

PART 110—CONTRIBUTIONS AND EXPENDITURE LIMITATIONS AND PROHIBITIONS

It is proposed to revise 11 CFR 110.10(b)(1) as follows:

§ 110.10 Expenditures by candidates.

(b) * * *

(1) Any assets which, under applicable state law, at the time he or she became a candidate, the candidate had legal right of access to or control over, and with respect to which the candidate had either:

- (i) Legal and rightful title, or
- (ii) An equitable interest

It is proposed to add new 11 CFR 110.10(b)(3) as follows:

(b) * * *

(3) A candidate may use a portion of assets jointly owned with his or her spouse as personal funds. The portion of the jointly owned assets that shall be considered as personal funds of the candidate shall be that portion which is the candidate's share under the instrument(s) of conveyance or ownership. If no specific share is indicated by an instrument of conveyance or ownership, the value of one-half of the property used shall be considered as personal funds of the candidate.

PART 9003—ELIGIBILITY FOR PAYMENTS

It is proposed to revise 11 CFR 9003.2(c)(3) as follows:

§ 9003.2 Candidate certifications.

(c) * * *

(3) For purposes of this section, the terms "personal funds" and "personal funds of his or her immediate family" mean—

(i) Any assets which, under applicable state law, at the time he or she became a candidate, the candidate had legal right of access to or control over, and with respect to which the candidate had either:

- (A) Legal and rightful title, or
- (B) An equitable interest.

(ii) Salary and other earned income from bona fide employment; dividends and proceeds from the sale of the candidate's stocks or other investments; bequests to the candidate; income from trusts established before candidacy; income from trusts established by bequest after candidacy of which the candidate is a beneficiary; gifts of a personal nature which had been customarily received prior to candidacy;

proceeds from lotteries and similar legal games of chance.

(iii) A candidate may use a portion of assets jointly owned with his or her spouse as personal funds. The portion of the jointly owned assets that shall be considered as personal funds of the candidate shall be that portion which is the candidate's share under the instrument(s) of conveyance or ownership. If no specific share is indicated by any instrument of conveyance or ownership, the value of one-half of the property used shall be considered as personal funds of the candidate.

Certification of No Effect Pursuant to 5 U.S.C. 605(b) Regulatory Flexibility Act

I certify that the attached proposed rules will not, if promulgated, have a significant economic impact on a substantial number of small entities. The basis for this certification is that no entity is required to make any expenditures under the proposed rules.

Dated: July 15, 1982.

Frank P. Reiche,

Chairman, Federal Election Commission.

[FR Doc. 82-19604 Filed 7-19-82; 8:45 am]

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FEDERAL TRADE COMMISSION

16 CFR Ch. I

Semiannual Regulatory Agenda

Corrections

In FR Doc. 82-18177 appearing on page 29462 in the issue of Tuesday, July 6, 1982, make the following changes:

(1) On page 29463, second column, paragraph numbered 2, eleventh line, "prohibitions" should read "prohibited".

(2) On page 29464, first column, twenty-sixth line from the bottom, "(39 FR 29385 * * *)" should read "(39 FR 39385 * * *)".

(3) On page 29465, third column, paragraph numbered 9, first line "contracts" should read "contacts".

(4) On page 29466, first column, twelfth line from the top, insert "debtor" after "principal".

(5) On page 29468, third column, last line, "know" should read "known".

BILLING CODE 1505-01-M

16 CFR Part 13

[File No. 821 0077]

BATUS, Inc.; Proposed Consent Agreement With Analysis To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed Consent Agreement.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent agreement, accepted subject to final Commission approval, would require, among other things, that a Louisville, Kentucky management and holding company timely divest 200,000 square feet of its retail floor space, and reduce the volume of its retail sales by \$20 million of 1981 sales. Further, the company would be barred from making certain acquisitions in prescribed areas without prior Commission approval.

DATE: Comments must be received on or before September 20, 1982.

ADDRESS: Comments should be directed to: Office of the Secretary, Federal Trade Commission, 6th and Pennsylvania Ave., NW., Washington, D.C. 20580.

FOR FURTHER INFORMATION CONTACT:

FTC/CS-4, Daniel P. Ducore, Washington, D.C. 20580 (202) 724-1268.

SUPPLEMENTARY INFORMATION: Pursuant to Section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and § 2.34 of the Commission's Rules of Practice (16 CFR 2.34), notice is hereby given that the following consent agreement containing a consent order to cease and desist and an explanation thereof, having been filed with an accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with Section 4.9(b)(14) of the Commission's Rules of Practice (16 CFR 4.9(b)(14)).

List of Subjects in 16 CFR Part 13

Department stores.

In the Matter of BATUS Inc., a corporation. Agreement Containing Consent Order File No. 821 0077.

The Federal Trade Commission ("Commission") having initiated an investigation of the acquisition of the stock and assets of Marshall Field & Company ("Marshall Field") by BATUS Inc. ("BATUS") and it now appearing that BATUS, as proposed respondents, is willing to enter into an agreement containing an order in settlement of that investigation:

It is hereby agreed by and between BATUS, by its duly authorized agent and its attorney, and counsel for the Commission that:

1. BATUS is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Delaware, with headquarters address at 2000 Citizens Plaza, Louisville, Kentucky.

2. BATUS admits all jurisdictional facts set forth in the draft of complaint here attached.

3. BATUS waives:

- (a) any further procedural steps;
- (b) the requirement that the Commission decision contain a statement of findings of fact and conclusions of law;
- (c) all rights to seek judicial review or otherwise to challenge or contest the validity of the order entered pursuant to this agreement; and
- (d) any claim under the Equal Access to Justice Act.

4. This Agreement shall not become part of the public record of the proceeding unless and until it is accepted by the Commission. If this agreement is accepted by the Commission, it, together with the draft of complaint contemplated thereby, will be placed on the public record for a period of sixty (60) days and information with respect thereto publicly released. The Commission thereafter may either withdraw its acceptance of this agreement and so notify BATUS, in which event it will take such action as it may consider appropriate, or issue and serve its complaint (in such form as the circumstances may require) and decision in disposition of the proceeding.

5. This agreement is for settlement purposes only and does not constitute an admission by BATUS that the law has been or would be violated as alleged in the draft of complaint here attached.

6. This agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to provisions of § 2.34 of the Commission's Rules, the Commission may, without further notice to BATUS, issue its complaint corresponding in form and substance with a draft of complaint here attached and its decision containing the order set forth herein in disposition of the proceeding and make information public with respect thereto. When so entered, the order shall have the same force and effect and may be altered, modified or set aside in the same manner and within the same time provided by statute for other orders. The order shall become final upon service. Delivery by the U.S. Postal Service of the complaint and the agreed-to order to BATUS shall constitute service. BATUS waives any right it may have to any other manner of service. The complaint may be used in construing the terms of the order, and no other agreement, understanding, representation or interpretation not contained in the order or in the agreement, may be used to vary or contradict the terms of the order.

7. BATUS has read the draft of complaint and order contemplated hereby. BATUS understands that once the Order has been issued, BATUS will be required to file one or more compliance reports showing it has fully complied with the order. BATUS further understands that it may be liable for civil penalties in the amount provided by law for each violation of the order after it becomes final.

Order

I

It is ordered that for purposes of this order the following definitions shall apply:

1. "BATUS" means BATUS Inc., a corporation organized, existing, and doing business under and by virtue of the laws of the State of Delaware, with headquarters address at 2000 Citizens Plaza, Louisville, Kentucky 40202, as well as its officers, directors, employees, agents, parents, divisions, subsidiaries, affiliates, successors, assigns, and the officers, directors, employees or agents of BATUS' parents, divisions, subsidiaries, affiliates successors or assigns.

2. "Marshall Field" means Marshall Field & Company, a corporation organized, existing, and doing business under and by virtue of the laws of the State of Delaware, with principal offices at 25 East Washington St., Chicago, Illinois 60602, as well as its officers, directors, employees, agents, its parents, divisions, subsidiaries, affiliates, successors and assigns, and the officers, directors, employees or agents of its parents, divisions, subsidiaries, affiliates, successors or assigns.

3. "SMSA" means a Standard Metropolitan Statistical Area as defined by the Office of Management and Budget, Statistical Policy Division, 1975 Edition, as amended.

4. "Department stores," as used herein, corresponds with Bureau of the Census Standard Industrial Classification No. 531, 1977 Census of Retail Trade. It refers to retail stores normally employing 25 or more people and engaged in selling some items of each of the following groups of merchandise:

(a) Furniture, home furnishings, appliances, and radio and TV sets; and

(b) A general line of apparel for the family; and

(c) Household linens and dry goods.

5. "GMAF stores," as used herein, refers to all retail establishments included in the following Bureau of Census Major Industry Group and Standard Industrial Classifications as used in the 1977 Census of Retail Trade:

Census Number and Descriptions

Classification No. 531—Department stores
Major Industry Group No. 56—Other stores primarily engaged in the sale of apparel
Classification No. 533—Limited price variety stores

Classification No. 539—Miscellaneous general merchandise stores
Major Industry Group No. 57—Furniture, home furnishings and equipment stores.

II

It is further ordered that BATUS shall, within two (2) years from the date upon which this order becomes final, divest absolutely and in good faith such of its department stores in the Milwaukee, Wisconsin SMSA as will reduce the floor space of its department stores in that SMSA by an amount not less than 200,000 square feet and reduce its annual sales volume in that SMSA in an amount not less than \$20 million as measured by fiscal 1981 sales.

A. Divestiture if any store under the terms of this order shall be made only to an acquirer approved in advance by the Federal Trade Commission.

B. Such divestiture shall include all leases, stock space and inventories but not the trade name or other proprietary names associated with the store.

C. Should BATUS divest the Marshall Field department store in Mayfair Mall it shall within two (2) years from the date of such divestiture open or begin construction of another Marshall Field retail establishment consisting of not less than 120,000 square feet of floor space in the Milwaukee SMSA. BATUS shall complete construction within three years from the time construction is begun. BATUS shall ensure that the store is a viable competitive retail establishment for not less than five (5) years from the date of its opening.

III

It is further ordered that:

A. For a period of ten (10) years from the date upon which this order becomes final, BATUS shall not, directly or indirectly, through acquisition of stock, share capital, equity or any other interest in any equity, corporate or noncorporate, acquire any department store or GMAF store located within the Milwaukee, Wisconsin SMSA without the prior approval of the Federal Trade Commission; nor shall BATUS acquire any assets of any entity, corporate or noncorporate, operating any department store or GMAF store located within the Milwaukee, Wisconsin SMSA without the prior approval of the Federal Trade Commission.

