission has considered, among other things, the number of firms in the industry and the purposes of the Holding Company Act that form the predicate for regulation by the Commission. Holding companies, as such, do not constitute a relevant industry group. The relevant industry is the electric and gas utility industry. Upon the basis of available data, as of 1979, the latest available year, the Commission estimates that there are approximately 130 investor-owned electric utility systems and 500 investor-owned gas utility systems, of which it is believed approximately 14 and 180, respectively, have utility revenues below $1,000,000.[35]

There are currently nine registered electric utility holding company systems and three registered gas utility holding company systems that include 53 wholly or partly owned electric utility subsidiaries and 19 gas distribution and transmission subsidiaries. Under the size standard adopted, none of the currently registered holding company systems is a small entity.

There were no substantive coments received regarding the proposed definitions as initially published.

Investment Companies and Investment Advisers

In view of the comments recieved and the reasons given below, the Commission has revised the definitions of "small business" and "small organization" that were proposed with respect to investment companies and investment advisers and is adopting the revised definitions as Rule 0–10, 17 CFR 270.0–10, and Rule 0–7, 17 CFR 275.0–7.

Rule 0–10, 17 CFR 270.0–10, classifies as small any investment company with net assets of $50 million or less as of the end of its most recent fiscal year. The Commission received two letters commenting specifically on this size standard. One urged that $50 million was an appropriate cut-off point.[36] The SBA, being of the impression that only 14 percent, rather than 62.4 percent, of the investment companies in the Commission's statistical sample have assets of $50 million or less, suggested raising the figure to $100 million so that a greater proportion of investment companies might be classified as small.[37] Both commentators suggested that any investment company that primarily invests in small businesses be deemed small even though its net assets exceed the cut-off point that may be adopted.

The Commission believes that had the SBA realized that 62.4 percent of the investment companies would be deemed small under the Commission's size standard it might not have suggested raising the cut-off point to $100 million. Moreover, the Commission continues to believe that, since investment companies with high expense ratios would generally be more adversely affected by regulatory costs than those with lower expense ratios, they are the appropriate subject of relief for purposes of the RFA. Since its statistical study shows that investment companies with net assets from $6 million to $47.2 million had expense ratios exceeding the mean (average) adjusted expense ratio plus one standard deviation (and all the companies with net assets of over $47.2 million had expense ratios falling below this boundary), the Commission is adopting $50 million as the cut-off point.

Having thus identified the small entities in the investment company industry, the Commission is not persuaded that it must, in addition, provide special treatment for investment companies which, although not small, invest in small businesses on the assumption that the benefit of reduced regulatory cost on such investment companies would filter down to its portfolio companies. These portfolio companies are a step removed from the purpose of the Commission's size standard which is to distinguish those investment companies that, due to their size, bear a disproportionate burden of the costs of complying with regulations.

Paragraph (a)(1) of Rule 0–7, 17 CFR 275.0–7(a)(1), classifies as small any investment adviser that manages assets with a total value of $50 million or less, in discretionary or non-discretionary accounts, as of the end of its most recent fiscal year and does not render other advisory services. The Commission received three letters commenting specifically on this size standard. One recommended $50 million as a realistic cut-off point, if indexed for inflation by tying it to the GNP deflator. The Commission believes that this is not necessary because $50 million is only an estimate and it can be changed in the future if necessary.

The SBA suggested that the Commission raise the cut-off point to $100 million to increase the number of investment advisers that will be eligible for regulatory relief. Another commentator also suggested raising the cut-off point to $100 million, but would add, as alternatives, "maintains 25 or less accounts or employs 5 or less persons."[38] The Commission has no information about the specific number of employees of investment advisers or how many investment advisers employ 5

[33] Section 2(a)(9).

[34] Section 11(b)(1).

[35] Source: "Electric Utility Statistics," Public Power, Jan–Feb. 1981, p. D–3, Federal Energy Regulatory Commission Form 1's for Class C and D electric utility companies (1979); Brown's Directory of American and International Gas Companies (93d ed. 1979); Statistics supplied by the American Gas Association.

[36] National Association of Small Business Investment Companies, letter dated May 19, 1981 ("NASBIC").

[37] Small Business Administration letter dated May 27, 1981 ("SBA").

