

§ 800.196 Designations.**(g) Responsibilities.**

(10) *Records.* Each agency shall maintain the records specified in §§ 800.145-159.

18. Section 800.198(b)(2) is revised to read:

§ 800.198 Contracts.**(b) Restrictions.**

(2) *Appeal service.* An agency or employees of agencies shall not be eligible to enter into a contract with the Service to obtain samples for, or to perform other services involved in appeal inspection or Board appeal inspection services. However, agencies may forward file samples to the Service in accordance with § 800.156(d).

Authority: Pub. L. 94-582, 90 Stat. 2867, as amended (7 U.S.C. 71 et seq.).

Dated: April 19, 1985.

K.A. Gillis,
Administrator.

[FR Doc. 85-10891 Filed 5-3-85; 8:45 am]

BILLING CODE 3410-EN-M

DEPARTMENT OF TRANSPORTATION**Federal Aviation Administration****14 CFR Part 71**

[Airspace Docket No. 85-ANM-1]

Alteration of Havre, Montana, Control Zone and Transition Area

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This rule redefines the current geographical boundaries of the Havre, Montana, control zone and 700' transition area. This action is required due to a magnetic variation change resulting in amendments to the VOR Rwy 7 and VOR Rwy 25 instrument approach procedures. This action provides the revised descriptions.

EFFECTIVE DATE: 0901 G.m.t., August 1, 1985.

FOR FURTHER INFORMATION CONTACT: Kathy Paul, Airspace Technical Specialist, ANM-535, Federal Aviation Administration, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168. The telephone number is (206) 431-2530.

SUPPLEMENTARY INFORMATION:**History**

On February 8, 1985, the FAA proposed to amend Part 71 of the Federal Aviation Regulations (14 CFR

Part 71) to redefine the current geographical boundaries of the Havre, Montana, control zone and 700' transition area (50 FR 5399).

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Except for editorial changes, this amendment is the same as that proposed in the notice. Sections 71.171 & 71.181 of Part 71 of the Federal Aviation Regulations were republished in Handbook 7400.6A dated January 2, 1985.

The Rule

This amendment to Part 71 of the Federal Aviation Regulations redefines the geographical boundaries of the Havre, Montana, control zone and 700' transition area. A change in the magnetic variation resulted in amendments to the VOR Rwy 7 and VOR Rwy 25 instrument approach procedures. This action provides the revised descriptions to accommodate these amendments.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Control zones, Transition areas, Aviation safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, § 71.171 & 71.181 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) are amended, as follows:

Havre, Montana, Control Zone—(Revised)

"Within a 5-mile radius of Havre City-County Airport (lat. 48° 32'39" N, long. 109° 45'41" W); within 3 miles each side of the Havre VOR 060° radial, extending from the 5-mile radius zone to 7 miles east of the VOR; and within 3 miles each side of the Havre VOR 290° radial, extending from the 5-mile radius zone to 7 miles west of the VOR;

within 2 miles each side of the Havre VOR 006° radial, extending from the 5-mile radius area to 7.5 miles north of the VOR. This control zone is effective during specific dates and times established in advance by a Notice to Airmen. The effective date and time thereafter will be continuously published in the Airport/Facility Directory".

Havre, Montana, Transition Area—(Revised)

"That airspace extending upward from 700 feet above the surface within a 14-mile radius of Havre VOR within 4.5 miles south and 9.5 miles north of the Havre VOR 080° radial, extending from the 14-mile radius of area to 18.5 miles east of the VOR; and within 4.5 miles north and 9.5 miles south of the Havre VOR 290° radial, extending from the 14-mile radius area to 18.5 miles west of the VOR".

(Secs. 307(a) and 313(a), Federal Aviation Act of 1958 (49 U.S.C. 1348(a) and 1354(a)); (49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983)); and 14 CFR 11.69)

Issued in Seattle, Washington, on April 24, 1985.

Wayne J. Barlow,

Acting Director, Northwest Mountain Region.

[FR Doc. 85-10897 Filed 5-3-85; 8:45 am]

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DEPARTMENT OF COMMERCE**Bureau of the Census****15 CFR Part 90**

[Docket No. 50221-5049]

Procedure for Challenging Certain Population and Income Estimates

AGENCY: Bureau of the Census, Commerce.

ACTION: Final rule.

SUMMARY: The Bureau of the Census is amending 15 CFR Part 90 to eliminate the need to electronically record hearings held under this procedure. The provision will now require that the hearings be recorded, thereby allowing the use of standard services such as those provided by court reporters. The legal authority citation also is being changed from 13 U.S.C. 4 to 13 U.S.C. 4 and 181.

EFFECTIVE DATE: May 6, 1985.

FOR FURTHER INFORMATION CONTACT:

Roger Herriot, Chief, Population Division, Bureau of the Census, Washington, D.C. 20233. (301) 763-7646.

SUPPLEMENTARY INFORMATION: On April 6, 1979, the Bureau of the Census published in the Federal Register (44 FR 20847) the administrative procedure available to States and units of local government to challenge current estimates of population and per capita income developed by the Bureau of the

Census. This procedure is described in 15 CFR Part 90.

The Bureau is amending Title 15, Chapter 1, Part 90 to delete "electronically" from § 90.14(f) in order to provide flexibility in the method used to record the hearing and to reduce costs to the hearing participants.

This rule is not a major rule within the meaning of Section 1 of Executive Order 12291. It is not likely to result in: (1) An annual effect on the economy of \$100 million or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

This rule is being issued in final without prior notice because it is a rule of agency procedure and is exempt from notice and comment requirements by 5 U.S.C. 553(b)(A). Since notice and opportunity to comment are not required by the Administrative Procedure Act or any other law, this rule is not a "rule" within the meaning of the Regulatory Flexibility Act and neither an initial nor final regulatory flexibility analysis will be prepared.

Accordingly, the Department's General Counsel has determined and so certified to the Office of Management and Budget that dispensing with notice and opportunity for comment is consistent with the APA and other relevant law.

This rule is not a substantive rule and therefore is exempt from the 30-day delayed effective date under 5 U.S.C. 553(d).

This rule does not impose an information collection requirement for purposes of the Paperwork Reduction Act.

The legal authority for Part 90 is 13 U.S.C. 4 and 181.

List of Subjects in 15 CFR Part 90

Census data, Statistics.

John G. Keane,

Director, Bureau of the Census.

PART 90—[AMENDED]

For the reasons set out in the preamble, 15 CFR Part 90 is amended to read as follows:

1. The legal authority line should be amended to include Section 181 of Title 13 U.S.C. as follows:

Authority: 13 U.S.C. 4 and 181.

§ 90.14 [Amended]

2. Section 90.14 is amended by revising paragraph (f) to read as follows:

(f) The hearing shall be recorded but no written record will be prepared unless the Bureau so orders or unless the challenging locality desires one in whole or part and pays the costs of such a written record, or the apportioned costs should the Bureau also desire a written record.

[FR Doc. 85-10907 Filed 5-3-85; 8:45 am]

BILLING CODE 3510-07-M

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 210, 229, 230, 239, 240, and 249

[Release Nos. 33-6578; 34-21982; FR-18; File No. S7-20-84]

Business Combination Transactions; Adoption of Registration Form

AGENCY: Securities and Exchange Commission.

ACTION: Final rules.

SUMMARY: The Commission announces the adoption of a new form to be used to register securities under the Securities Act of 1933 in connection with business combination transactions. The form applies the principles of the integrated disclosure system to disclosure in the context of mergers and exchange offers. The form is designed to improve the effectiveness of the business combination prospectus by requiring that information be presented in a more accessible and meaningful format. In addition, the Commission announces the adoption of corresponding amendments to existing rules and the adoption of an amendment to Form 8-K relating to the time for filing financial statements of acquired businesses and stating the policy implications of delays in filing required information.

DATES: *Effective date:* Form S-4 and these amendments are effective July 1, 1985, for all documents filed on or after that date with respect to transactions begun thereafter.

Compliance date: Registrants are permitted, however, to use Form S-4 immediately and to use the other provisions amended herein in filings made after publication of this release in the Federal Register.

FOR FURTHER INFORMATION CONTACT: Prior to the effective date, questions relating to this action should be directed to Patricia B. Magee, (202) 272-2589, Office of Disclosure Policy, Division of

Corporation Finance, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, D.C. 20549; after the effective date, contact Mauri L. Osheroff, (202) 272-2573, Deputy Chief Counsel, Division of Corporation Finance, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, D.C. 20549. For questions concerning accounting matters, contact Howard P. Hodges, Jr., Chief Accountant, Division of Corporation Finance (202) 272-2553, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, D.C. 20549.