B. For a period of two (2) years from the date upon which this order becomes final, BATUS shall not, directly or indirectly, through acquisition of stock, share capital, equity or any other interest in any equity, corporate or noncorporate, acquire any department store or GMAF store located in any SMSA in which BATUS then operates a department store or GMAF store without the prior approval of the Federal Trade Commission; nor shall BATUS acquire any assets of any entity, corporate or noncorporate, operating any department store or GMAF store located in any SMSA in which BATUS then operates a department store or GMAF store without the prior approval of the Federal Trade Commission.

C. For a period of three (3) years, beginning two (2) years from the date upon which this order becomes final, BATUS shall not, directly or indirectly, through acquisition of stock, share capital, equity or any other interest in any equity, corporate or noncorporate, acquire any department store or DMAF store located in any SMSA in which BATUS then operates a department store or GMAF store without the prior approval of the Federal Trade Commission; nor shall BATUS acquire any assets of any entity, corporate or noncorporate, operating any department store or GMAF store located in any SMSA in which BATUS then operates a department store or GMAF store without the prior approval of the Federal Trade Commission. Provided that this provision (III. C.) shall not be deemed to require prior approval of the Federal Trade Commission of acquisitions (1) of store sites, leases or inventories if the store property has not been operated as a department store or GMAF store for a period of ninety (90) consecutive days immediately prior to its acquisition, or (2) of stock, share capital, equity or any other

interest in any equity, corporate or noncorporate, or assets for a purchase price or other consideration less than \$15 million.

IV

It is further ordered that BATUS shall submit within sixty (60) days after the date upon which this order becomes final, and every ninety (90) days thereafter, until such time that divestiture as required by paragraph II of this order has been accomplished, a report setting forth in detail the manner and form in which BATUS intends to comply, is complying, and has complied with the terms of this order and such additional information relating thereto as may from time to time be required. All such reports shall include a summary of contacts or negotiations with anyone for the specified assets, the identity of all such persons, and copies of all written communications to and from such persons.

V

It is further ordered that for a period of ten (10) years from the date upon which this order becomes final, BATUS shall notify the Federal Trade Commission at least thirty (30) days prior to any change in BATUS which may affect compliance with the obligations arising out of this consent order, such as dissolution, assignment or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries or any other change in the corporation.

VI

It is further ordered that each year, for a period of ten (10) years from the date upon which divestiture as required by paragraph II of this order is accomplished, BATUS shall submit a report setting forth in detail the manner and form in which BATUS intends to comply, is complying or has complied with paragraph III of this order.

Analysis of Proposed Consent Order To Aid Public Comment

The Federal Trade Commission has accepted an agreement to a proposed consent order from BATUS Inc.

The proposed consent order has been placed on the public record for sixty (60) days for reception of comments from interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the agreement and the comments received and will decide whether it should withdraw from the agreement or make final the agreement's proposed order.

The Commission's investigation in this matter concerned the April 1982 acquisition by BATUS Inc. ("BATUS") of the stock of Marshall Field & Company ("Marshall Field"). Marshall Field operates one department store in the Milwaukee, Wisconsin Standard Metropolitan Statistical Area (SMSA), where BATUS operates seven Gimbels department stores and 14 Kohl's department stores. Since the proposed consent order was negotiated during the investigational stage of the proceedings, the complaint proposed by the Commission staff was not issued. That complaint charges that BATUS' acquisition of Marshall Field violated Section 7 of the Clayton Act and

Section 5 of the Federal Trade Commission Act. The complaint alleges that there will be anticompetitive effects of the acquisition in the Milwaukee SMSA, a highly concentrated market. The alleged anticompetitive effects include (a) the elimination of actual competition between BATUS and Marshall Field in the Milwaukee SMSA; (b) increased concentration in the department store and traditional department store business in the Milwaukee SMSA and in the retail sale of certain merchandise lines; and (c) the lessening of the likelihood of future deconcentration in the department store business in the Milwaukee SMSA.

The proposed order contains provisions requiring divestiture and imposing limitations on BATUS' future acquisitions. Under the order BATUS will be required to divest stores in the Milwaukee SMSA, within two years of the date the order becomes effective, such as to reduce BATUS' presence by 200,000 square feet and \$20 million of 1981 sales. Divestiture will be made to an acquirer or acquirors approved in advance by the Federal Trade Commission. The proposed order also requires that for a period of ten (10) years from the effective date of the order, BATUS will not be permitted to make any acquisitions in the department store business in the Milwaukee SMSA without prior Commission approval. Furthermore, BATUS will be required to obtain Commission approval prior to making any department store acquisition in other areas where BATUS operates for five years from the effective date of the order; with a provision, beginning after two years, that acquisitions of inoperative store assets or acquisitions for less than \$15 million will not require prior Commission approval.

The provisions of the proposed order are expected to ameliorate the anticompetitive effects alleged in the Complaint resulting from the merger. Before the acquisition BATUS was ranked number one in the market and Marshall Field number seven. As a result of the acquisition the concentration ratio for the four largest firms in Milwaukee increased by more than 3%. BATUS' relative position stayed the same though its market share increased by more than 3%. Under the proposed consent order BATUS' market share increase will be limited almost completely, and four-firm concentration may actually decrease. This will alleviate to a substantial extent any possible adverse impact of the acquisition on competitors in the Milwaukee department store markets.

The purpose of this analysis is to facilitate public comment on the proposed order. It is not intended to constitute an official interpretation of the agreement and proposed order or to modify in any way their terms.

Carol M. Thomas,

Secretary.

[FR Doc. 82-19618 Filed 7-19-82; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 229, 239, 240, and 249

[Release Nos. 33-6416, 34-18878, 40-12543; File No. S7-939]

Disclosure of Certain Relationships and Transactions Involving Management

AGENCY: Securities and Exchange Commission.

ACTION: Proposed rulemaking.

SUMMARY: The Commission is publishing for comment, as part of its comprehensive Proxy Review Program, proposed rule, form and schedule amendments relating to the disclosure of transactions in which certain persons connected with management have a material interest and relationships between a registrant's directors or nominees for director and certain entities with which the registrant conducts business. The proposed amendments are intended to simplify disclosure and reduce compliance burdens in a manner consistent with investor protection. The proposed amendments include, among other things, a proposed new uniform item, applicable to registration statements, periodic reports and proxy statements, relating to disclosure of certain relationships and transactions and, in connection therewith, substantially streamlined requirements relating to disclosure of relationships.

DATE: Comments must be received on or before September 7, 1982.

ADDRESS: Comments should be submitted in triplicate to George A. Fitzsimmons, Secretary, Securities and Exchange Commission, 450 5th Street, NW., Washington, D.C. 20549. Comment letters should refer to File No. S7-939. All comments received will be available for public inspection and copying in the Commission's Public Reference Room, 1100 L Street, NW., Washington, D.C. (prior to July 23, 1982), or at 450 5th Street, NW., Washington, D.C. (after July 23, 1982).

FOR FURTHER INFORMATION CONTACT: Susan P. Davis (202) 272-2604 or Robert Pincus (202) 272-2589, Office of Disclosure Policy, Division of Corporation Finance, Securities and Exchange Commission, Washington, D.C. 20549.

SUPPLEMENTARY INFORMATION: The Securities and Exchange Commission today published for comment proposed amendments to Regulation S-K (17 CFR 229) and to Forms S-1 (17 CFR 239.11)

and S-11 (17 CFR 239.18) under the Securities Act of 1933 (the "Securities Act") (15 U.S.C. 77a et seq. (1976 and Supp. III 1979), as amended by the Small Business Incentive Act of 1980, Pub. L. No. 96-447 (October 21, 1980)), as well as to Form 10 (17 CFR 249.210), Form 10-K (17 CFR 249.310), Schedule 14A (17 CFR 240.14a-101) and Schedule 14B (17 CFR 240.14a-102) under the Securities Exchange Act of 1934 (the "Exchange Act") (15 U.S.C. 78a et seq. (1976) and Supp. II 1977)). These proposals include: (1) A new Item 494 of Regulation S-K (17 CFR 229.404) concerning disclosure of certain relationships and related transactions; (2) amendments to Item 401 of Regulation S-K (17 CFR 239.401) to include certain disclosure involving the business experience of executive officers and directors; (3) amendments to Item 402 of Regulation S-K (17 CFR 229.402) to rescind certain disclosure requirements proposed to be incorporated into new Item 404 relating to transactions with management, indebtedness of management, and transactions with promoters, and to rescind the disclosure requirements relating to transactions with pension plans; (4) amendments to Forms S-1, S-11, 10 and 10-K and Schedules 14A and 14B to require the disclosure called for by new Item 404; and (5) amendments to Item 6(b) of Schedule 14A to rescind certain disclosure requirements concerning relationships of directors, some of which are proposed to be incorporated into new Item 404. These proposed amendments are the first rulemaking initiatives of the Commission's Proxy Review Program.

I. The Proxy Review Program

Over the past several years, the Commission has been engaged in a number of major rulemaking initiatives designed to simplify, in a manner consistent with the protection of investors, the complex disclosure systems that have evolved during the more than forty years since the enactment of the federal securities laws. Application of similar themes in other areas produced, among other things, the Integrated Disclosure System, which streamlines and harmonizes two major disclosure systems—the registration of securities under the Securities Act and the continuous reporting system under the Exchange Act.¹ In addition, the Commission recently examined the registration requirements and exemptive scheme under the Securities Act and adopted new Regulation D,² designed to

achieve uniformity between state and federal exemptions and to facilitate capital formation.³

The Commission now is commencing a major program in connection with the third major disclosure system—the rules, forms and schedules relating to the solicitation of proxies. While various aspects of the proxy rules have been the subject of study in recent years, this will be the first comprehensive and coordinated review of the entire system of proxy regulation.