[38] Myerson, Den Berg and Co., letter dated May 5, 1981.

or less persons. Aside from the difficulty of defining "employee" (whether to include half-time, full-time, temporary, permanent, partners, etc.), an attempt to solicit this information from investment advisers would impose unnecessary burdens on them to provide information, contrary to the spirit of the Paperwork Reduction Act.[39] Although it is possible to gather from Form ADV the number of accounts of investment advisers,[40] the number of accounts will not necessarily identify the small investment advisers that only manage assets because of the varying size of the accounts. Thus, an investment adviser with just one account—a $1 billion money market fund—would not be small compared to an investment adviser with fifty $1 million accounts. Therefore, the Commission is not adopting these alternatives size standards.

As to raising the cut-off point for investment advisers that only manage assets, the Commission notes that it proposed $50 million as the cut-off point because of the similarities, with respect to the management of assets, between the investment company and the investment advisory businesses. Therefore, having adopted $50 million as the cut-off point for investment companies, the Commission also adopts it for investment advisers that only manage assets. The Commission is not persuaded that the cut-off point should be raised simply to increase the number of investment advisers that will be eligible for relief. To adopt such an approach would be to depart from the purpose of adopting a size standard, which is to identify the small entities among a particular type of entities so that the Commission may determine whether a particular rulemaking has "a significant economic impact on a substantial number of small entities."[41]

Paragraph (a)(2) of Rule 0–7, 17 CFR 275.0–7(a)(2), classifies as small any investment adviser that solely, or in addition to managing assets of $50 million or less, renders other advisory services and the assets related to its advisory business do not exceed in value $50,000 as of the end of its most recent fiscal year. As originally proposed, the size standard for this type of adviser was that its business-related assets, as shown in the balance sheet most recently filed with the Commission, did not exceed in value 50 percent of the average business-related assets for this type of adviser. As stated in the proposal, the Commission expected to determine such average assets from the balance sheets in its files and to express the size standard in dollars in the final rule. This size standard encountered several objections. One commentator suggested that "$50 million or less" be changed to "$100 million or less, 25 or less accounts or employs 5 or less persons." For the reasons stated in the preceding two paragraphs, the Commission has not adopted this suggestion.

Another commentator suggested that the Commission use the 500-employee size standard proposed by the SBA for miscellaneous publishers.[42] The Commission does not adopt this suggestion because some investment advisers in this category are not publishers at all[43] and, to the extent that some of them issue publications on a subscription basis, the standard would probably embrace all of them for it is unlikely that any of them has more than 500 employees. The standard, therefore, would not identify those that are small among this type of advisers. For this reason, the standard would not serve the purposes of the RFA. This reasoning also supports the Commission's not following suggestions that there should be a separate standard classifying as small all investment advisers who solely or mainly publish newsletters.[44]

Finally, one commentator pointed out potential problems with using the "average" business-related assets as a point of reference for the size standard in the absence of data showing the distribution of this type of investment advisers.[45] This comment is well-taken. The size standard in paragraph (a)(2) of Rule 0–7, 17 CFR 275.0–7(a)(2), uses the median business-related assets, not the average business-related assets, as the point of reference. In a random sample of 100 investment advisers out of about 2,300 investment advisers that solely, or in addition to managing assets of $50 million or less, render other advisory services[46] the Commission found that the median value of their business-related assets was approximately $50,000. The information about the business-related assets of those advisers in the sample was taken from such advisers' latest balance sheets in the Commission's files.[47] Using the median assets of investment advisers in the sample ($50,000), instead of 50 percent of such median assets ($25,000), as the cut-off point would classify as small 55 percent of investment advisers in the sample—a segment which compares with 62.4 percent of investment companies in the Commission's earlier sample that are classified as small under the size standard for investment companies.

Text of Amendments

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

Part 230 of Chapter II of Title 17 of the Code of Federal Regulations is amended by adding § 230.157 to read as follows:

§ 230.157 Small entities for purposes of the Regulatory Flexibility Act.

For purposes of Commission rulemaking in accordance with the provisions of Chapter Six of the Administrative Procedure Act (5 U.S.C. 601 et seq.), and unless otherwise

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[39] Under the Paperwork Reduction Act of 1980, effective on April 1, 1981, the Commission must obtain approval from the Office of Management and Budget ("OMB") for every questionnaire calling for answers to identical questions posed to ten or more persons.

[40] Items 15(ii)(a) and 16(ii)(a), Part I, Form ADV, require an investment adviser to state the total number of accounts under discretionary management and of accounts under management or supervision, respectively, as of the end of the adviser's last fiscal year.

[41] Increasing the number of entities within the class deemed small might even be counterproductive in applying this statutory standard in that the bigger the class, the greater the number of entities within it that must be adversely affected by a particular rulemaking before it can be said that the rulemaking affects a "substantial" number of the class.