SUPPLEMENTARY INFORMATION: Form S-4, as adopted, is available for registration under the Securities Act of 1933 ("Securities Act")¹ of securities issued in: (i) Transactions of the type specified in Rule 145(a);² (ii) mergers in which the applicable state law would not require the solicitation of the votes or consents of all of the security holders of the company being acquired; (iii) exchange offers for securities of the issuer or another entity; and (iv) reoffers or resales of securities registered on this Form.³ Form S-4 employs the principles underlying the integrated disclosure system and, thus, permits incorporation by reference of information from reports filed pursuant to the continuous reporting requirements under the Securities Exchange Act of 1934 ("Exchange Act")⁴ to the same extent as is permitted when a company registers securities under the Securities Act in a primary offering not involving a business combination. In addition, the Commission is adopting a number of other amendments in connection with Form S-4, including an amendment to Form 8-K⁵ relating to the financial statements of acquired businesses.⁶

¹ 15 U.S.C. 77a-77aa (1976 and Supp. V 1981), as amended by Business Regulatory Reform Act of 1982, Pub. L. No. 97-261, section 19(d), 96 Stat. 1121 (1982).

² 17 CFR 230.145. The transactions specified in Rule 145 include certain reclassifications, mergers, consolidations and transfers of assets.

³ In a separate release, the Commission also is announcing the adoption of Form F-4 (17 CFR 239.34) to be used by certain foreign private issuers to register securities in the context of the same kind of business combination transactions encompassed by Form S-4. See Release No. 33-6579 (April 23, 1985). Form F-4 is to be used by a foreign private issuer, as that phrase is defined in Rule 405 (17 CFR 230.405) under the Securities Act, eligible to use Form 20-F (17 CFR 249.220f).

⁴ 15 U.S.C. 78a-78kk (1976 and Supp. V 1981), as amended by Act of June 6, 1963, Pub. L. No. 98-38, 97 Stat. 205 (1983).

⁵ 17 CFR 249.308.

⁶ The Commission today is adopting amendments to: (1) Rule 3-05 of Regulation S-X (17 CFR 210.3-05); (2) Items 502, 512 and 601 of Regulation S-K (17 CFR 229.502, 512, 601); (3) Rules 145, 406, 463, 464,

Continued

I. Executive Summary

This rulemaking action is part of the Commission's Proxy Review Program,⁷ and represents the culmination of efforts extending over several years to improve disclosure to investors in business combinations.⁸ Commentators generally supported the Commission's effort and the Commission is adopting the Form and related amendments substantially as proposed.⁹

This area has been the focus of attention because the documents delivered to security holders in the context of business combinations (mergers and exchange offers) are frequently unwieldy, often 150 or more pages. Improvements to the business combination prospectus in certain limited contexts were made in 1980 with the adoption, on an experimental basis, of Form S-15¹⁰ as part of the first phase

473, 475a and 477 under the Securities Act (17 CFR 230.145, 406, 463, 464, 473, 475a, 477); (4) Rules 14a-3, 14a-6, 14c-2 and 14c-5 under the Exchange Act (17 CFR 240.14a-3, 14a-6, 14c-2, 14c-5); and (5) Form 8-K under the Exchange Act (17 CFR 249.308).

⁷These amendments are the fifth rulemaking initiative in the Commission's program. The first initiative was the adoption of a new uniform Regulation S-K item relating to the disclosure of certain relationships and transactions involving management (Release No. 33-6441 (December 2, 1962) [47 FR 55661]). The second initiative was the adoption of amendments designed to facilitate shareholder communications (Release No. 34-20021 [July 25, 1983] [48 FR 35082]). The third was the adoption of amendments to the Commission's shareholder proposal rule, Rule 14a-8 (Release No. 34-20091 (August 16, 1983) [48 FR 38218a]). The fourth initiative was the adoption of amendments to the uniform Regulation S-K item governing the disclosure of executive compensation, Item 402 (Release No. 33-6486 (September 23, 1983) [48 FR 44457]).

⁸See proposed Form S-14A (Release No. 33-5744 (September 27, 1976) [41 FR 43870]), later withdrawn (Release No. 33-5806 (February 16, 1977) [42 FR 10655]); See also Freund and Greene, *Substance Over Form S-14: A Proposal to Reform SEC Regulation of Negotiated Acquisitions*, 36 Bus. Law 1483 (1981), which grew out of work done on a consulting basis with the Division of Corporation Finance.

⁹Release No. 33-6534 (May 9, 1984) [49 FR 20633]. The Commission received 43 comment letters on proposed Form S-4. The comment letters and a summary of the comments prepared by the staff are available for inspection and copying at the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, D.C. 20549. See File No. S7-20-04.

¹⁰17 CFR 239.29. Form S-15 was adopted for the registration of securities in connection with relatively small business combination transactions and requires that the registrant's latest annual report to security holders be delivered to security holders and incorporated by reference into the prospectus (i.e., it provides the same level of disclosure as does Form S-2 under the Securities Act (17 CFR 239.12)). See Release No. 33-6232 (September 2, 1980) [45 FR 63647], adopting Form S-15.

of the Commission's integrated disclosure system. Form S-4, which will replace Forms S-14¹¹ and S-15, expands upon the limited scope of Form S-15 in several respects. First, Form S-4 extends the principles underlying the integrated disclosure system to all business combination registration statements, not just those involving relatively small transactions. The Form also extends the principles of integration to the full extent to which they are applied in the context of primary offerings not involving business combinations. Second, Form S-4 builds upon the foundation laid by Form S-15 by applying the same disclosure requirements to exchange offers and mergers.¹² Thus, Form S-4 provides simplified and streamlined disclosure in prospectuses for business combinations whether the transactions are effected by merger or exchange offer.

The integrated disclosure system, on which Form S-4 is based, proceeds from the premise that investors in the primary market need much the same information as investors in the trading market. Integration also specifies the manner in which information should be delivered to investors. Under Forms S-1,¹³ S-2 and S-3,¹⁴ transaction oriented information must be presented in the prospectus. Company oriented information, however, may be presented in, delivered with, or incorporated by reference into the prospectus, depending on the extent to which Exchange Act reports containing the information have been disseminated and assimilated in the market.¹⁵ Thus, for registrants qualified

¹¹17 CFR 239.23. Form S-14 will be retained for use by registered investment companies and business development companies pending the adoption of Form N-14. See Section H.2. *infra*, "New Investment Company Merger Proxy Form."

¹²Prior to the adoption of Form S-15 in 1980, exchange offers could be registered on Forms S-1, S-7 or S-11 (17 CFR 239.18). In 1982, the Commission adopted the final phase of the integrated disclosure system and determined generally that Form S-2, which replaced Form S-7 as the middle-tier form, and Form S-3 would not be available for registration of exchange offers pending this business combinations project. Forms S-1 and F-1 (17 CFR 239.31) currently are, and will continue to be, available for registration of securities in the context of exchange offers. See fn. 24, *infra*.

¹³17 CFR 239.11.

¹⁴17 CFR 239.13.

¹⁵Extending the principles of integration to business combinations is, in part, predicated on the fact that annual reports are disseminated to security holders. These annual reports contain the basic information package (financial statements, management's discussion and analysis, selected financial data and market data) adopted in 1980 as the foundation for the integrated disclosure system. See Release No. 33-6321 (September 2, 1980). This company information is the same kind of information that would be required to be included in the prospectus. Because it already has been disseminated to security holders, it need not be

to use Form S-3, the most widely followed companies, company specific information that has been included in Exchange Act reports need not be reiterated in the prospectus, but may be incorporated by reference. Registrants qualified to use Form S-2, reporting companies which are less widely followed, must present certain company information, but may do so either by delivering the annual report to security holders or reiterating that level of company information in the prospectus. Finally, S-1 registrants must present all company information in the prospectus.

The prospectus requirements of Form S-4 are divided into four sections. The first section calls for information about the transaction, which will be presented in the prospectus in all cases, and which is designed to make the presentation of the complex transactions that typify business combinations more easily understood by investors. The next two sections specify the information about the businesses involved and prescribe different levels of prospectus presentation and incorporation by reference depending upon which form under the Securities Act the company could use in making a primary offering of its securities not involving a business combination. The last section sets forth the requirements as to voting and management information. All voting information must be presented in the prospectus, while the amount of prospectus presentation for management information, like company information, depends on which form could be used in a primary offering not involving a business combination.