The existing proxy rules were adopted in a piecemeal fashion and have been the subject of frequent changes. This has led to certain duplicative requirements and difficulty for registrants in keeping current with existing requirements and establishing systems for gathering information for disclosure in proxy statements under Regulation 14A⁴ and information statements under Regulation 14C⁵ (hereinafter referred to, collectively, as "proxy statements"). Moreover, the disclosure requirements applicable to proxy statements have become more detailed and complex over the years. The burdens associated with proxy statement preparation have been widely felt, since the proxy rules apply to all companies registered pursuant to Section 12 of the Exchange Act.⁶

The Commission also recognizes that the continued accretion in the information required to be included in proxy statements may not always provide benefits to security holders that outweigh the costs of compliance for registrants. Merger proxy statements, for example, may be so lengthy and detailed that they cannot be digested easily by security holders. In fact, security holders may be discouraged from reading some proxy statements due to their sheer volume. To the extent that a proxy statement is overly complicated and difficult to read, it may not effectively perform its intended function of communicating meaningful information to security holders in order that they may make informed voting decisions.

¹ Release No. 33-6389 (March 8, 1982) (47 FR 11251).

² 17 CFR 240.14a-1 et seq.

³ 17 CFR 240.14c-1 et seq.

⁴ Registration arises under Section 12(b) for companies registering securities on a national securities exchange. Companies register under Section 12(g) if, on the last day of their fiscal year, they have total assets exceeding \$1 million and a class of securities held of record by 500 or more persons. Pursuant to Section 12(g) and the rules promulgated thereunder, however, companies are not required to register under Section 12(g) until they have 500 record holders and total assets of \$3 million or more. Release No. 34-18647 (April 15, 1982) (47 FR 17046).

In order to update the proxy regulations and, in doing so, improve the readability of proxy statements and eliminate unnecessary disclosure costs, the Commission has commenced a comprehensive review of the proxy regulations. The Proxy Review Program will involve review of existing substantive and procedural provisions and elimination of duplicative or outmoded requirements. Where practicable, concepts developed in connection with the Integrated Disclosure System, such as incorporation by reference and the use of uniform disclosure items, will be applied to proxy regulations. Particular attention will be paid to simplifying proxy disclosure, because, while security holders often rely on market professionals to digest Exchange Act reports and Securities Act registration statements, they generally do not rely on such persons to do the same in connection with proxy statements.

The Proxy Review Program currently contains six projects.⁷ The Commission intends to put revised requirements into place as promptly as possible consistent with registrants' needs for a reasonable time to comply with any new requirements. The entire Proxy Program is expected to take approximately two years to complete.

This release discusses the background of proposed Item 404, the disclosure provisions from which it is derived, the changes proposed to be made from existing disclosure requirements, and proposed coordinating changes. Attention is directed to the text of the proposals for a more complete understanding.

II Background

These proposals result primarily from comments received in response to Release No. 34-17517,⁸ which, among

⁷ In addition to the revision of rules relating to the disclosure of transactions and relationships, the Program will include: (1) The simplification of the provisions contained in Item 402 of Regulation S-K relating to disclosure of management remuneration; (2) a reexamination of Exchange Act Rule 14a-8 regarding shareholder proposals (17 CFR 240.14a-8); (3) the simplification of Form S-14—the merger proxy statement (17 CFR 239.23); (4) a review of the rules concerning proxy contests; and (5) an evaluation of the recommendations of the Advisory Committee on Shareholder Communications concerning the processes by which issuers communicate with the beneficial owners of their securities. See U.S. Securities and Exchange Commission, "Improving Communications Between Issuers and Beneficial Owners of Nominee Held Securities," Report of the Advisory Committee on Shareholder Communications, June 1982.

⁸ Release No. 34-17517 (February 5, 1981) (46 FR 12011) (the "February Release"). The Commission received 85 comment letters, not including 16 letters that commented exclusively on the amendments that were proposed to Rule 14a-8, which are the

¹ Release No. 33-6383 (March 3, 1982) (47 FR 11380).

² 17 CFR 230.501 et seq.

other things: (1) proposed amendments to Item 6(b) of Schedule 14A to clarify and simplify the requirements relating to disclosure of relationships that may affect the independent judgement of directors and nominees for election as a director (hereinafter referred to, collectively, as "directors") and (2) solicited comment on the advisability of combining Item 6(b) with Item 402(f) of Regulation S-K, which elicits disclosure of transactions in which certain persons connected with the registrant or their relatives have a direct or indirect material interest, to create a uniform Regulation S-K item applicable equally to registration statements, periodic reports and proxy statements.⁹ The Commission suggested that, although these items originally were adopted to serve differing disclosure functions,¹⁰ it might be appropriate to develop a uniform item since the two items overlap.¹¹ The Commission noted that

subject of a separate project. The comment letters, as well as a Comment Highlight prepared by the Division of Corporation Finance, are available for public inspection in the Commission's Public Reference Room. See File No. S7-871.

⁹ Among the other amendments proposed in the February Release were amendments to Instructions 1 and 5 of Item 403 of Regulation S-K (17 CFR 229.403) relating to the disclosure of beneficial ownership, which will be acted upon at the same time that final action is taken with respect to the proposals set forth herein.

¹⁰ Item 402(f), which was promulgated originally in 1942 (Release No. 34-3347 (December 18, 1942) (7 FR 10653)) as part of Schedule 14A of the Commission's proxy rules and made a part of Regulation S-K in 1978 (Release No. 33-5949 (July 29, 1978) (43 FR 34407)), requires disclosure of transactions involving the registrant or its subsidiaries in which specified persons (including, but not limited to, officers and directors and certain of their relatives) have a direct or indirect material interest.

Item 6(b) was added to the Commission's proxy rules in 1978 (Release No. 34-15384 (December 6, 1978) (43 FR 58552)) following extensive hearings on the subjects of shareholder communications, shareholder participation in the corporate electoral process and corporate governance generally.

See Release Nos. 34-13482 (April 28, 1977) (42 FR 23901) and 34-13901 (August 29, 1977) (42 FR 44860). At the hearings, support was expressed for improving the quality of disclosure to security holders regarding the structure and composition of corporate boards of directors in order to enable security holders to make more informed voting decisions in elections of directors. The Commission thereafter adopted Item 6(b), which requires disclosure of relationships between directors and certain significant customers, suppliers and creditors, as well as with law or investment banking firms that provide services to the registrant. For a more complete discussion of the corporate governance hearings and various staff recommendations, see Division of Corporation Finance, U.S. Securities and Exchange Commission, *Staff Report on Corporate Accountability*, 98th Cong., 2d Sess. (Comm. Print 1980) (Senate Comm. on Banking, Housing and Urban Affairs) (the "Staff Report").

¹¹ Under Item 402(f), a material interest in a transaction involving another entity may arise, in certain circumstances, from a position with such

this overlap has resulted in some confusion and duplication with concomitant burdens on registrants. In addition, the Commission is concerned that overly detailed disclosure about relationships and transactions may result in truly significant relationships and transactions being obfuscated by less important information.

While commentators generally supported the proposed amendments in the February Release, a large number of commentators stated that the Commission should re-examine the entire area of disclosure of transactions and relationships and, as it had suggested, attempt to develop a uniform item. Commentators asserted that investors and security holders are interested in essentially the same transactions and business relationships, so that separate disclosure requirements for registration statements, periodic reports and proxy statements should not be maintained. They also stated that a uniform item would make document preparation less burdensome. At the same time, however, commentators expressed concern that all of the requirements of Item 6(b) not be incorporated into a new item applicable to registration statements on the basis that detailed disclosure about directors' relationships is not necessary for informed investment decisionmaking and that substantial additional burdens should not be imposed on registrants.

As a result of the Commission's reexamination of this area, it is proposing a new uniform Regulation S-K item, Item 404, "Certain relationships and related transactions," which would be applicable to registration statements, periodic reports and proxy statements. The proposed item represents the Commission's efforts to extract a basic package of information about transactions and relationships that is important to both investment and voting decisions. The requirements of proposed Item 404 are derived, in large part, from the requirements of Items 402(f) and 6(b). In addition, proposed Item 404 incorporates, with some modifications, other provisions of Item 402 of Regulation S-K concerning disclosure of loans to persons connected with management and transactions with promoters so that all provisions regarding transactions are included in

other entity. Similarly, Item 6(b) requires the registrant to focus on a director's or nominee's position with significant customers, suppliers and creditors. Moreover, Item 402(f) requires an examination of certain transactions that also may need to be examined to determine the identity of significant customers, suppliers and creditors under Item 6(b).

one Regulation S-K item.¹² Finally, the Commission is proposing to amend various registration forms and periodic reports, as well as Schedules 14A and 14B, to reference the new Item and to make other necessary changes.

The Commission believes that these proposals, if adopted, will maintain the quality of disclosure received by security holders and investors while reducing compliance burdens on registrants. Moreover, the addition of a new item to Regulation S-K concerning certain relationships and related transactions would constitute another step in integrating the disclosure required under the Securities Act and the Exchange Act.

Pursuant to 5 U.S.C. 605(b), the Chairman of the Commission has certified that the amendments proposed herein, if promulgated, will not have a significant economic impact on a substantial number of small entities. This certification, including the reasons therefor, is attached to this release.

III. Proposed Item 404: Certain Relationships and Related Transactions

A. Proposed Item 404(a)—Transactions With Management and Others

Proposed Item 404(a) sets forth the disclosure requirements with respect to transactions in which certain specified persons connected with the registrant or their relatives have a direct or indirect material interest. Such information is relevant for investment and voting decisions as it indicates insiders' interests in transactions engaged in for the benefit of public security holders.

The provisions of proposed Item 404(a) are derived from existing Item 402(f).¹³ The Commission believes that Item 402(f) has worked quite well to elicit information on transactions that are important to investors and security holders. In addition, a large number of the commentators responding to the February Release expressed the view that Item 402(f)'s requirements should be the basis of, or at least included in, any new disclosure item concerning transactions and relationships with management. The commentators stated, among other things, that Item 402(f)'s materiality standard is an effective indicator of conflicts of interest that are important to security holders and investors.¹⁴

¹² As discussed *infra*, the provisions concerning disclosure of transactions with pension plans are proposed to be rescinded.

¹³ Accordingly, Item 402(f) is proposed to be rescinded.

¹⁴ Similarly, Congressman John D. Dingell recently stated in hearings held by a Subcommittee on

While including the requirements of Item 402(f) in proposed Item 404(a), the Commission is making several changes to clarify certain requirements and to close certain gaps in the disclosure of transactions involving relatives of persons who are connected with the registrant. First, the \$50,000 *de minimis* threshold, currently set forth in Instruction 2C to Item 402(f), is proposed to be incorporated into the text of Item 404(a). Second, the provision, also currently contained in Instruction 2C, regarding aggregation of a series of similar transactions, is likewise proposed to be included in the text of the new item.