[42] At the time of the proposal the Commission rejected a size standard based on the number of subscribers because it had no information about the number of these subscribers. The Commission still does not have this information, but it is proposing to amend item 17 of Part I of Form ADV to require an applicant that issues periodic publications relating to securities on a subscription basis to state the number of subscribers thereto as of the end of the applicant's last fiscal year. If this proposed amendment is adopted, the Commission, with available information about the number of subscribers, might reconsider amending the size standard applicable to publishers of market letters.

[43] This category includes not only those advisers that issue periodic publications relating to securities on a subscription basis, but also those that furnish investment advice through consultations (without furnishing investment supervisory services or otherwise managing investment advisory accounts), prepare or issue special reports or analyses relating to securities, or prepare or issue any charts, graphs, formulas, or other devices which clients may use to evaluate securities.

[44] SBA; Newsletter Association of America, letter dated May 13, 1981.

[45] NAIC Investor Advisory Service, letter dated May 14, 1981.

[46] As used in this proposed definition, "other advisory services" means services referred to in item 1(c), (d), (e), (f), and (h), Part II, of Form ADV, 17 CFR 279.0–1.

[47] The Commission is proposing to delete the unaudited balance sheet requirement in item 17, Part I, Form ADV. This deletion, if adopted, should not affect the Commission's application of the size standard in view of the data already available or the monitoring of its continued propriety in view of the balance sheet data that the Commission obtains in its routine adviser inspections.

defined for purposes of a particular rulemaking proceeding, the term "small business" or "small organization" shall—

(a) When used with reference to an issuer, other than an investment company, for purposes of the Securities Act of 1933, mean an issuer whose total assets on the last day of its most recent fiscal year were $3,000,000 or less and that is engaged or proposing to engage in small business financing. An issuer is considered to be engaged or proposing to engage in small business financing under this section if it is conducting or proposes to conduct an offering of securities which does not exceed the dollar limitation prescribed by section 3(b) of the Securities Act.

(b) When used with reference to an investment company that is an issuer for purposes of the Securities Act of 1933, mean an investment company with net assets of $50 million or less as of the end of its most recent fiscal year.

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

Part 240 of Chapter II of Title 17 of the Code of Federal Regulations is amended by adding § 240.0–10 to read as follows:

§ 240.0–10 Small entities for purposes of the Regulatory Flexibility Act.

For purposes of Commission rulemaking in accordance with the provisions of Chapter Six of the Administrative Procedure Act (5 U.S.C. 601 et seq.), and unless otherwise defined for purposes of a particular rulemaking proceeding, the term "small business" or "small organization" shall—

(a) When used with reference to an "issuer" or a "person," other than an investment company, under sections 12, 13, 14, 15(d) or 16(b) of the Securities Exchange Act of 1934, mean an "issuer" or "person" that, on the last day of its most recent fiscal year, had total assets of $3,000,000 or less;

(b) When used with reference to an "issuer" or "person" that is an investment company, mean an investment company with net assets of $50 million or less as of the end of its most recent fiscal year;

(c) When used with reference to a broker or dealer, mean a broker or dealer that:

(1) Had total capital (net worth plus subordinated liabilities) of less than $500,000 on the date in the prior fiscal year as of which its audited financial statements were prepared pursuant to § 240.17a–5(d) or, if not required to file such statements, a broker or dealer that had total capital (net worth plus subordinated liabilities) of less than $500,000 on the last business day of the preceding fiscal year (or in the time that it has been in business, if shorter); and

(2) Is not affiliated with any person (other than a natural person) that is not a small business or small organization as defined in this section;

(d) When used with reference to a clearing agency, mean a clearing agency that:

(1) Compared, cleared and settled less than $500 million in securities transactions during the preceding fiscal year (or in the time that it has been in business, if shorter);

(2) Had less than $200 million of funds and securities in its custody or control at all times during the preceding fiscal year (or in the time that it has been in business, if shorter); and

(3) Is not affiliated with any person (other than a natural person) that is not a small business or small organization as defined in this section;

(e) When used with reference to an exchange, mean any exchange that has been exempted from the reporting requirements of § 240.11Aa3–1;

(f) When used with reference to a municipal securities dealer that is a bank (including any separately identifiable department or division of a bank), mean any such municipal securities dealer that:

(1) Had, or is a department of a bank that had, total assets of less than $10 million at all times during the preceding fiscal year (or in the time that it has been in business, if shorter);

(2) Had an average monthly volume of municipal securities transactions in the preceding fiscal year (or in the time it has been registered, if shorter) of less than $100,000; and