The use of the S-1-2-3 approach in Form S-4 reflects the premise that decisions made in the context of business combination transactions and those made otherwise in the purchase of a security in the primary or trading market are substantially similar. At the same time, the Commission recognizes that there are significant differences. In particular, business combination decisions are not of the same volitional nature as other investment decisions. Moreover, typically mergers may give rise to a change in security ownership as a consequence of inaction.

To address the differences in the nature of the investment decision, special provisions have been included in the Form. First, a specifically tailored item covering risk factors, ratio of

repeated in the business combination prospectus involving S-3 companies. The Commission has not sanctioned in this proceeding any revision of the basic information package, such as summary annual reports to security holders.

earnings to fixed charges, certain per share data and other information must be presented in the prospectus regardless of the level of disclosure available to the companies involved. This item, as adopted, has been expanded to reflect commentators' suggestions that the item include: (1) Certain additional financial data; and (2) information about regulatory approvals.

While the item highlights certain information discussed more fully elsewhere in the prospectus, or in documents incorporated by reference therein, it is not intended to be a summary of all material information concerning the transaction and the parties thereto. In the case of S-3 companies, where company and management information, including historical financial statements, is not presented in the prospectus, such information will have been furnished to security holders and widely disseminated in the market by means of the company's annual report to security holders. Therefore, this information need not be reiterated in the business combination prospectus. As to other companies, the historical financial statements and other company information will be presented in the prospectus.

Second, the Form establishes a minimum time period if incorporation by reference is used. The time period is designed to address the need for documents incorporated by reference to be delivered to security holders on a timely basis. The proposed Form would have required that, where incorporation by reference is used to take the place of presentation in the delivered document, the prospectus must either: (1) Be sent at least twenty business days in advance of the date of the meeting of security holders or the date of the final investment decision; or (2) be accompanied by the documents from which information is incorporated. The proposal also would have provided that where a registrant wishes to proceed faster than the twenty day time period, it could do so by delivering to security holders, along with the prospectus, all documents incorporated by reference therein.

Commentators generally supported the concept of the twenty business day period and the adopted Form requires the prospectus to be sent prior to the proposed twenty business day period where incorporation by reference is used. Concern was expressed, however, that the alternative of delivering documents incorporated by reference could result in a cumbersome and

unreadable prospectus because of the potential multiplicity of documents delivered. Accordingly, Form S-4 as adopted, provides a different alternative. Registrants still may proceed faster than the twenty business day period,¹⁶ but if they wish to do so, they must furnish the required information to security holders at the S-1 level. The same quantum of information will be delivered as was provided in the proposal's alternative, but the S-1 alternative provides a more readable format.¹⁷ In addition, the Commission has added a legend to encourage security holders to request the incorporated documents promptly and an undertaking¹⁸ to require the registrant to respond within one business day by first class mail or other equally prompt means.

In addition to these disclosure and timing measures, the Commission directed particular commentator attention to whether other possible alternatives, involving greater degrees of delivery of information, would be appropriate in view of the nature of the investment decision involved in business combination transactions. Commentators rejected the alternatives and favored the Form S-4 approach.

The one respect in which some commentators expressed reservations about the full streamlining afforded by the proposed Form was in the area of contested exchange offers. More than half of the commentators who directed specific comments to exchange offers, however, supported the S-4 approach. Moreover, some concerns were directed, at least in part, to the timing aspects of exchange offers which were not addressed in proposed Form S-4.

Form S-4 implements Recommendation Eleven of the Commission's Advisory Committee on Tender Offers ("Advisory Committee").¹⁹ one of the

¹⁶Of course, Form S-4 makes clear that for exchange offers, there must be compliance with the Williams Act [sections 13(d)-(f) and 14(d)-(g)] of the Exchange Act, 15 U.S.C. sections 78m(d)-(f), 78n(d)-(g)], and the regulations thereunder. With respect to mergers, the Commission notes that any accelerated timing must comply with applicable state law. In a recent case, the Delaware Supreme Court stated that "... in an appropriate case, an otherwise candid proxy statement may be so untimely as to defeat its purpose of meeting the needs of a fully informed electorate." *Smith v. Van Gorkom*, No. 255, 1982, slip op. at 74 (Del. Jan. 29, 1985) opinion revised, March 14, 1985. In this regard, the language in the proposed General Instruction A.2. relating to compliance with applicable federal or state law has been deleted as unnecessary.

¹⁷This approach is consistent with that of Form S-15, which allowed the S-2 level of disclosure, but provided for 20 day prior delivery.

¹⁸See Item 22(b) of Form S-4.

¹⁹Advisory Committee on Tender Offers Report on Recommendations ("Report") (July, 1983). The

recommendations intended to: (1) Lessen the regulatory disincentives to using securities as consideration in a tender offer; and (2) promote the equivalency of cash and exchange offers. Recommendation Eleven addresses disclosure in exchange offers, recommending that the approach of the integrated disclosure system be used for exchange offers. As noted in the proposing release, the inclusion of exchange offers in Form S-4 does not affect the timetable for exchange offers. Timing for exchange offers is the subject of Recommendation Twelve which would permit an exchange offer to commence on the date the preliminary registration statement is filed rather than the effective date of the registration statement. If adopted, Recommendation Twelve would put exchange offers on the same timetable as cash offers.²⁰ The Commission wishes to emphasize that Recommendation Twelve is not being implemented with adoption of Form S-4. Moreover, the Form as adopted contains an instruction and an undertaking that ensure Form S-4 cannot be used for this purpose.²¹

The Commission has adopted as proposed the modification of the current procedures for filing reports on Form 8-K in the context of acquisitions. The proposing release also contained policy statements about the implications under the Securities Act and the Exchange Act of a delay in filing or failure to file required financial statements for acquired businesses. In response to commentator concerns and suggestions, these policy statements have been revised in some respects, and certain of the revised statements have been included in the amended Form 8-K.²²

II. Synopsis of the Form

The following synopsis is intended to assist interested parties in their understanding of the Form and related amendments. Attention is directed to the text of the Form and amendments for a more complete understanding of this rulemaking action, including certain technical and clarifying changes not described below.

Advisory Committee was established by the Commission to examine the tender offer process and other techniques for acquiring control of public issuers and to recommend to the Commission legislative and/or regulatory changes the Committee considered appropriate or necessary. See Release No. 34-19528 (February 25, 1983) [48 FR 9111].

²⁰See Release No. 33-6534 (May 9, 1984) [49 FR 20833, 20834].

²¹See General Instruction H and Item 22(c) of the Form.

²²See Instructions to revised Item 7(a)(4) of Form 8-K.

A. Availability and Use of Form

Form S-4 is available for the registration of securities in connection with Rule 145 transactions as well as other mergers,²³ exchange offers and reoffers or resales of securities registered on the Form.²⁴ In addition, registrants that choose to use the incorporation by reference feature of the Form must send the prospectus twenty business days prior to the date of the meeting of security holders or, where no such meeting is held, the date the investment decision would become final.²⁵ For example, in a consent solicitation the prospectus would have to be disseminated at least twenty business days before the consents could be used to effect the proposal.

B. Business Combinations Involving Entities Required To Use Form S-11

Consistent with specific requirements in Form S-11 and administrative practice under Form S-14, special

²³ Merger transactions to which General Instruction A.1.(2) of Form S-4 would apply include short form mergers pursuant to state corporation laws similar to Section 253 of the Delaware General Corporation Law (the "DGCL") and merger by consent provisions like those found in section 228 of the DGCL. The former provision authorizes a parent corporation owning at least 90 percent of a subsidiary to merge that subsidiary into the parent pursuant to the unilateral action of the board of directors of the parent with the minority holders not entitled to vote or give an authorization or consent. The latter provision authorizes the taking of corporate action without a meeting, without prior notice and without a vote, if consent in writing setting forth the action is signed by the holders of outstanding stock having not less than the minimum number of votes necessary to authorize or take such action at a meeting. A clarifying amendment has been made to General Instruction A.1.(2) of the Form S-4.