Third, the Commission proposes to require disclosure under Item 404(a) of the amount of the transaction, in addition to the amount of any disclosable interest. Currently, Instruction 4 to Item 402(f) requires disclosure of the amount of the transaction only when it is not practicable to state the amount of the interest involved. The Commission believes that information regarding the size of the transaction, as well as the size of the interest of those connected with management, would be material to investors and security holders in making investment or voting decisions relating to the registrant.

Fourth, the Commission proposes to change the class of relatives whose transactions must be disclosed. Currently, Item 402 requires disclosure of transactions in which any relative of a director or officer of the registrant, a nominee for director, or an owner, beneficially or of record, of more than five percent of any class of the registrant's voting securities, who lives in the same household as such person, or who is a director or officer of any parent or subsidiary of the registrant, has a direct or indirect material interest. The Commission believes that Item 402(f) may be too narrow in its coverage of relatives of persons connected with management. Potential conflicts of interest are not necessarily limited to relatives who live in the same household or who are employed by parents or subsidiaries of the registrant; such

opportunities may exist for any close relative of a person connected with management. Accordingly, the Commission is proposing to require disclosure of transactions involving relatives of the specified persons, provided they are no more remote than first cousin. The Commission solicits specific comment, however as to whether other classifications of relatives whose transactions are required to be disclosed would be more appropriate.

The Commission is not proposing at this time to make any other changes in the classes of persons whose transactions are disclosable. However, the Commission is requesting comment on whether transactions of only "executive officers," rather than all officers, should be disclosed. Disclosure of transactions would then be required only with respect to officers that perform policy-making functions.¹⁵

The Commission is proposing to include, as instructions to Item 404(a), most of the instructions to Item 402(f) that are not proposed to be incorporated into the text of the new item. Instructions 2A, B and D (relating to transactions that need not be disclosed), Instruction 2C (relating to aggregation of periodic installments), Instruction 3 (relating to interests that are not deemed to be material), Instruction 4 (regarding the computation of the amount of the transaction) and Instruction 7 (relating to transactions involving remuneration) are proposed as Instructions 1, 2, 3, 4 and 6 to Item 404(a), respectively.¹⁶ Instruction 5 to Item 402(f) (relating to the purchase or sale of assets not in the ordinary course of business) is proposed to be included in Item 404(a) as Instruction 5, except that the Commission is proposing to clarify the Instruction by moving the portion that relates only to registration statements on Form S-11 into that form. Instruction 1 (dealing with information disclosed or omitted pursuant to other paragraphs of Item 402), which has been revised slightly, and Instruction 6 (relating to the presentation of the Item 402(f) information in a registration statement) are proposed to be included as general instructions to Item 404, since they apply to all the disclosure requirements contained in the item. Finally, a new general instruction is proposed to clarify the application of the new item to non-Canadian foreign private issuers that

are eligible to use Form 20-F (17 CFR 249.220f).

B. Proposed Item 404(b)—Disclosure of Business Relationships

Proposed Item 404(b) sets forth requirements applicable to registration statement, periodic reports and proxy statements with respect to disclosure of certain relationships of directors and nominees for director. The requirements are derived from Items 6(b)(3), (4), (5) and (7) of Schedule 14A,¹⁷ which are applicable to registrants other than investment companies registered under the Investment Company Act of 1940.¹⁸ Proposed Item 404(b)(1) applies to disclosure of relationships with significant customers; proposed Item 404(b)(2) concerns relationships with significant suppliers; proposed Item 404(b)(3) deals with disclosure of relationships with significant creditors; proposed Items 404(b)(4) and (5) deal with disclosure of relationships with law and investment banking firms respectively; and proposed Item 404(b)(6) requires disclosure of any similar relationships.

The requirements of proposed Item 404(b) are streamlined significantly from those contained in Item 6(b). The major changes from the existing requirements are: (1) Eliminating the need for registrants to trace directors' relationships over two years; (2) eliminating disclosure where a director's relationships with a significant customer, supplier or creditor consists solely of a directorship or employment with the other entity; (3) eliminating disclosure where a director owns five percent or less of the equity interest in the other entity; (4) raising the thresholds of payments or indebtedness that must be met before a relationship is required to be disclosed; (5) requiring the specific dollar amount of payments received by law and investment banking firms to be disclosed only if such amount exceeds five percent of such firm's gross revenues and unconsolidated gross revenue respectively; and (6) excluding certain payments made or received by, or indebtedness incurred by, certain *de minimis* subsidiaries.

The adoption of a Regulation S-K item applicable to registration statements, periodic reports and proxy statements would mean that certain additional information relating to relationships would be required to be included in

Oversight and Investigations of the House of Representatives:

Self-dealing transactions [are] an area in which management is most likely to favor itself with the potential for substantial harm to shareholders. It is precisely in this area of greatest potential harm that full disclosure is most thoroughly needed.

Transcript of hearings before the Subcommittee on Oversight and Investigations of the Committee on Energy and Commerce, House of Representatives, on H.R. "The administration of the federal securities laws and the regulations concerning corporate disclosure," February 8, 1982, p. 7.

¹⁵ See the definition of "executive officer" contained in Rule 405 under the Securities Act (17 CFR 230.405) and Rule 3b-7 under the Exchange Act (17 CFR 240.3b-7).

¹⁶ Instruction 8, the general materiality instruction to Item 402(f), is proposed to be incorporated into new Instruction 1.

¹⁷ Accordingly, Items 6(b)(3), (4), (5) and (7) are proposed to be rescinded.

¹⁸ 15 U.S.C. 80a-1 et seq. (the "Investment Company Act").

registration statements.¹⁹ Such a result would be in accordance with the views of some commentators responding to the February Release who believed that little distinction could be made in the information on transactions and relationships that is relevant to investment and voting decisions; if information is relevant to one type of decision, it also would be relevant to the other. Thus, there was support for disclosing relationships in registration statements on the basis that, among other things, relationships that are important for security holders to know when voting because they may affect directors' independence also are important to investors when making their decisions as to whether to invest in a company.

In spite of the importance of certain directors' relationships to investors, commentators also were of the view that not all of the relationships currently required to be disclosed by Items 6(b)(3), (4) and (5) are equally important to investment decision-making. In addition, commentators were concerned that substantial additional burdens would be imposed if all of the requirements of Item 6(b) were applied to registration statements.

In view of these comments, proposed Item 404(b) would require disclosure only of those relationships currently required to be disclosed under Items 6(b)(3), (4) and (5) that the Commission believes are necessary for informed voting and investment decisions. The Commission believes that proposed Item 404 strikes an appropriate balance between security holders' and investors' needs for meaningful information that may bear on the ability of directors to exercise independent judgment and the compliance costs that generating and disclosing this information entails. The differences between proposed Item 404(b) and current Items 6(b)(3), (4) and (5) are discussed in more detail below.

1. *Concurrent Relationships.* Item 6(b)(3) currently requires disclosure of any relationship where a director is, or has been within the last two full fiscal years, an officer, director or employee of, or owns, or has owned within the last two full fiscal years, in excess of one percent equity interest in, any entity that has been a significant customer, supplier or creditor during the registrant's last fiscal year or other appropriate period. Commentators have asserted that the requirement to trace directors'

relationships over the previous two years results in disclosure of relationships that did not, in fact, exist when the transactions between the registrant and other entity took place.²⁰

The Commission believes that conflicts of interest are most likely to arise when a director's relationship with a business entity and the registrant's relationship with such entity are concurrent. In addition, tracing directors' relationships over the two previous years imposes substantial burdens on registrants and may result, in certain instances, in misleading disclosure. Accordingly, the Commission is proposing to limit disclosure of directors' relationships with entities that have been significant customers, suppliers or creditors of the registrant during its last fiscal year to relationships that existed during that period.

2. *Director and Employee Relationships.* In the February Release, the Commission proposed to raise the thresholds of payments made or received or indebtedness incurred that must be met before a relationship with a customer, supplier or creditor is disclosable where the only relationship between the registrant and the other entity is the existence of a common nonemployee director. Many commentators stated that disclosure of relationships based solely on the existence of common directors should be eliminated altogether. These commentators opined, among other things, that such directors generally are unaware of transactions between the registrant and the other entity of which they are a director, and thus they are unlikely to be subject to conflicts of interest due to their relationships.

On the basis of the comments received and its own experience, the Commission believes that the need for disclosure of the existence of business dealings between entities with common directors does not justify the effort involved in making this determination. Accordingly, the Commission is not requiring disclosure based solely on common directorships under proposed Item 404(b). This is consistent with the exclusion in proposed Item 404(a) (based on Item 402(f)) for transactions in which a person's interest consists solely of a directorship with the other entity involved in the transaction.

²⁰ For example, if during year one a nominee had the requisite equity interest in a company which in year two became the registrant's customer, but in year two the nominee no longer had an equity interest in the customer, then in fact there was no relationship or common interest, but Item 6(b)(3)(i) would require disclosure as if there were.

The Commission also is proposing to eliminate disclosure where a director's relationship with a significant customer, supplier or creditor arises merely from the director's employment as other than an officer with the other entity. Situations where a person is a director of the registrant and also an employee, other than an officer, of the other entity are apt to arise infrequently.

3. *Equity Ownership.* In the February Release, the Commission proposed to raise, from one percent to five percent, the ownership threshold for disclosure of business relationships between the registrant and a significant customer, supplier or creditor in which a director has an equity interest. This proposal was overwhelmingly endorsed by commentators who agreed with the Commission that the increased threshold would help to reduce burdens and allow security holders to focus more readily on disclosure of more significant relationships. Accordingly, proposed Item 404(b) utilizes a five percent equity ownership threshold.

4. *Thresholds of Payments or Indebtedness.* Currently, a customer relationship is required to be disclosed under Items 6(b)(3)(i) and (ii) if the amount of payments made or proposed to be made to the registrant or its subsidiaries for property or services during the registrant's last full fiscal year exceeds one percent of the registrant's consolidated gross revenues for its last full fiscal year. Similarly, a supplier relationship is disclosable under Items 6(b)(3)(iv) and (v) if payments made or proposed to be made by the registrant or its subsidiaries for property or services during the other entity's last full fiscal year exceeds one percent of such other entity's consolidated gross revenues for its last full fiscal year.