(3) Is not affiliated with any person (other than a natural person) that is not a small business or small organization as defined in this section;

(g) When used with reference to a securities information processor, mean a securities information processor that:

(1) Had gross revenues of less than $10 million during the preceding fiscal year (or in the time it has been in business, if shorter);

(2) Serviced less than 100 interrogation devices or moving tickers as those terms are defined in § 240.11Aa–3–1 at all times during the preceding fiscal year (or in the time that it has been in business, if shorter); and

(3) Is not affiliated with any person (other than a natural person) that is not a small business or small organization as defined in this section; and

(h) When used with reference to a transfer agent, mean a transfer agent that:

(1) Received less than 500 items for transfer and less than 500 items for processing during the preceding six months (or in the time that it has been in business, if shorter);

(2) Maintained master shareholder files that in the aggregate contained less than 1,000 shareholder accounts or was the named transfer agent for less than 1,000 shareholder accounts at all times during the preceding fiscal year (or in the time that it has been in business, if shorter); and

(3) Is not affiliated with any person (other than a natural person) that is not a small business or small organization under this section.

(i) For purposes of paragraphs (c) through (h) of this section, a person is affiliated with another person if that person controls, is controlled by, or is under common control with such other person; a person shall be deemed to control another person if that person has the right to vote 25% or more of the voting securities of such other person or is entitled to receive 25% or more of the net profits of such other person or is otherwise able to direct or cause the direction of the management or policies of such other person.

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

Part 250 of Chapter II of Title 17 of the Code of Federal Regulations is amended by adding § 250.110 to read as follows:

§ 250.110 Small entities for purposes of the Regulatory Flexibility Act.

For purposes of Commission rulemaking in accordance with the provisions of Chapter Six of the Administrative Procedure Act (5 U.S.C. 601 et seq.), and unless otherwise defined for purposes of a particular rulemaking proceeding, the terms "small business" and "small organization," for purposes of the Public Utility Holding Company Act of 1935, shall mean a holding company system whose gross consolidated revenues from sales of electric energy or of natural or manufactured gas distributed at retail for its previous fiscal year did not exceed $1,000,000. There may be excluded from such gross revenues:

(a) Sales or electric energy or natural or manufactured gas to tenants or employees of any operating subsidiary company of such holding company for their own use and not for resale; and

(b) Sales of gas to industrial consumers or in enclosed portable containers.

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

Part 260 of Chapter II of Title 17 of the Code of Federal Regulations is amended by adding § 260.0–7 to read as follows:

§ 260.0–7 Small entities for purposes of the Regulatory Flexibility Act.

For purposes of Commission rulemaking in accordance with the provisions of Chapter Six of the Administrative Procedure Act (5 U.S.C. 601 et seq.), and unless otherwise defined for purposes of a particular rulemaking proceeding, the term "small business" or "small organization," for purposes of the Trust Indenture Act of 1939 shall mean an issuer whose total assets on the last day of its most recent fiscal year were $3 million or less that is engaged or proposing to engage in small business financing. An issuer is considered to be engaged or proposing to be engaged in small business financing under this section if it is conducting or proposing to conduct an offering of securities which does not exceed the dollar limitation prescribed by § 260.4a–2.

PART 270—RULES AND REGULATIONS, INVESTMENT COMPANY ACT OF 1940

Part 270 of Chapter II of Title 17 of the Code of Federal Regulations is amended by adding § 270.0–10 to read as follows:

§ 270.0–10 Small entities for purposes of the Regulatory Flexibility Act.

For purposes of Commission rulemaking in accordance with the provisions of Chapter Six of the Administrative Procedure Act (5 U.S.C. 601 et seq.), and unless otherwise defined for purposes of a particular rulemaking proceeding, the term "small business" or "small organization," for purposes of the Investment Company Act of 1940 shall mean an investment company with net assets of $50 million or less as of the end of its most recent fiscal year.

PART 275—RULES AND REGULATIONS, INVESTMENT ADVISERS ACT OF 1940

Part 275 of Chapter II of Title 17 of the Code of Federal Regulations is amended by adding § 275.0–7 to read as follows:

§ 275.0–7 Small entities for purposes of the Regulatory Flexibility Act.

(a) For purposes of Commission rulemaking in accordance with the provisions of Chapter Six of the Administrative Procedure Act (5 U.S.C. 601 et seq.), and unless otherwise defined for purposes of a particular rulemaking proceeding, the term "small business" or "small organization" for purposes of the Investment Advisers Act of 1940 shall mean an investment adviser that:

(1) Manages assets with a total value of $50 million or less, in discretionary or non-discretionary accounts, as of the end of its most recent fiscal year and does not render other advisory services; or

(2) Solely, or in addition to managing assets of $50 million or less, renders other advisory services, and the assets related to its advisory business do not exceed in value $50,000 as of the end of its most recent fiscal year.