²⁴ Form S-4 will remain available for mergers and exchange offers. For example, registrants may choose to use Form S-1 and to have the company being acquired prepare its own proxy statement so that the company being acquired will assume liability for the information in its own proxy statement. Of course, Forms S-2 and S-3, which are not available for business combination transactions, will remain unavailable for such transactions because registrants qualifying for use of those forms may use the respective forms' disclosure approaches through the use of Form S-4. Form S-4 also will be available for registration of securities in connection with issuer exchange offers.

²⁵ Form S-4 also contains two related provisions: (1) The requirement in Item 2 of a legend in the prospectus to inform investors that they need to make prompt requests for documents incorporated by reference; and

(2) A requirement in Item 22 for an undertaking by registrants to respond to requests for documents within one business day and to furnish the requested documents by first class mail or other equally prompt means. Where the registration statement incorporates by reference documents at the S-3 level, a request for such documents would include documents filed subsequent to the effective date of the registration statement up to the date of the response to the request. The undertaking would not require delivery of incorporated documents filed subsequent to such request.

disclosure provisions apply to business combination transactions involving certain real estate entities, described in Instruction A of Form S-11.²⁶ Form S-4 is available to register securities in connection with business combinations involving such entities and the special disclosure provisions that apply have been adopted as proposed.²⁷

C. Relationship with Exchange Act Rules

The Form S-4 prospectus may serve as the proxy or information statement used in connection with the transaction. It would be deemed to meet the informational and filing requirements of the proxy or information statement rules under section 14 of the Exchange Act and Regulations 14A²⁸ and 14C²⁹ thereunder, where applicable to the transaction. All other provisions of those regulations also apply.

In addition, General Instruction E.3. of the Form provides that if the transaction in which the securities being registered are to be issued is subject to sections 13(e), 14(d) or 14(e) of the Exchange Act, the disclosure and other provisions of those sections and the rules and regulations thereunder shall apply to the transaction in addition to the provisions of Form S-4. Thus, the provision calling for the more extensive disclosure will prevail, as will the time periods and other substantive provisions of the Williams Act and the Commission's going private and tender offer rules and schedules thereunder.³⁰

²⁶ General Instruction A of Form S-11 provides that the Form shall be used to register securities issued by: (i) A real estate investment trust, as defined in section 856 of the Internal Revenue Code; or (ii) other issuers whose businesses are primarily that of acquiring and holding for investment real estate or interests in real estate or interests in other issuers whose businesses are primarily that of acquiring and holding real estate or interests in real estate for investment.

²⁷ See General Instruction B.2. with respect to the acquiring entity and General Instruction C.2. concerning the entity being acquired. See also Release No. 33-6534 (May 9, 1984) [49 FR 20833, 20835].

²⁸ 17 CFR 240.14a-1 to 14b-1.

²⁹ 17 CFR 240.14c-1 to 14c-101.

³⁰ For example, if the transaction is an exchange offer subject to Regulation 14D, the registrant is required to disseminate material changes pursuant to Rule 14d-4(c) (17 CFR 240.14d-4(c)). The relationship between the undertaking to deliver incorporated documents (including those filed subsequent to effectiveness if the S-3 level is elected) and Rule 14d-4(c) is that, if a registrant has delivered requested documents to security holders and those documents reflect the material change, this would constitute compliance with Rule 14d-4(c). If, however, the documents do not reflect the material change or have not been sent to security holders, then the registrant still must comply with Rule 14d-4(c). Similarly, if the transaction is an exchange offer where the vote passes with the tender of shares, then the proxy regulations also will apply to the transaction. The Form S-4 filing

D. Transactions Involving Foreign Companies

As noted above, the Commission also has adopted new Form F-4,³¹ which may be used by foreign private companies when they are involved in business combination transactions. General Instruction F of Form S-4 describes which of the new Forms may be used when a foreign private issuer is one of the businesses involved. Form F-4 contains a similar instruction.

E. Automatic Effectiveness of Certain Registration Statements

General Instruction G provides for automatic effectiveness of registration statements filed for the sole purpose³² of the formation of a bank or savings and loan holding company³³ where the provisions of Staff Accounting Bulletin 50 ("SAB 50") are satisfied.³⁴ Under this provision, original registration statements will become effective automatically on the twentieth day after filing, and post-effective amendments will become effective on filing.³⁵ In response to commentators' suggestions that the Instruction specify the conditions and provisions of SAB 50, rather than include a reference to the SAB, the Instruction has been adopted with these provisions set forth specifically therein for clarity and ease of reference. The Instruction only refers

may be used to satisfy the Schedule 14D-1 (Tender Offer Statement, 17 CFR 240.14d-100) and, if the parties so choose, the subject company's Schedule 14D-9 (Tender Offer Solicitation/Recommendation Statement, 17 CFR 240.14d-101) filing obligation.

³¹ SEC Release No. 33-6579 (April 23, 1985) [— FR —].

³² This Instruction will not apply if there are any other proposals, e.g., antitakeover amendments to a corporate charter.

³³ To date, securities issued in connection with the conversion of banks to bank holding companies and savings and loan associations to savings and loan holding companies have been registered on Form S-1 or S-14, depending upon the nature of the transaction. Legislation that would have exempted such transactions from registration under the Securities Act where only a change in form is contemplated and certain other conditions are satisfied passed the Senate in the 98th Congress as S.2851, 98th Cong., 2d Sess. (1984). No such legislation passed the House of Representatives, however, and the exemptive provision, along with other features of the Senate bill, has not been reintroduced in the 99th Congress.

³⁴ SAB 50 reflects the staff's position regarding the financial statement requirements in filings involving the formation of one-bank holding companies. Release SAB-50 (March 3, 1983) [46 FR 10043].

³⁵ As noted in the proposing release, this provision is similar to the automatic effectiveness provisions of Form S-8 (17 CFR 239.16b) and for certain filings on Form S-3 and F-3. In addition, to assist the proper processing of such filings, the Form includes a box on the cover page indicating the registration in connection with the formation of a holding company and compliance with General Instruction G.

to those provisions in SAB 50 which are conditions to the use of automatic effectiveness. Registrants are directed to SAB 50 for further guidance concerning financial statement provisions.³⁶ The Commission believes that the automatic effectiveness of these registration statements will reduce administrative burdens and provide time and cost savings to registrants. In addition, the Commission, in this release, is adopting corresponding amendments to Rules 406, 464, 473, 475a, and 477 to reflect the automatic effectiveness of such registration statements.

F. Rule 415

Registration statements on Form S-4, because they relate to offerings which are continuous over a period of time, are subject to Rule 415(a)(1)(viii) (business combination transactions) and, if they are to be used for reoffers or resales, to Rule 415(a)(1)(i) (secondary offerings).³⁷

General Instruction H has been added to address situations where the registrant uses Form S-4 for an offering of securities in connection with a business combination transaction which will be effected on a delayed basis. In that case, the registrant must furnish information concerning the type of contemplated transaction(s) and the company(ies) being acquired as of the date of initial effectiveness only to the extent practicable. The required information about the specific transaction(s) and the particular company(ies) being acquired generally must be provided by post-effective amendment. For example, where an acquisition will be effected in a multi-step transaction in which there is an exchange offer followed by a merger, the initial registration statement would contain a prospectus that includes information about the exchange offer.³⁸ A post-effective amendment would have to be filed to provide information with respect to the second step merger.

In order to implement the content of General Instruction H, an undertaking has been added to Item 22 of the Form. This undertaking, to file post-effective amendments with respect to transactions contemplated after effectiveness, is required in addition to

the undertakings required by Item 512(a) of Regulation S-K.³⁹ The new undertaking will ensure that Rule 415 cannot be used to implement Recommendation Twelve of the Advisory Committee's recommendations,⁴⁰ by using a prospectus supplement to provide for the immediate commencement of an exchange offer.

On the other hand, if the transaction in which the securities are being offered pursuant to a registration statement under the Securities Act would itself qualify for an exemption from section 5 of the Act, but for the existence of other similar (prior or subsequent) transactions, then a prospectus supplement may be used to provide information necessary in connection with such transaction.⁴¹ General Instruction H codifies this administrative practice with respect to transactions the securities for which currently are registered on Form S-1 or S-14.

G. Structure of the Form

See, e.g., (Letter re Beatrice Foods Co., [1973] Fed. Sec. L. Rep. (CCH) ¶ 79,351 [available January 17, 1973]).

The two part structure of Form S-4, separating the information which must be included in the prospectus (Part I) and that which need not (Part II), is the same as other Securities Act forms. Part I of the Form is divided into four separate sections in order to set forth clearly the requirements relating to the transaction, the companies involved, voting and management information.