In the February Release, the Commission proposed to raise the thresholds of payments, where the only relationship between the registrant and the other entity consists of the existence of a common nonemployee director, to five percent of the registrant's consolidated gross revenues, in the case of customers, and to five percent of the other entity's consolidated gross revenues, in the case of suppliers. Agreeing with the proposal, many commentators stated, furthermore, that the one percent thresholds are too low and do not focus on truly significant relationships, regardless of the nature of the relationship between the registrant and the other entity. To improve the quality of disclosure, commentators suggested across-the-board increases in the thresholds.

¹⁹ Specifically, information on relationships would be required to be presented in Forms S-1 and S-11. In addition, such information would be required to be incorporated by reference into Forms S-2 [17 CFR 239.12] and S-3 [17 CFR 239.13] from the registrant's latest annual report on Form 10-K.

In view of these comments, the Commission is proposing to establish consolidated gross revenues thresholds of five percent in Items 404(b)(1) and (2). The Commission believes, however, that the significance of a customer or supplier relationship should be determined by reference to the percentage of business from the point of view of both the registrant and the other entity involved in the transaction. Accordingly, proposed Item 404(b) applies the five percent test to the consolidated gross revenues of the registrant and to the consolidated gross revenues of the other entity, regardless of whether the registrant is making or receiving payments.

Proposed Item 404(b)(2) also changes the time period over which payments made, or proposed to be made, by the registrant or its subsidiaries are measured from the other entity's last or current fiscal year to the registrant's last or current fiscal year. The proposed time period is consistent with that over which payments made to the registrant or its subsidiaries are measured under proposed Item 404(b)(1) (derived from Items 6(b)(3)(i) and (ii)).

In conformity with the change regarding payments, the Commission is proposing to incorporate into proposed Item 404(b) a five percent consolidated gross assets threshold of indebtedness that must be met before a relationship with a creditor is required to be disclosed. Current Item 6(b)(3)(iii) requires disclosure of a director's relationship with any entity to which the registrant or its subsidiaries was indebted, at any time during the last fiscal year, in excess of one percent of the registrant's consolidated gross assets, or \$5,000,000, whichever is less. In the February Release, the Commission proposed to raise the consolidated gross assets threshold to five percent and to eliminate the alternative \$5,000,000 threshold where the only relationship between the registrant and the creditor is the existence of a common nonemployee director. A substantial number of commentators advocated raising the percentage threshold and, in particular, eliminating the \$5,000,000 alternative threshold regardless of the nature of the relationship between the registrant and the creditor, as they believed the alternative threshold imposed a greater burden on large companies whose indebtedness to any particular creditor may be in excess of \$5,000,000 but less than one percent of the company's consolidated gross assets.

The Commission agrees that larger companies should not bear a

disproportionate burden with respect to disclosure of relationships with creditors. Accordingly, the Commission, while setting the consolidated gross assets threshold in proposed Item 404(b)(3) at five percent, is not including the \$5,000,000 alternative threshold therein.

5. *Relationships with Law and Investment Banking Firms.* Currently, Item 6(b)(4) requires disclosure of whether any director is a member or employee of, or is associated with, a law firm that the issuer has retained in the last two full fiscal years or proposes to retain in the current fiscal year. Item 6(b)(5) requires similar disclosure of relationships of directors with investment banking firms. In February Release, the Commission proposed to retain, as separate items, the requirements to disclose relationships with law and investment banking firms and to add a statement to the effect that a registrant would not be required to specify the amount of transactions between the registrant and the law or investment banking firm if such amount did not exceed \$50,000.

The majority of the commentators supported this proposal, but argued that the \$50,000 figure above which the Commission would require disclosure of the dollar amounts of payments was much too low to elicit important information for security holders, given the amounts that ordinarily are paid by companies each year for legal or investment banking services. In addition, a few commentators objected to relationships with law and investment banking firms being treated differently from relationships with other entities that supply services to the registrant, which would be disclosable only if certain thresholds were met.

The Commission is reevaluating the requirements concerning disclosure of relationships with law and investment banking firms in light of the changes in both the composition of boards of directors²¹ and in the nature of relationships between registrants and law and investment banking firms. Proposed Items 404(b)(4) and (5) would continue to require disclosure of these relationships regardless of the dollar amount involved, but would permit the omission of the dollar amounts which do not exceed five percent of the law firm's gross revenues or the investment banking firm's consolidated gross

revenues.²² The Commission, however, solicits specific comment as to whether relationships with law and investment banking firms should be treated in the same fashion as relationships with other suppliers of services by requiring both the relationship and the dollar amount involved to be disclosed only if the five percent gross revenue threshold is met.

6. *Other Changes.* While incorporating various current disclosure requirements of Item 6(b)(3) into proposed Item 404(b), the Commission is proposing to clarify several of these disclosure provisions and to reduce the costs of compliance. First, the Commission is proposing to add Instruction 3B to Item 404(b), which, consistent with previous staff interpretations, would permit registrants to exclude amounts due for purchases subject to the usual trade terms in calculating their aggregate amount of indebtedness. This exclusion is based on a proposal in the February Release which was supported by commentators. The Commission believes that trade debt is more appropriately considered in connection with the calculation of amounts arising from customer and supplier relationships pursuant to proposed paragraphs (b)(1) and (2) of Item 404. In addition, this exclusion would result in the consistent treatment of trade debt for purposes of Item 404.

Second, the Commission is proposing that Item 404(b)(3), consistent with previous staff interpretations, refer to the aggregate amount of indebtedness as of the end of the registrant's fiscal year. This provision is derived from a similar proposal in the February Release that was supported by commentators.

The Commission also is proposing to permit the exclusion of payments for property or services when the transaction involves the rendering of services as a common or contract carrier, in addition to the exclusion in current Item 6(b)(3) which permits such exclusion when services are performed as a public utility. This proposal, which also is derived from the February Release, would be consistent with proposed paragraph (a) of Item 404.

Finally, the Commission is proposing to permit registrants, when computing aggregate amounts of payments for services or property or indebtedness under Item 404(b), to exclude payments made or received by, or indebtedness incurred by, certain *de minimis*

²¹ See Release No. 34-18532 (March 3, 1982) (47 FR 10792) analyzing the results of the Commission's 1981 proxy monitoring program, which indicates a downward trend in the presence of lawyers and investment bankers on boards of directors.

²² In order to treat these relationships in a more similar manner to those of other suppliers of services, proposed Items 404(b)(4) and (5) would not require disclosure of a director's position as an associate or employee of (other than of counsel to) a law or investment banking firm that provides services to the registrant.

subsidiaries. The proposal, derived from a proposal made in the February Release but modified in response to comments, is intended to reduce costs of compliance without a loss of significant information to investors.

The February Release proposed that payments made or received by five percent subsidiaries or indebtedness incurred by such subsidiaries be excluded from the calculations of payments or indebtedness. A "five percent subsidiary," in turn, was defined as a "significant subsidiary" under Rule 1-02(v) of Regulation S-X,²³ except that the applicable assets and income thresholds were to be five, rather than ten, percent. The exclusion was proposed to be made available, however, only if all five percent subsidiaries engaged in transactions, when considered in the aggregate as a single subsidiary, would not constitute a significant subsidiary under Rule 1-02(v).

The proposal met with substantial criticism. Commentators objected that the introduction of the new "five percent subsidiary" concept would cause confusion and argued that the "significant subsidiary" concept contained in Rule 1-02(v) could be utilized in connection with the exclusion without any loss of meaningful information to security holders. Commentators also believed that the requirement to aggregate payments or indebtedness of all *de minimis* subsidiaries in determining whether the exclusion is applicable would impose substantial burdens on registrants that would outweigh any benefits that might otherwise be achieved.

In accordance with the views of commentators, the proposed exclusions utilize the existing concept of "significant subsidiary." Thus, proposed Instructions 2C and 3C to Item 404(b) permit registrants, when computing the aggregate amount of payments for services or property or indebtedness, to exclude payments made or received by, or indebtedness incurred by, subsidiaries other than significant subsidiaries as defined in Rule 1-02(v). However, this exclusion is proposed to be made available only if all subsidiaries other than significant subsidiaries engaged in transactions, when considered in the aggregate as a single subsidiary, would not constitute a significant subsidiary.²⁴ The

Commission continues to believe that, when the *de minimis* subsidiaries, in the aggregate, represent a material part of the registrant's business, such transactions would be important to investors.

C. Proposed Item 404(c)—Indebtedness of Management

In connection with the development of a uniform item on transactions and relationships, the Commission has examined Item 402 of Regulation S-K, the focus of which is management remuneration, with a view towards determining if any provisions contained therein, in addition to the provisions on transactions with management contained in Item 402(f), would be more appropriately included in proposed Item 404. On the basis of this examination, the Commission is proposing to move the provisions regarding disclosure of management indebtedness, currently elicited by Item 402(e), into proposed Item 404 as paragraph (c).²⁵ The Commission believes that information regarding loans is more appropriately elicited under a transactions disclosure item than a remuneration disclosure item.

The Commission is proposing several changes in the disclosure provisions regarding loans to management in connection with the inclusion of those provisions in proposed Item 404(c). First, the Commission proposes to modify the persons whose connections with management require that their indebtedness be disclosed under Item 404(c) to conform more closely to the persons whose transactions must be disclosed under Item 404(a).

Currently, Item 402(e) requires disclosure of indebtedness of directors, officers and nominees and associates of such persons. Through the definition of "associate" under Securities Act Rule 405 and Exchange Act Rule 12b-2, [17 CFR 240.12b-2], Item 402(e) covers substantially the same types of family relationships as currently are specified in Item 402(f). Just as the Commission believes that Item 402(f) is too limited in its coverage of relatives, and thus is broadening that coverage in proposed Item 404(a), it also believes that Item 402(e) is likewise too limited.

11 percent of the registrant's consolidated assets, the amount of the payments to the 3 and 4 percent subsidiaries could be disregarded in determining whether the disclosure is required under Item 404(b)(1). If, however, the same entity made payments to a subsidiary constituting 8 percent of the registrant's consolidated assets and to a subsidiary constituting 6 percent of the registrant's consolidated assets, the amount of these payments would be included in an Item 404(b)(1) computation.

²⁵In connection therewith, Item 402(e) is proposed to be rescinded.