(b) As used in this rule, the term "other advisory services" means the services referred to in Form ADV, Part II, items 1(c) through (f) and (h). (17 CFR 279.0–1).

Statutory Authority

The Commission hereby adopts Rules 157, 0–10, 110, 9–7, 0–9 and 0–7, 17 CFR 230.157, 240.0–10, 250.110, 260.0–7, 270.0–10 and 275.0–7 respectively, pursuant to chapter 6 of title 5 of the United States Code (and particularly section 601 thereof (5 U.S.C. 601)) and pursuant to the Securities Act of 1933 (15 U.S.C. 77a et seq. and particularly section 19 thereof (15 U.S.C. 77s)), the Securities Exchange Act of 1934 (15 U.S.C. 78a et seq. and particularly section 23 thereof (15 U.S.C. 78w)), the Public Utility Holding Company Act of 1935 (15 U.S.C. 79a et seq. and particularly section 20 thereof (15 U.S.C. 79t)), the Trust Indenture Act of 1939 (15 U.S.C. 77aaa et seq. and particularly section 319 thereof (15 U.S.C. 77sss)), the Investment Company Act of 1940 (15 U.S.C. 80a–1 et seq. and particularly section 38 thereof (15 U.S.C. 80a–37)), and the Investment Advisers Act of 1940 (15 U.S.C. 80b–1 et seq. and particularly section 211 thereof (15 U.S.C. 80b–11)).

By the Commission.

George A. Fitzsimmons,

Secretary.

January 28, 1982.

[FR Doc. 82–2905 Filed 2–3–82; 8:45 am]

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17 CFR Part 250

[Release No. 35–22369]

Technical Amendments to Rules 70, 72 and 100

AGENCY: Securities and Exchange Commission.

ACTION: Technical amendments to rules.

SUMMARY: The Commission announces the adoption of technical amendments to Rules 70, 72 and 100 promulgated under the Public Utility Holding Company Act of 1935 ("1935 Act"). These amendments identify the correct forms for filing reports pursuant to section 17(a) of the 1935 Act and eliminate certain duplicate text and an obsolete reference.

DATE: February 4, 1982.

FOR FURTHER INFORMATION CONTACT: James E. Lurie, Special Counsel, Division of Corporate Regulation, Securities and Exchange Commission, Washington, D.C. 20549 (202) 523–5683.

SUPPLEMENTARY INFORMATION: Sections 17(a) and (b) of the 1935 Act concern the filing of statements of beneficial ownership and the liability for short-swing profits by certain insiders involving any security of a registered holding company or subsidiary thereof. These provisions parallel the reporting and liability provisions of sections 16(a) and (b) of the Securities Exchange Act of 1934 ("Exchange Act"). On January 8, 1981, the Commission amended Rule 72(b) under the 1935 Act so that it applied the rules, including exemptive rules, promulgated under sections 16(a) and (b) of the Exchange Act to transactions involving any security of a registered holding company or subsidiary thereof under sections 17(a) and (b) of the 1935 Act.[1] Duplication of filing requirements had previously been avoided by specifying Forms 3 and 4 prescribed under section 16(a) of the Exchange Act as filings also under the 1935 Act.[2] On March 20, 1981, these forms were deleted from the list of 1935 Act forms (previously at 17 CFR 259.271(a) and (b)), since the amendment to rule 72(b) made the dual designation superfluous.[3] The fact that other rules still referred to them was overlooked, a technical oversight corrected here.

The technical amendment revises Rule 72(a) to make clear that only the Exchange Act filing is contemplated. Parallel revisions to reflect this change are made to footnote 5, a note to the subheading preceding rule 70, and to the text of rule 70(b)(4), each of which refers to the filing requirements under section 17(a) of the 1935 Act.

The Commission is also deleting as obsolete footnote 6 to the 1935 Act rules. The footnote, a note accompanying rule 70(c)(5), refers to temporary provisions concerning exemptions in rule 201(b).

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[1] HCAR No. 21863 (December 31, 1980), 46 FR 2036 (January 8, 1981).

[2] HCAR No. 14383 (March 9, 1961), 26 FR 2465 (March 23, 1961).

[3] HCAR No. 21960 (March 12, 1981), 46 FR 17756 (March 20, 1981).