1. Information Required in the Prospectus—Part I

a. *Information about the Transaction—Section A.* Section A calls for information about the transaction. This information must be presented in the prospectus instead of being incorporated by reference. The items in

section A include: Items 1 and 2, information called for by Items 501⁴² and 502⁴³ of Regulation S-K; Item 3, risk factors, ratio of earnings to fixed charges and other information; Item 4, terms of the transaction; Item 5, pro forma financial information; Item 6, material contacts between the companies; Item 7, additional information related to resales; and Items 8 and 9, information called for by Items 509⁴⁴ and 510⁴⁵ of Regulation S-K. These items are adopted substantially as proposed; there follows a discussion of areas where changes have been made from the proposal, or that otherwise are highlighted.

(1) *Risk Factors, Ratio of Earnings to Fixed Charges and Other Information—Item 3.*—Item 3 is adopted with modifications and additional items that reflect commentators' suggestions. First, the item has been redesignated "Risk Factors, Ratio of Earnings to Fixed Charges and Other Information," to clarify that the information set forth in this part of the prospectus is not a summary of all material information concerning the transaction. The item requires the registrant to furnish information required by Item 503 of Regulation S-K;⁴⁶ the name and address of the subject entities; a brief description of business and properties; a brief description of the transaction; certain comparative per share data; a statement concerning dissenters' appraisal rights; a statement comparing the percentage of outstanding voting shares held by directors, officers and their affiliates; the vote required for approval; and a brief statement regarding the tax consequences of the proposed transaction.⁴⁷

Based upon commentators' suggestions, Item 3 has been revised further to require (1) a statement as to whether any federal or state regulatory requirements must be complied with or approvals must be obtained in connection with the transaction, and if so, the status of such compliance or

³⁶ 17 CFR 229.512(a). Item 512(a) requires the registrant, in an offering of securities pursuant to Rule 415 to undertake to update the prospectus by post-effective amendment to reflect: (1) Any prospectus required by section 10(a)(3) of the Securities Act; (2) facts or events arising after the effective date of the registration statement which constitute a fundamental change; and (3) any material information with respect to the plan of distribution not disclosed previously in the registration statement or any material change to such information in the registration statement. The item also requires an undertaking to remove from registration by means of a post-effective amendment any of the securities being registered which remain unsold at the termination of the offering.

³⁷ See discussion at page 13, *infra*.

³⁸ See, e.g., (Letter re Beatrice Foods Co., [1973] Fed. Sec. L. Rep. (CCH) ¶ 79,351 [available January 17, 1973]).

⁴² 17 CFR 229.501 (forepart of registration statement and outside front cover page of prospectus).

⁴³ 17 CFR 229.502 (inside front and outside back cover page of prospectus).

⁴⁴ 17 CFR 229.509 (interests of named experts and counsel).

⁴⁵ 17 CFR 229.510 (disclosure of Commission position on indemnification).

⁴⁶ 17 CFR 229.503 (summary information, risk factors and ratio of earnings to fixed charges).

⁴⁷ In view of the complexity of the tax consequences of certain business combination transactions, revised Item 3(j) permits registrants to provide, where appropriate, only a cross reference to the information furnished pursuant to Item 4 of the Form.

³⁶ Of course, the references to Form S-14 in SAB 50 should be construed to be references to Form S-4 after its adoption.

³⁷ 17 CFR 230.415(a)(1) (i) and (viii). In view of this position, it was not necessary to include a Rule 415 cover page box in Form S-4 as adopted.

³⁸ Where such a second step in a multi-step transaction becomes probable, however, pro forma financial information is required at this point as to the effects of both the exchange offer and the second step merger. See Financial Reporting Release 2, Release No. 33-6413 [June 24, 1982] [47 FR 29832].

approvals; and (2) a requirement to furnish the information required by Item 301 of Regulation S-K⁴⁸ (condensed financial data for five year trend information) for (1) the registrant; (2) the company being acquired; and (3) if material with respect to the registrant, pro forma data giving effect to the transaction.⁴⁹ As a result of this change, the time period requirements for the comparative per share data and equivalent per share data have been revised to reflect that the Item 301 time periods provide the basis for such comparative data.

(2) *Terms of the Transaction—Item 4.*—Item 4 calls for a description of the terms of the transaction, including information about the acquisition agreement, reasons for and consequences of the transaction, description of securities and differences in the rights of security holders. This Item, as adopted, reflects several changes from the proposal in response to commentator suggestions.

Proposed Form S-4 allowed registrants eligible to use Form S-3 to incorporate by reference the description of the securities being issued in the transaction if the same securities are registered under the Exchange Act. The adopted Item has changed the conditions under which the description of securities may be incorporated by reference to require not only that securities of the same class as those being offered must be registered under section 12 of the Exchange Act, but also that these securities must be listed for trading or admitted to unlisted trading privileges on a national exchange, or be securities for which bid and offer quotations are reported in an automated quotations system operated by a national securities association. This change responds to commentators' concerns by ensuring that security holders receive the description of any class of securities that previously has not been trading.

The proposed Form would have required disclosure of the effect of the transaction on the registrant, the company being acquired and the existing security holders of both. This requirement has been deleted because commentators believed disclosure of the effect of the transaction would be duplicative of the requirement in Item 4(a)(2) for disclosure of the reasons for the transaction. For example, if the registrant plans to dispose of substantial components or assets of the company

being acquired, disclosure of such plans would be called for pursuant to Item 4(a)(2).

Item 4 also has been revised to codify existing administrative practice in the area of investment banking and other opinions. The Item requires that if the registrant or the company being acquired has obtained a report, opinion or appraisal from an outside party as to the transaction and refers to such opinion in the prospectus, then the information called for by Item 9(b)(1) of Schedule 13E-3⁵⁰ must be furnished. The Item does not require that such a report be obtained or that there be an affirmative statement as to whether one was obtained. The Item applies only where a report has been obtained and reference to it is made in the prospectus.

In addition, pursuant to commentators' suggestions, a requirement to furnish a brief statement as to the accounting treatment of the transaction has been added. This item will elicit disclosure as to whether the proposed acquisition will be accounted for as a purchase transaction or as a pooling of interests transaction.

Finally, Item 4(b) of the proposed Form would have required incorporation by reference of the acquisition agreement into the prospectus and an undertaking that the agreement be furnished, without charge, by first class mail or other equally prompt means, to security holders that request it. In this regard, the Commission solicited comment as to whether it should: (1) Give guidance as to which of the provisions of the acquisition agreement registrants should discuss pursuant to Item 4(a)(1); and (2) in keeping with its goal of streamlining disclosure, take further steps to discourage delivery of the acquisition agreement.

Commentators generally supported the incorporation by reference requirement, but indicated that timely delivery of the acquisition agreement to security holders that request it would be essential to the adequacy of the requirement. Commentators did not believe any further steps would be appropriate in this area. The Commission agrees and has adopted Item 4(b) with the one modification that the undertaking to furnish the agreement has been deleted because it is

duplicative of the new undertaking added as Item 22(b).⁵¹

(3) *Pro Forma Financial Information—Item 5.*—This Item has been adopted as proposed. The pro forma financial information relating to the transaction pursuant to which a Form S-4 is filed, like other transaction information, must be presented in the prospectus and may not be incorporated by reference. However, pro forma information relating to other business combinations besides the transaction pursuant to which this registration statement is filed, is treated like company information and, therefore, may be presented in the prospectus or incorporated by reference therein.

(4) *Material Contacts Between Companies—Item 6.*—Item 6 of Form S-4, which has been adopted as proposed, calls for information relating to any past, present or proposed material contracts, negotiations, transactions or similar contacts between the registrant and the company being acquired. The Item is designed to elicit information about: (1) Possible conflicts of interest and (2) facts relating to transactions such as pre-takeover transactions or purchases by the registrant of significant blocks of the securities of the company being acquired.

b. *Information About the Registrant—Section B. (1) Reporting Companies.*—If a registrant is subject to either section 13(a) or 15(d) of the Exchange Act, the information it would have to present in the prospectus about itself is the same as that required by Form S-1, S-2 or S-3⁵² if it were making a primary offering

⁴⁸ See fn. 25, *infra*.