Opportunities for obtaining loans from a registrant may arise for any close relatives of directors, officers, or nominees, regardless of where such relatives live or whether they are officers of the registrant's parents or subsidiaries. Accordingly, the Commission is proposing to apply the provisions regarding disclosure of loans to all relatives, provided that they are no more remote than first cousin.²⁶

Second, the Commission is proposing to move the threshold of indebtedness that triggers disclosure, currently contained in Instruction 2 to Item 402(e), into the text of proposed Item 404(c) and to raise the threshold to be consistent with that applicable to transactions generally. Currently, Item 402(e) requires disclosure of aggregate indebtedness in excess of the lesser of \$25,000 or one percent of the registrant's total assets, whereas the threshold applicable to transactions generally under proposed Item 404(a) is \$50,000. The Commission believes that loans aggregating less than \$50,000 are generally *de minimis* so that conforming the thresholds of transactions and indebtedness will ease compliance burdens without sacrificing information important to security holders.²⁷

Third, the Commission is proposing to include the provisions currently contained in Instruction 1 to Item 402(e), concerning the naming of the person whose indebtedness is required to be disclosed, into the text of the proposed new item.

The Commission is proposing, as instructions to Item 404(c), instructions based on the provisions of existing Instructions 2, 3 and 4 to Item 402(e), with several modifications.²⁸ First, the exclusion in current Instruction 2 (proposed Instruction 1) for transactions in the ordinary course of business is proposed to be eliminated as duplicative of the exclusions for ordinary travel and expense advances. In connection with this, the Commission is proposing to eliminate, as unnecessary, the language in current Instruction 3 (proposed Instruction 2) that makes clear that the ordinary course of business exclusion

²⁶The Commission is proposing to specify in Item 404(c) the persons currently covered by the term "associate" whose indebtedness will continue to be required to be disclosed, as well as the modified class of relatives.

²⁷In this regard, related party transactions, including loans, must be disclosed in the financial statements, regardless of their size, if they are material. See Statement of Financial Accounting Standards No. 57 (March 1982).

²⁸Instruction 5 (relating to disclosure of indebtedness in registration statements) is not proposed as an instruction to Item 404(c) as it is duplicative of proposed general Instruction 2.

²³17 CFR 210.1-02(v).

²⁴For example, under proposed Instruction 2C, if a specified entity made payments for property or services to a subsidiary constituting 3 percent of the registrant's consolidated assets, to a subsidiary constituting 4 percent of the registrant's consolidated assets and to a subsidiary constituting

does not permit registrants in the business of making loans to omit disclosure of loans in excess of the specified threshold.

Finally, the Commission is proposing to amend the remainder of current Instruction 3 (proposed Instruction 2), which exempts banks, savings and loan associations and broker-dealers extending credit under Federal Reserve Regulation T²⁹ from having to describe loans made in the ordinary course of business on substantially the same terms as those for comparable transactions that do not involve more than the normal risk of collectability, to limit the exemption to loans that are not nonperforming.³⁰ The Commission believes that abbreviated disclosure is not appropriate in the case of loans that are in default or as to which there are serious problems with respect to repayment.

This proposal is derived from a similar proposal made in the February Release, except that disclosure is proposed to be required only of loans that were nonperforming at the end of the registrant's fiscal year, rather than at any time during the fiscal year. While comments on the proposal generally were supportive, commentators believed it would be unduly burdensome to have to determine whether loans had been nonperforming at any time during the fiscal year.³¹

D. Proposed Item 404(d)—Transactions With Promoters

The Commission believes that disclosure of transactions with promoters, currently elicited by Item 402(h) of Regulation S-K, may be more

appropriately included with the other provisions concerning potential conflicts of interest in proposed Item 404.

Accordingly, the Commission proposes to rescind Item 402(h) and to move the disclosure requirements of current Item 402(h) into Item 404, as paragraph (d), without proposing any changes in the substance of the provisions.

E. Transactions With Pension or Similar Plans

Finally, the Commission's examination of the provisions of Item 402 has led it to propose the rescission of current Item 402(g) regarding disclosure of transactions with pension or similar plans. The Commission believes that the item is unnecessary in view, among other things, of the extent to which affiliated transactions by pension plans generally are regulated under the Employee Retirement Income Security Act of 1974.³² However, specific comments are requested as to whether such action will eliminate meaningful disclosure.

IV. Proposed Amendments to Item 6(b)

As a result of the proposed incorporation of the substantive requirements relating to disclosure of relationships with significant customers, suppliers and creditors into Item 404, the Commission is proposing new Items 6(b) (1) and (2) which instruct registrants to furnish the information required by Item 404 of Regulation S-K.³³ Proposed Item 6(b)(1) requires registrants to furnish the information required by Items 404 (a), (c) and (d). Proposed Item 6(b) (2) requires registrants, other than investment companies registered under the Investment Company Act, to furnish the information required by Item 404 (b). This limitation to registrants other than registered investment companies is consistent with current requirements.

In connection with its review of the requirements relating to disclosure of relationships, the Commission has reexamined the provisions of existing Items 6(b) (1) and (2) relating to disclosure of employment experience and family relationships of directors. Item 6(b)(1) currently requires disclosure of whether any director or nominee has during the past five years had a principal occupation or employment with any of the issuer's parents, subsidiaries or other affiliates. Item 401(e) of Regulation S-K calls for disclosure of a similar nature, requiring registrants to furnish a brief account of the business experience during the past

five years of each director, executive officer, nominee for director or executive officer and certain other persons, including the person's principal occupation and employment during the period and the name and principal business of any corporation or other organization in which such occupations and employment were carried on.

The Commission believes that the existence of two items concerning past experience is duplicative and unnecessary. Accordingly, the Commission is proposing to rescind Item 6(b)(1) and amend Item 401(e) to require that registrants, in identifying any corporations or other organizations by which the enumerated persons have been employed during the past five years, indicate whether such corporation or organization is a parent, subsidiary or other affiliate of the registrant.

Item 6(b)(2) of Schedule 14A currently requires to indicate whether any director or nominee is related to any executive officer of the registrant's parents, subsidiaries or other affiliates. Disclosure of family relationships also is covered by Item 401(d) of Regulation S-K, which requires registrants to indicate family relationships between the registrant's executive officers, directors and nominees for executive officer or director.

The Commission believes that only one item pertaining to disclosure of family relationships is necessary. Accordingly, the Commission is proposing to rescind Item 6(b)(2). While current Item 6(b)(2) is slightly more expansive in that it includes relatives employed by parents, subsidiaries and other affiliates, the Commission does not believe that such relationships are sufficiently important to investors that they must be disclosed. To the extent that a close relative of a director, including a relative that is an executive officer of a parent or subsidiary, has a material interest in a transaction involving the registrant, that interest would be disclosed under proposed Item 404(a).

Finally, the Commission proposes to rescind Item 6(b)(6) which requires disclosure if the nominee or director is a control person of the issuer. Based on its experience, the Commission believes that such disclosure does not add any material information to that which is otherwise available to security holders and investors.

V. Coordinating Amendments to Forms and Schedules

In coordination with the proposal of uniform Regulations S-K Item 404, the

²⁹ 12 CFR Part 220.

³⁰ "Nonperforming" is proposed to be defined in a manner consistent with Industry Guide 3, "Statistical Disclosure by Bank Holding Companies." Thus, more information would be required with respect to loans that (i) are accounted for on a non-accrual basis; (ii) are contractually past due 90 days or more with respect to principal or interest; (iii) have been renegotiated to provide a reduction in principal or interest payments due to a deterioration in financial condition of the borrower; or (iv) are now current but about which serious doubts exist regarding compliance with repayment terms.

³¹ Concurrent with this proposal, the Commission is proposing amendments to Article 9 of Regulation S-X, that, among other things, would revise the requirement to disclose aggregate indebtedness of related parties in excess of a specified amount and to require disclosure of nonperforming loans if they represent a significant portion of the total reported related party loans. Release No. 33-6417 (July 9, 1982). In that release, the Commission is proposing to rescind Schedule 1 which requires disclosure of loans from the registrant to its executive officers and principal shareholders. However, the Commission solicits specific comments as to whether that schedule should be included in proxy statements. Proposed Item 404 excludes such loans made in the ordinary course of business.

³² 29 U.S.C. 1001 et seq.

³³ As discussed *infra*, current Items 6(b) (1) and (2) are proposed to be rescinded.

Commission is proposing to amend registration Forms S-1 and S-11 under the Securities Act, and Forms 10 and 10-K and Schedules 14A and 14C under the Exchange Act to require the information called for by Item 404. The Commission is also proposing certain renumbering changes necessitated by the addition of proposed Item 404 to such forms and schedules.³⁴

VI. Request for Comment

Any interested person wishing to submit written comments on the proposed amendments, as well as on other matters that might have an impact on the proposals contained herein, are requested to do so. In addition to the issues raised above, the Commission requests comment on whether the proposed item and amendments, if adopted, would have an adverse effect on competition or would impose a burden on competition which is neither necessary nor appropriate in furthering the purposes of the Exchange Act. Comments on this inquiry should include, to the extent feasible, detailed empirical and evidentiary material in support of any conclusions, opinions or positions. Comment on this inquiry will be considered by the Commission in complying with its responsibilities under Section 23(a)(2) of the Exchange Act.

List of Subjects in 17 CFR Parts 229, 239, 240 and 249.

Reporting requirements and securities.

VII. Text of Proposals

In accordance with the foregoing, it is proposed to amend Title 17, Chapter II, of the Code of Federal Regulations as follows:

PART 229—STANDARD INSTRUCTIONS FOR FILING FORMS UNDER SECURITIES ACT OF 1933 AND SECURITIES EXCHANGE ACT OF 1934—REGULATION S-K

1. By revising paragraph (e)(1) of § 229.401 to read as follows:

§ 229.401 (Item 401) Directors and executive officers.

(e) *Business experience*—(1) *Background.* Give a brief account of the business experience during the past five years of each director, executive officer, person nominated or chosen to become a director or executive officer, and each person named in answer to paragraph (c) of this section. The account should set forth each person's principal occupations and employment during the

past five years and the name and principal business of any corporation or other organization in which such occupations and employment were carried on, including whether such corporation or organization is a parent, subsidiary or other affiliate of the registrant. When an executive officer or person named in response to paragraph (c) of this section has been employed by the registrant or a subsidiary of the registrant for less than five years, a brief explanation shall be included as to the nature of the responsibility undertaken by the individual in prior positions to provide adequate disclosure of his prior business experience. What is required is information relating to the level of his professional competence, which may include, depending upon the circumstances, such specific information as the size of the operation supervised.

§ 229.402 [Amended]

2. By revising § 229.402 to change its title to Management remuneration, to remove paragraphs (e)–(h) and to redesignate paragraph (i) as paragraph (e).