⁴⁹ Application of the Form S-3 level includes the forward incorporation feature of that Form, i.e., the incorporation by reference of subsequently filed Exchange Act reports, including all reports filed subsequent to the effectiveness of the registration statement and prior to the termination of the offering. As the Commission noted in proposing Form S-3, however:

Despite the fact that subsequently filed periodic reports under the Exchange Act are incorporated by reference into a Form S-3 prospectus, registrants should be aware that they may be required to amend the prospectus if the information actually presented therein has become materially false and misleading by reason of subsequent events that are reported in the incorporated Exchange Act documents.

See Release No. 33-6331 (August 6, 1981) [46 FR 41902] at fn. 64. Form S-4 registrants who elect the S-3 level for either entity similarly should be mindful with respect to information actually presented in the prospectus delivered in connection with the transaction. See also Rule 14a-9 (17 CFR 240.14a-9) if applicable.

⁵⁰ 17 CFR 229.301 (selected financial data).

⁵¹ Where S-2 or S-1 companies are involved, this information already is required to be presented pursuant to other items of the Form.

⁵² 17 CFR 240.13e-100. Of course, the person rendering such opinion would be an expert within the meaning of section 7 of the Securities Act and, accordingly, would be required to furnish the required consent. Moreover, a requirement to furnish the report, opinion or appraisal as an exhibit to the registration statement, if it has been referenced in the prospectus, has been added in Item 21(c) of Form S-4.

of securities not involving a business combination.⁵³ Registrants eligible to use Form S-2 or S-3 are not required to present information at the most streamlined level available, but may elect instead to comply with provisions of the Form calling for greater prospectus presentation. General Instruction B explains the operation of the three-tier system in the context of registration on Form S-4 and, as adopted, reflects certain clarifying language changes.

(2) *Non-Reporting Companies.*—For registrants that are not subject to the reporting requirements of the Exchange Act, Form S-4 requires disclosure of company information at the level prescribed by Form S-1. The majority of the commentators supported this approach and these requirements have been adopted as proposed.

In the proposing release, the Commission also sought comment as to whether the disclosure level of Form S-18⁵⁴ should be made available where the company(ies) involved could use that Form for an initial public offering, *i.e.*, where the company is non-public and the value of the securities being registered does not exceed \$7.5 million. While the commentators who addressed this point supported the concept, they also questioned its utility in the business combination context in light of the dollar amount limitation. Moreover, the Form S-4 financial disclosure requirements discussed below with respect to non-reporting companies being acquired are less burdensome for non-reporting companies being acquired than are those of Form S-18, which requires a two year audit. Based upon the questionable utility of the S-18 approach and the complexity its implementation would add to Form S-4, with little concomitant benefit, the Commission has determined not to pursue this approach.

c. *Information About the Company Being Acquired—Section C.* (1) *Reporting Companies.*—Form S-4 generally provides for the same prospectus presentation about a reporting company being acquired that would be required by Form S-1, S-2 or S-3 were such company making a primary offering of securities not involving a business combination. Thus, Form S-4 for the most part requires

registrants to provide information about the company being acquired as if that company were the registrant.

(2) *Non-Reporting Companies.*—Form S-4 allows registrants to elect to provide information about non-reporting companies being acquired either at the S-1 level or at a level that is the same as that required under Form S-15 for non-reporting companies being acquired. With respect to financial statement requirements, this approach reflects a change from the proposal, which is discussed below. The Commission believes that these revised requirements strike a more appropriate balance between the cost of collecting and processing information not previously developed, and the investor's need for information. In addition, the definition of a non-reporting company being acquired has been modified, in Item 17(b), to include, in addition to companies not subject to the reporting requirements of either sections 13(a) or 15(d) of the Exchange Act, a public company which, because of section 12(i) of the Exchange Act, has not furnished an annual report to security holders pursuant to Rule 14a-3⁵⁵ or Rule 14c-3⁵⁶ for its latest fiscal year.

Proposed Form S-4 would have required non-reporting companies being acquired to provide audited financial statements for the periods required to be presented by Rule 3-05 of Regulation S-X.⁵⁷ In addition, the proposed Form carried over the provisions of Item 15 of Schedule 14A⁵⁸ that such financial statements need be certified⁵⁹ only to the extent practicable, but that reoffers to the public by any person who is deemed an underwriter within the meaning of Rule 145(c) would be prohibited until the required certified statements are provided.

Pursuant to commentator suggestion that some minimum level of disclosure should be required in the Form as to both entities, the financial statement requirements of Form S-4 with respect to non-reporting companies being acquired have been changed to incorporate the current requirements of

Form S-15. Thus, Item 17(b)(7) provides that a non-reporting company being acquired must provide three-year financial statements as would have been required to be included in an annual report furnished to security holders pursuant to Rule 14a-3 (b)(1) and (b)(2) or Rule 14c-3 (b)(1) or (b)(2), had the company being acquired been required to prepare such report. The balance sheet for the year preceding the latest full fiscal year and the income statements for the two preceding years, however, need not be audited if they have previously not been audited. In addition, the quarterly financial and other information that would have been furnished had the company being acquired been required to file Part I of Form 10-Q⁶⁰ for the most recent quarter prior to the time of effectiveness of the registration statement must be furnished.

d. *Voting and Management Information—Section D.* (1) *Voting Information.*—If a proxy, consent⁶¹ or authorization is to be solicited, Form S-4 requires registrants to present in the prospectus information concerning (1) the vote needed for approval, (2) dissenters' rights of appraisal, (3) revocability of proxies, (4) interest of certain persons in the transaction, (5) persons making the solicitation and (6) the registrant's relationship with independent public accountants. In the absence of a solicitation, the Form requires prospectus presentation of information about (1) the date of the shareholder meeting, (2) the vote required for approval, (3) dissenters' rights of appraisal, (4) the registrant's relationship with independent public accountants and (5) a statement that proxies, consents or authorizations are not being solicited. These requirements have been adopted as proposed, except that Item 19 has been revised to make clear which provisions thereof are not applicable in the case of exchange offers.

(2) *Management Information.*—Whether or not proxies are to be solicited, Form S-4 requires information concerning voting securities and the principal holders of such shares⁶² with

⁵³ 17 CFR 240.14a-3(b) sets forth the information required to be included in the annual report to security holders which must accompany or precede the annual proxy materials.

⁵⁴ 17 CFR 240.14c-3(a) sets forth the information to be included in the annual report to security holders which must accompany or precede the annual information statement.

⁵⁵ Generally, Rule 3-05 requires audited financial statements for one, two or three years regarding a business that is being acquired depending upon the relative size of the acquisition.

⁵⁶ 17 CFR 240.14a-101.

⁵⁷ In the revised Form S-4 requirements, the word "certified" has been changed to "audited" for consistency.

⁵⁸ 17 CFR 240.308a.

⁵⁹ In a consent solicitation, the 20 business day period discussed, *infra*, operates to require the registrant to send the prospectus to security holders 20 business days in advance of the date on which such consents may be used to effect the transaction, rather than 20 days in advance of the date on which the requisite consents may be received by the soliciting party. This procedure considers the possibility of revocation of consents and establishes a fixed date for calculation of the 20 business day period in this context.

⁶⁰ Item 5 of Schedule 14A (17 CFR 240.14a-101).

⁵³ The language in the introduction to Item 11 of Form S-2 and Item 12(a)(3) of Form S-4, which calls for information prescribed by Article 11 (17 CFR 210.11-01 *et seq.*) and Rule 3-05 of Regulation S-X "if not reflected in the registrant's latest annual report to security holders . . ." is not intended to suggest that the annual report to security holders prescribes the inclusion of such information.

⁵⁴ 17 CFR 239.28.

respect to all directors and executive officers of both entities and, with regard to the directors and executive officers of the surviving or acquiring company, information about directors and executive officers,⁶³ certain relationships and related transactions,⁶⁴ and executive compensation.⁶⁵ The Form permits incorporation by reference of management information to the same extent as would be permitted in a primary offering not involving a business combination under Forms S-1, S-2, and S-3.

2. Information Not Required in the Prospectus—Part II

Part II of Form S-4 prescribes information called for by: (1) Item 702 of Regulation S-K⁶⁶ indemnification of directors and officers; (2) Item 601 of Regulation S-K, exhibits; and (3) Item 512 of Regulation S-K, undertakings.

This information would be included in the registration statement, but could be omitted from the prospectus. These requirements have been adopted as proposed, with the addition of the two new undertakings (compliance with requests for information incorporated by reference and post-effective amendments for delayed business combinations) and the new exhibit requirement for reports, opinions or appraisals materially related to the transaction that are referenced in the prospectus.

H. Other Amendments

1. Corresponding Amendments

a. The Commission also has adopted corresponding amendments to Rule 3-05 of Regulation S-X, Items 502,⁶⁷ 512 and 601 of Regulation S-K, Rules 406, 463, 464, 473, 475a and 477 under the Securities Act and Rules 14a-3, 14a-6, 14c-2 and 14c-5 under the Exchange Act. These amendments are necessitated by rescission of Form S-15 and its replacement with Forms S-4 and F-4. The changes delete references to Form S-15 and, where appropriate, replace them with references to Form S-4 or F-4. The Commission notes that although Form F-4 is not being published in this release, the technical amendments necessitated by its adoption are included in this release to avoid unnecessary duplication. The amendment to Rule 145(a)(2) to codify the staff position that the Rule's change

in domicile exception does not apply to a change in national jurisdiction is included in the F-4 release, however, because it applies in the foreign context.

2. New Investment Company Merger Proxy Form

The Commission notes that registered investment companies and business development companies, as defined in section 2(a)(48) of the Investment Company Act of 1940⁶⁸ currently may register securities issued in connection with business combinations on Form S-14. Form S-14 is not available for the registration of securities in connection with a business combination where the registrant is a registered investment company or a business development company. The Commission has proposed a new merger proxy form, Form N-14,⁶⁹ that, if adopted, will be available for use by such companies and will replace Form S-14 for these companies. Form S-14 will be retained only for these companies and business development companies on a temporary basis until the new form is adopted, at which time Form S-14 will be rescinded.

3. Item 502 of Regulation S-K

In addition to the corresponding amendments noted above, a clarifying amendment to Item 502 of Regulation S-K also has been adopted. The amendment clarifies that the undertaking required of registrants to send documents that are incorporated and not delivered extends to beneficial owners.

4. Rule 145—Preliminary Note

The Commission has eliminated from the preliminary note to Rule 145 under the Securities Act certain details concerning the history and application of Rule 133, which contained the Commission's previously existing "no-sale" theory, was rescinded effective January 1, 1973 following the adoption of Rule 145.⁷⁰ The portions of the preliminary note the Commission has deleted pertain to the applicability of Rule 133 and are no longer relevant.

5. Form 8-K Reports of Acquisitions

The Commission has adopted as proposed a modification of the current procedures for filing reports on Form 8-K in the context of acquisitions. Currently, a reporting registrant must file a report on Form 8-K within fifteen days after it has made an acquisition. In

that report, the registrant must provide a description of the acquisition pursuant to Item 2, and the financial statements and pro forma financial information prescribed by Rule 3-05 and Article 11 of Regulation S-X pursuant to Item 7. As amended, Item 7 of Form 8-K provides an extension of up to 60 days, from the date the filing initially is due, for filing the financial statements and pro forma financial information regarding an acquired business. The extension is available where: (1) The provision of such information within fifteen days is impracticable; (2) the registrant so states in its filing on Form 8-K and states the date such financial statements are expected to be filed by an amendment; and (3) the registrant provides such financial information as soon as practicable within the 60 day period. Commentators generally supported the proposed amendment.

Under the amended procedure, registrants, upon notice in the initial Form 8-K report filed in connection with the acquisition, would have up to 60 additional days⁷¹ in which to provide Item 7 financial information where the provision of the required audited financial statements and pro forma financial information within fifteen days would be impracticable. In such an instance, the registrant would have to provide within the regular fifteen day deadline as much of the required financial statements as then were available, including where appropriate, unaudited financial statements.

The proposing release also contained policy statements concerning the implications under the Securities Act and the Exchange Act of a delay in filing or failure to file required financial statements for acquired businesses. In response to commentator concerns and suggestions, these policy statements have been revised in some respects. In addition, new instructions have been added to revised Item 7(a)(4) in order to set forth certain of the revised policies in the Form itself.

During the pendency of the extension, registrants would be deemed current for purposes of their reporting requirements under the Exchange Act. With respect to filings under the Securities Act, registration statements and post-effective amendments to effective registration statements would not be declared effective. In addition, offers

⁶³ Item 401 of Regulation S-K (17 CFR 229.401).

⁶⁴ Item 404 of Regulation S-K (17 CFR 229.404).

⁶⁵ Item 402 of Regulation S-K (17 CFR 229.402).

⁶⁶ 17 CFR 229.702.

⁶⁷ The Commission also has made clarifying technical changes to the Item 502 references to incorporated material.

⁶⁸ 15 U.S.C. 80a-2(a)(48), as amended by Pub. L. 96-477 1980.

⁶⁹ Release No. 33-6570 [March 18, 1985] [50 FR 11725].

⁷⁰ See Release No. 33-5316 [October 6, 1972] [37 FR 23631].

⁷¹ Because the number of days (60) available under the extension runs from the date the filing on Form 8-K is due (fifteen days subsequent to the acquisition), rather than the date of the acquisition, the extension provides a maximum of 75 days from the acquisition date for the registrant to furnish the required information.

and sales should not be made pursuant to effective registration statements, or pursuant to Rules 505 and 506 of Regulation D⁷² where any purchaser is not an accredited investor under Rule 501(a) of that Regulation, until the required audited financial statements are furnished. This prohibition, however, does not affect offerings or sales, made: (1) Upon the conversion of outstanding convertible securities, or the exercise of outstanding warrants or rights; (2) pursuant to dividend or interest reinvestment plans on Form S-3; (3) pursuant to employee benefit plans on Form S-8; (4) in transactions involving secondary offerings; or (5) in reofferings or resales of securities pursuant to Rule 144.⁷³ These positions respecting the pendency of the 60 day extension are described in new Instruction 1 to Item 7(a)(4) and reflect changes made: (1) To clarify the status of effective shelf registration statements; (2) to rescind the previous position that affiliates of the registrant would not be permitted to resell securities in reliance on Rule 144;⁷⁴ and (3) to explain the implications of an extension under Regulation D.

As noted in the proposing release, no further extensions of the filing period will be available. A few commentators indicated that this policy should be modified to allow requests for further extensions of time in the most unusual circumstances, such as in the event that unforeseeable delays are encountered during the course of an audit.

The Commission believes, however, that the purposes of the Exchange Act, "to insure the maintenance of fair and honest markets in securities transactions * * *,"⁷⁵ may be better

served without a further extension procedure.⁷⁶ Moreover, it should be noted that the notification procedure and the availability of the 60 day extension should not be an invitation to non-timely filing of the required financial information.

Finally, the proposing release stated that in certain rare instances the Division would consider requests for waiver of some or all of the required financial information. The Commission wishes to emphasize that a waiver of the financial statement requirements will be considered only where the circumstances are so rare as to constitute a unique occurrence in the life of the registrant. The waiver process will be administered for the Commission by the Division of Corporation Finance, on a case by case basis.

As was stated in the proposing release, in determining whether to grant a waiver, the Division will consider: (1) The size of the acquisition relative to the registrant;⁷⁷ (2) the reasons why the statements cannot be obtained;⁷⁸ and (3) the financial information the registrant can provide.⁷⁹ All three factors will be considered together. The larger the acquisition, the more compelling the reasons must be, and the more important that information which can be provided becomes. While certain commentators suggested the need for explicit guidelines as to the standards to be applied to requests for waiver, the unique facts and circumstances under which such requests would be considered make guidelines impracticable.

⁷² This position is consistent with that embodied in Rule 12b-25 (17 CFR 240.12b-25), which provides the procedures for extensions of time for filing all or part of reports on Form 10-K and Form 10-Q. For reports on these Forms, no further extensions beyond that provided under Rule 12b-25 are available.

⁷³ See Article 3-05 of Regulation S-X, which establishes the time periods for which financial statements must be furnished based upon the relative size of the acquisition. The sliding scale of Article 3-05 for the evaluation of the significance of a business acquisition was adopted in Securities Act Release No. 33-6413 [June 24, 1982] [47 FR 29632]. It revised and codified the principles applicable to requests for waiver of certain audited financial statement requirements set forth in Securities Act Release No. 4050 (February 20, 1969) [34 FR 4886], "General Requirements for Certified Financial Statements of Companies Acquired or to be Acquired."

⁷⁴ For example, impossibility would be considered relevant. However, cost of an audit alone generally would not be deemed a sufficient basis for a waiver.

⁷⁵ For example, an audit of the most relevant portions of the required financial statements, or an audit of two of the three required years' financial statements, may provide an adequate basis for a waiver of the remaining requirements where the other factors (size and reasons) also support such action.