3. By adding § 229.404 to read as follows:

§ 229.404 (Item 404) Certain relationships and related transactions.

(a) *Transactions with management and others.* Describe briefly any transaction, or series of similar transactions, since the beginning of the registrant's last fiscal year, or any currently proposed transaction, or series of similar transactions, to which the registrant or any of its subsidiaries was or is to be a party, in which the amount involved exceeds \$50,000 and in which any of the following persons had, or is to have, a direct or indirect material interest, naming such person and indicating the person's relationship to the registrant, the nature of such person's interest in the transaction, the amount of such transaction and, where practicable, the amount of such person's interest in the transaction:

- (1) Any director or officer of the registrant;
- (2) Any nominee for election as a director;
- (3) Any security holder who is known to the registrant to own of record or beneficially more than five percent of any class of the registrant's voting securities; and
- (4) Any relative, by blood, marriage or adoption, of any of the foregoing persons who has no more remote relationship to such person than first cousin.

Instructions to Paragraph (a) of Item 404

1. No information need be given in answer to this Item 404(a) as to any transaction where:

A. The rates or charges involved in the transaction are determined by competitive bids, or the transaction involves the rendering of services as a common or contract carrier, or public utility, at rates or charges fixed in conformity with law or governmental authority;

B. The transaction involves services as a bank depository of funds, transfer agent, registrar, trustee under a trust indenture, or similar services;

C. The interest of the specified person arises solely from the ownership of securities of the registrant and the specified person receives no extra or special benefits not shared on a pro rata basis.

There may be situations where, although this instruction does not expressly authorize nondisclosure, the interest of a specified person in a particular transaction or series of transactions is not a direct or indirect material interest. In that case, information regarding such interest and transaction is not required to be disclosed in response to this paragraph. In determining the significance of the information to investors, the importance of the interest to the person having the interest, the relationship of the parties to the transaction with each other, and the amount involved in the transaction are among the factors to be considered.

2. In computing the amount involved in the transaction or series of similar transactions, include all periodic installments in the case of any lease or other agreement providing for periodic payments or installments.

3. This paragraph calls for disclosure of indirect, as well as direct, material interests in transactions. A person who has a position or relationship with a firm, corporation, or other entity that engages in a transaction with the registrant or its subsidiaries may have an indirect interest in such transaction by reason of such position or relationship. However, a person shall be deemed not to have a material indirect interest in a transaction within the meaning of this paragraph where:

A. The interest arises only (i) from such person's position as a director of another corporation or organization which is a party to the transaction; or (ii) from the direct or indirect ownership by such person and all other persons specified in paragraphs (a)(1) through (4) of this Item, in the aggregate, of less than a ten percent equity interest in another person (other than a partnership) which is a party to the transaction; or (iii) from both such position and ownership;

B. The interest arises only from such person's position as a limited partner in a partnership in which the person and all other persons specified in paragraphs (a)(1) through (4) of this Item had an interest of less than ten percent; or

C. The interest of such person arises solely from the holding of an equity interest (including a limited partnership interest but excluding a general partnership interest), or a creditor interest, in another person which is a party to the transaction with the registrant or

³⁴ When final action is taken on the amendments proposed herein, certain other technical amendments may be necessary.

any of its subsidiaries and the transaction is not material to such other person.

4. The amount of the interest of any specified person shall be computed without regard to the amount of the profit or loss involved in the transaction.

5. In describing any transaction involving the purchase or sale of assets by or to the registrant or any of its subsidiaries, otherwise than in the ordinary course of business, state the cost of the assets to the purchaser and, if acquired by the seller within two years prior to the transaction, the cost thereof to the seller. Indicate the principle followed in determining the registrant's purchase or sale price and the name of the person making such determination.

6. Information shall be furnished in answer to this paragraph with respect to transactions not excluded above which involve remuneration from the registrant or its subsidiaries, directly or indirectly, to any of the specified persons for services in any capacity unless the interest of such persons arises solely from the ownership individually and in the aggregate of less than ten percent of any class of equity securities of another corporation furnishing the services to the registrant or its subsidiaries.

(b) *Certain business relationships.* Describe any of the following relationships that exist, indicating the identity of the entity with which the registrant has such a relationship, the name of the nominee or director affiliated with such entity and the nature of such nominee's or director's affiliation, the relationship between such entity and the registrant and the amount of the business done between the registrant and the entity during the registrant's last full fiscal year or proposed to be done during the registrant's current fiscal year:

(1) If the nominee or director is an officer of, or owns of record or beneficially in excess of five percent equity interest in, any business or professional entity that has made during the registrant's last full fiscal year, or proposes to make during the registrant's current fiscal year, payments to the registrant or its subsidiaries for property or services in excess of five percent of the registrant's or other entity's consolidated gross revenues for its last full fiscal year;

(2) If the nominee or director is an officer of, or owns of record or beneficially in excess of five percent equity interest in, any business or professional entity to which the registrant or its subsidiaries has made during the registrant's last full fiscal year, or proposes to make during the registrant's current fiscal year, payments for property or services in excess of five percent of the registrant's or other entity's consolidated gross revenues for its last full fiscal year;

(3) If the nominee or director is an officer of, or owns of record or beneficially in excess of five percent equity interest in, any business or professional entity to which the registrant or its subsidiaries was indebted at the end of the registrant's last full fiscal year in an aggregate amount in excess of five percent of the registrant's total consolidated assets at the end of such fiscal year;

(4) If the nominee or director is a member of, or of counsel to, a law firm which the issuer has retained during the last fiscal year or proposes to retain during the current fiscal year, *Provided, however,* That the dollar amount of fees paid to a law firm by the registrant need not be disclosed if such amount does not exceed five percent of the law firm's gross revenues for its last fiscal year.

(5) If the nominee or director is a director, partner or officer of any investment banking firm which has performed services for the registrant, other than as a participating underwriter in a syndicate, during the last fiscal year or which the registrant proposes to have perform services during the current year, *provided, however,* that the dollar amount of compensation received by an investment banking firm need not be disclosed if such amount does not exceed five percent of the investment banking firm's consolidated gross revenues for its last fiscal year;

(6) Any other relationships that the registrant is aware of between the nominee or director and the registrant that are substantially similar in nature and scope to those relationships listed above.

Instructions to Paragraph (b) of Item 404

1. In order to determine whether payments or indebtedness exceed five percent of the consolidated gross revenues of any entity other than the registrant for such entity's last full fiscal year, it is appropriate to rely on information provided by the nominee or director.

2. In calculating payments for property and services the following may be excluded:

A. Payments where the rates of charges involved in the transaction are determined by competitive bids, or the transaction involves the rendering of services as a common contract carrier, or public utility, at rates or charges fixed in conformity with the law or governmental authority;

B. Payments that arise solely from the ownership of securities of the registrant and no extra or special benefit not shared on a pro rata basis by all holders of the class of securities is received;

C. Payments made or received by subsidiaries other than significant subsidiaries as defined in Rule 1-02(v) of Regulation S-X [17 CFR 210.1-02(v)], provided that all such subsidiaries making or receiving payments, when considered in the

aggregate as a single subsidiary, would not constitute a significant subsidiary as defined in Rule 1-02(v).

3. In calculating indebtedness the following may be excluded:

A. Debt securities that have been publicly offered, admitted to trading on a national securities exchange, or quoted on the automated quotation system of a registered securities association;

B. Amounts due for purchases subject to the usual trade terms;

C. Indebtedness incurred by subsidiaries other than significant subsidiaries as defined in Rule 1-02(v) of Regulation S-X [17 CFR 210.1-02(v)], provided that all such subsidiaries incurring indebtedness, when considered in the aggregate as a single subsidiary, would not constitute a significant subsidiary as defined in Rule 1-02(v).

(c) *Indebtedness of management.* If any of the following persons has been indebted to the registrant or its subsidiaries at any time since the beginning of the registrant's last fiscal year in an amount in excess of \$50,000, indicate the name of such person, the nature of the person's relationship by reason of which such person's indebtedness is required to be described, the largest aggregate amount of indebtedness outstanding at any time during such period, the nature of the indebtedness and of the transaction in which it was incurred, the amount thereof outstanding as of the latest practicable date and the rate of interest paid or charged thereon:

(1) Any director or officer of the registrant;

(2) Any nominee for election as a director;

(3) Any corporation or organization (other than the registrant or a majority-owned subsidiary of the registrant) of which any of the persons specified in paragraphs 404(c)(1) or (c)(2) above is an officer or partner or is, directly or indirectly, the beneficial owner of ten percent or more of any class of equity securities;

(4) Any trust or other estate in which any of the persons specified in paragraphs 404(c)(1) or (c)(2) above has a substantial beneficial interest or as to which such person serves as a trustee or in a similar capacity; and

(5) Any relative, by blood, marriage or adoption, of any of the persons specified in paragraphs 404(c)(1) or (c)(2) above who has no more remote relationship to such person than first cousin.

Instructions to Paragraph (c) of Item 404

1. Exclude from the determination of the amount of indebtedness all amounts due from the particular person for purchases subject to usual trade terms and for ordinary travel and expense advances.

2. If the lender is a bank, savings and loan association, or broker-dealer extending credit under Federal Reserve Regulation T (12 CFR Part 220) and the loans are not nonperforming, disclosure may consist of a statement, if such is the case, that the loans to such persons (A) were made in the ordinary course of business, (B) were made on substantially the same terms, including interest rates and collateral, as those prevailing at the time for comparable transactions with other persons, and (C) did not involve more than the normal risk of collectability or present other unfavorable features. For purposes of this instruction, "nonperforming loans" are loans that, at the end of the registrant's last fiscal year, were within any of the following categories: (i) Loans accounted for on a nonaccrual basis; (ii) loans contractually past due 90 days or more as to interest or principal payments; (iii) loans, the terms of which have been renegotiated to provide a reduction or deferral of interest or principal because of deterioration in the financial position of the borrower; or (iv) loans now current where there are serious doubts as to the ability of the borrower to comply with present loan repayment terms. A renewal on current market terms at maturity will not be considered a renegotiation within the meaning of clause (iii) of this instruction.

3. If any indebtedness required to be described arose under Section 16(b) of the Exchange Act and has not been discharged by payment, state the amount of any profit realized, that such profit will inure to the benefit of the registrant or its subsidiaries and whether suit will be brought or other steps taken to recover such profit. If, in the opinion of counsel, a question reasonably exists as to the recoverability of such profit, it will suffice to state all facts necessary to describe the transactions, including the prices and number of shares involved.

(d) *Transactions with promoters.* Registrants that have been organized within the past five years and that are filing a registration statement on Form S-1 under the Securities Act (§ 239.11 of this chapter) or on Form 10 under the Exchange Act (§ 249.210 of this chapter) shall:

(1) State the names of the promoters, the nature and amount of anything of value (including money, property, contracts, options or rights of any kind) received or to be received by each promoter, directly or indirectly, from the registrant and the nature and amount of any assets, services or other consideration therefor received or to be received by the registrant; and

(2) As to any assets acquired or to be acquired by the registrant from a promoter, state the amount at which the assets were acquired or are to be acquired and the principal followed or to be followed in determining such amount and identify the persons making the determination and their relationship, if any, with the registrant or any promoter. If the assets were acquired by

the promoter within two years prior to their transfer to the registrant, also state the cost thereof to the promoter.

Instructions to Item 404

1. No information need be given in response to any paragraph of this Item as to any remuneration or other transaction reported in response to any other paragraph of this Item or to Item 402 of Regulation S-K (§ 229.402 of this chapter) or as to any remuneration or transaction with respect to which information may be omitted pursuant to any other paragraph of this Item or Item 402.

2. If the information called for by this Item is being presented in a registration statement filed pursuant to the Securities Act or the Exchange Act, the period for which the information called for shall be reported is the previous three years.

3. A non-Canadian foreign private issuer eligible to use Form 20-F (§ 249.220f of this chapter) may respond to this Item only to the extent that the registrant discloses to its security holders or otherwise makes public the information specified in this Item.

PART 239—FORMS PRESCRIBED UNDER THE SECURITIES ACT OF 1933

4. By revising § 239.11 to add a new paragraph (m) to Item 11 as follows:

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

Item 11. *Information With Respect to the Registrant.*

(m) Information required by Item 404 of Regulation S-K (§ 229.404 of this chapter), certain relationship and related transactions.

5. By revising § 239.18 to renumber Items 23-35 as Items 24-36 and to add a new Item 23 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 23. *Transactions with Management and Related Transactions.*

Furnish the information required by Item 404 of Regulation S-K (§ 229.404 of this chapter). If the information prescribed by Instruction 4 to Item 404(a) is included and the assets have been acquired by the seller within five years prior to the transaction, disclose the aggregate depreciation claimed by the seller for federal income tax purposes.

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

6. By revising paragraph (b) of Item 6 of § 240.14a-101 to read as follows:

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

Item 6. *Directors and executive officers.*

(b)(1) Furnish the information required by Item 404 (a), (c) and (d) of Regulation S-K (§ 229.404 of this chapter).

(2) With respect to registrants other than investment companies registered under the Investment Company Act of 1940, furnish the information required by Item 404(b) of Regulation S-K (§ 229.404(b) of this chapter).

7. By revising paragraph (b) of Item 4 of § 240.14a-102 to read as follows:

§ 240.14a-102 Schedule 14B. Information to be included in statements filed by or on behalf of a participant (other than the issuer) pursuant to § 240.14a-11(c) (Rule 14a-11(c)).

Item 4. *Further matters.*

(b) Furnish for yourself and your associates the information required by Item 404 of Regulation S-K (§ 229.404 of this chapter).

PART 249—FORMS, SECURITIES EXCHANGE ACT OF 1934

8. By revising § 249.210 to renumber Items 7-14 as Items 8-15 and to add a new Item 7 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 7. *Certain Relationships and Related Transactions.*

Furnish the information required by Item 404 of Regulation S-K (§ 229.404 of this chapter).

9. By revising § 249.310 to renumber Item 13 as Item 14 and to add a new Item 13 as follows:

§ 249.310 Form 10-K, annual report pursuant to section 13 or 15(d) of the Securities Exchange Act of 1934.

Item 13. *Certain Relationships and Related Transactions.*

Furnish the information required by Item 404 of Regulation S-K (§ 229.404 of this chapter).

Statutory Authority

These amendments are being proposed pursuant to authority in Sections 6, 7, 8, 10 and 19(a) of the Securities Act of 1933 and Sections 12, 13, 14, 15(d) and 23(a) of the Securities Exchange Act of 1934.

(Secs. 6, 7, 8, 10, 19(a), 48 Stat. 78, 79, 81, 85; secs. 205, 209, 48 Stat. 906, 908; sec. 301, 54 Stat. 857; sec. 8, 68 Stat. 685; sec. 1, 79 Stat. 1051; sec. 308(a)(2), 90 Stat. 57; secs. 12, 13, 14,

15(d), 23(a) 48 Stat. 892, 895, 901; secs. 1, 3, 8, 49 Stat. 1375, 1377, 1379; Sec. 203(a), 49 Stat. 704; sec. 202, 68 Stat. 686; secs. 3, 4, 5, 6, 78 Stat. 565-568, 569, 570-574, secs. 1, 2, 3, 82 Stat. 454, 455; secs. 28(c), "1, 2, 3-5, 84 Stat. 1435, 1497; sec. 105(b), 86 Stat. 1503; secs. 8, 9, 10, 18, 89 Stat. 117, 118, 119, 155; sec. 308(b), 90 Stat. 57; secs. 202, 203, 204, 91 Stat. 1994, 1498, 1499, 1500; 15 U.S.C. 77f, 77g, 77h, 77j, 77s(a), 78f, 78m, 78n, 78o(d), 78w(a)]

By the Commission.

Dated July 9, 1982.

George A. Fitzsimmons,
Secretary.

Regulatory Flexibility Act Certification

I, John S. R. Shad, Chairman of the Securities and Exchange Commission, hereby certify, pursuant to 5 U.S.C. 605(b), that the proposed amendments published in Release No. 33-6416 (July 9, 1982) "Disclosure of Certain Relationships and Transactions Involving Management," will not, if promulgated, have a significant economic impact on a substantial number of small entities. The reasons for such certification are that, while all entities that are subject to the Commission's rules and regulations or that initially file registration statements on Forms S-1 or S-11 will be affected by the proposed amendments, it is not expected that such amendments will have a significant impact on any registrant.

In any event, those small entities that file registration statements on Form S-18 (an optional registration statement available to small entities and others) will be unaffected by the proposed amendments as such amendments will not be applicable to that form.

Dated: July 9, 1982.

John S. R. Shad,
Chairman.

[FR Doc. 82-19590 Filed 7-19-82; 8:45 am]
BILLING CODE 8010-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 271

[Docket No. RM79-76-098 (Montana-1)]

High-Cost Gas Produced From Tight Formations; Montana Public Hearing

July 14, 1982.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Notice of hearing on proposed rule; date change.

SUMMARY: On July 1, 1982 the Commission issued a Notice of Public Hearing pertaining to high-cost gas produced from tight formations in Docket No. RM79-76-098 (Montana-1), (47 FR 29569 (July 7, 1982)). The hearing was scheduled for Tuesday, July 27, 1982. The Commission

subsequently received a request from a party desiring to participate in the hearing to have the hearing date changed to avoid a scheduling conflict that the party had. Accordingly, the hearing is rescheduled for August 20, 1982.

DATES: The public hearing will be held on Friday, August 20, 1982, at 10:00 a.m. Requests to participate and amount of time requested should be directed to the Secretary of the Commission no later than August 16, 1982.

ADDRESS: The hearing will be held in a hearing room at the Federal Energy Regulatory Commission, 825 North Capitol St., NE., Washington, D.C. 20426.

Requests to participate and questions regarding participation should be directed to the Office of Secretary, 825 North Capitol Street, NE., Washington, D.C. 20426.

FOR FURTHER INFORMATION CONTACT: Leslie Lawner, (202) 357-8511.

Kenneth F. Plumb,
Secretary.

[FR Doc. 82-18516 Filed 7-19-82; 8:45 am]

BILLING CODE 6717-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 888

[Docket No. 78N-3028]

Orthopedic Devices; General Provisions and Classification of 77 Devices; Correction

AGENCY: Food and Drug Administration.

ACTION: Proposed rule; correction.

SUMMARY: In FR Doc. 82-17576 appearing at page 29052 in the Federal Register of Friday, July 2, 1982, the following correction is made: On page 29052 in the first column in the heading, [DOCKET NO. 78N-2830] is corrected to read [DOCKET NO. 78N-3028].

FOR FURTHER INFORMATION CONTACT: Agnes B. Black, Federal Register Writer's Office (HFC-11), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-2994.

Dated: July 12, 1982.

William F. Randolph,
Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 82-19486 Filed 7-19-82; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF DEFENSE

Corps of Engineers, Department of the Army

33 CFR Parts 206, 207, and 209

Fishing, Hunting, and Navigation Regulations; Removal and Amendment of Obsolete Provisions

AGENCY: U.S. Army Corps of Engineers, DOD.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Corps of Engineers proposes to amend the Fishing and Hunting and Navigation Regulations in Title 33 by revoking certain sections and amending other sections where identified as obsolete or unnecessary. This is part of the Corps ongoing program to improve its regulations.

DATE: Comments must be received on or before August 19, 1982.

ADDRESS: HQDA, DAEN-CWO-N, Washington, D.C. 20314

FOR FURTHER INFORMATION CONTACT: Mr. Ralph T. Eppard, at (202) 272-0200.

SUPPLEMENTARY INFORMATION: The Corps of Engineers has reviewed the regulations in 33 CFR Parts 206, 207 and 209 with a view toward amending or deleting obsolete or unnecessary sections. The following is a list of regulations affected by this proposal and the reason for the proposed change.

1. *Part 206 Fishing and Hunting Regulations (removed and reserved.)* On 16 November 1979 (44 FR 65977-86) the Corps published final rules that revoked most of the fishing and hunting regulations and held the revocation of the remaining regulations in Part 206 in abeyance pending further study. Our current study supports the position that was taken previously that the regulations in Part 206 are unnecessary and may be contradictory in view of the issuance of nationwide permits for marine life harvesting devices in 33 CFR Part 330. It should be noted that these marine life harvesting devices will continue to be subject to regulation by the Corps. If additional control is necessary in the future the district engineers may through public notices, designate and publicize the areas considered to be acceptable for fishing and hunting structures.

2. *Part 207 Navigation Regulations.* We have reviewed the regulations in Part 207 and have identified many that no longer serve the intended purpose and accordingly are obsolete and should be deleted in their entirety. Other regulations in Part 207 are amended to