Where a waiver is not granted and the required financial statements are not supplied in the time prescribed, registrant are notified that the deficiency may affect the registrant for both Exchange Act and Securities Act purposes. Depending on the circumstances and the relevancy of the information, the registrant may not be considered timely or current in its Exchange Act reporting obligations and, where appropriate, enforcement action would be taken. Once the registrant has furnished audited financial statements of the new combined entity for an appropriate period,⁸⁰ it could, in some cases, be considered current for Exchange Act purposes, and also may be able to register securities under the Securities Act.

Statutory Authority

The Commission is adopting Form S-4 and the related amendments pursuant to sections 5, 6, 7, 10 and 19(a) of the Securities Act and sections 14(a), 14(c) and 23(a) of the Exchange Act.

As required by section 23(a) of the Exchange Act, the Commission has considered specifically the impact that the rulemaking actions revising 17 CFR Parts 210, 229, 230, 239, 240 and 249 taken pursuant to the various provisions of the Exchange Act would have on competition, and has concluded that they would impose no significant burden on competition not necessary or appropriate in furtherance of the purposes of the Exchange Act.

Final Regulatory Flexibility Analysis

This final regulatory flexibility analysis, which relates to Form S-4, has been prepared in accordance with 5 U.S.C. 604. The corresponding Initial Regulatory Flexibility Analysis is contained in the proposed release (Release No. 33-6534, May 9, 1984 [49 FR 20833]).

The Need for and Objectives of Form S-4

The Form is designed to improve the effectiveness of the business combinations prospectus by requiring that information be presented in a more accessible and meaningful format, and to simplify the registration of securities issued in such transactions. The Commission is implementing these objectives by applying to business combination transactions the principles of the integrated disclosure system

⁸⁰ In this regard, what constitutes an appropriate time period will be determined by the staff, based upon the particular facts and circumstances of each case.

⁷² 17 CFR 230.501 to 230.506. With respect to sales made only to accredited investors, however, there are no informational requirements under Regulation D.

⁷³ 17 CFR 230.144. Rule 144 provides a safe-harbor rule by means of which affiliates and nonaffiliates of the registrant can resell their restricted securities without the need for registration under the Securities Act. Availability of the Rule is conditioned, *inter alia*, on there being adequate current public information concerning the registrant. See Rule 144(c).

⁷⁴ This position is rescinded because the dangers posed by allowing affiliates, who may have non-public information about the registrant, to continue to sell securities during the pendency of the extension are adequately addressed by: (1) Exchange Act section 10(b) and Rule 10b-5 thereunder (17 CFR 240.10b-5); and (2) the representation made by affiliates in filings on Form 144. Form 144 requires the selling affiliate to represent that he does not know any material adverse information about the current or prospective operations of the issuer of the securities which has not been disclosed publicly.

⁷⁵ Section 2 of the Exchange Act of 1934, 15 U.S.C. 78b.

developed in the context of primary offerings of securities. Thus, information about the companies involved is presented in, delivered with, or incorporated by reference into, the prospectus to the same extent as provided when such companies are making primary offerings. Form S-4 together with Form F-4 replaces Form S-15 under the Securities Act of 1933 ("Securities Act") and is available for the registration of all business combination transactions, including exchange offers previously registered on Form S-1 under the Securities Act.

Issues Raised by Public Comment

No commentators referred to the Initial Regulatory Flexibility Analysis in Commenting on proposed Form S-4.

Significant Alternatives

Form S-4 is modeled on the disclosure requirements contained in Forms S-1, S-2 and S-3, the basic forms under the Commission's integrated disclosure system. In developing those Forms, the Commission carefully analyzed whether they should be adapted specially for use by small entities. The Commission concluded that the better approach was to address the needs of small entities separately in the context of Regulation D and Form S-18. The Commission in connection with Form S-4, considered whether the disclosure level of Form S-18 should be made available where a company involved could use that Form for an initial public offering. Although some commentators supported the concept, they questioned its utility in the business combination context in light of the \$7.5 million limit on the value of securities registered on Form S-18. Moreover, the fact that the financial disclosure requirements of Form S-4 are less burdensome for non-reporting companies being acquired than those of Form S-18, indicates that the Form S-18 approach would increase the complexity of Form S-4, with little concomitant benefit for small entities. Accordingly, the Commission has determined not to implement this alternative. Form S-4 thus requires disclosure according to the levels represented by Forms S-1, S-2 and S-3 in the primary offering context. The Commission does not believe that other alternatives, including use of a performance rather than a design standard, or exempting small entities from all or part of the requirements of the Form would accomplish the Commission's statutory mandate to protect investors.

List of Subjects

17 CFR Part 210

Securities, Reporting and recordkeeping requirements, Holding companies, Insurance companies, Investment companies.

17 CFR Part 229

Securities, Reporting and recordkeeping requirements.

17 CFR Part 230

Confidential business information, Investment companies, Reporting and recordkeeping requirements, Securities.

17 CFR Part 239

Reporting and recordkeeping requirements, Securities.

17 CFR Part 240

Reporting and recordkeeping requirements, Securities.

17 CFR Part 249

Brokers, Reporting and recordkeeping requirements, Securities.

Text of Amendments

In accordance with the foregoing, Title 17, Chapter II of the Code of Federal Regulations is amended as follows:

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

1. By revising paragraph (b)(1) introductory text of § 210.3-05 to read as follows:

§ 210.3-05 Financial statements of business acquired or to be acquired.

(b) Periods to be presented. (1) If securities are being registered to be offered to the security holders of the business to be acquired, the financial statements specified in §§ 210.3-01 and 210.3-02 shall be furnished for the business to be acquired, except as provided otherwise for filings on Form S-14. In all other cases, financial statements of the business acquired or to be acquired shall be filed for the periods specified in this paragraph or such shorter period as the business has been in existence. The financial statements covering fiscal years shall be audited except as provided in Item 15 of Schedule 14A, (§ 240.14a-101 of this chapter) with respect to certain proxy

statements or in a registration statement filed on Form S-14, S-4 or F-4 (§ 239.23, 25 or 34 of this chapter). The periods for which such financial statements are to be filed shall be determined using the conditions specified in the definition of significant subsidiary in Rule 1-02 of Regulation S-X (§ 210.1-02 of this chapter). The determination shall be made by comparing the most recent annual financial statements of each such business to the registrant's most recent annual consolidated financial statements filed at or prior to the date of acquisition.

PART 229—STANDARD INSTRUCTIONS FOR FILING FORMS UNDER SECURITIES ACT OF 1933, SECURITIES EXCHANGE ACT OF 1934 AND ENERGY POLICY AND CONSERVATION ACT OF 1975—REGULATION S-K

2. By revising paragraph (c) of § 229.502 to read as follows:

§ 229.502 (Item 502) Inside front and outside back cover pages of prospectus.

(c) *Incorporation by reference.* Where any document or part thereof is incorporated by reference in the prospectus but not delivered therewith, include an undertaking to provide without charge to each person, including any beneficial owner, to whom a prospectus is delivered, upon written or oral request of such person, a copy of any and all of the information that has been incorporated by reference in the prospectus (not including exhibits to the information that is incorporated by reference unless such exhibits are specifically unincorporated by reference into the information that the prospectus incorporates), and the address (including title or department) and telephone number to which such a request is to be directed.

3. By revising paragraph (h) introductory text of § 229.512 to read as follows:

§ 229.512 (Item 512) Undertakings.

(h) *Registration on Form S-14, S-4 or F-4 of securities offered for resale.* Include the following if the securities are being registered on Form S-14, S-4 or F-4 (§ 239.25, or 34 of this chapter) in connection with a transaction specified

in paragraph (a) of Rule 145 (§ 230.145 of this chapter).

4. By revising the Exhibit Table and revising paragraph (b)(4)(ii) of § 229.601 to read as follows:

§ 229.601 (Item 601) Exhibits.

EXHIBIT TABLE

	Securities Act forms											Exchange Act forms				
	F-1	F-2	F-3	F-4 ¹	S-1	S-2	S-3	S-4 ²	S-8	S-11	S-14	S-18	S-10	8-K	10-Q	10-K
(1) Underwriting agreement	X	X	X	X	X	X	X	X		X	X	X		X		
(2) Plan of acquisition, reorganization, arrangement, liquidation or succession	X	X	X	X	X	X	X	X	X	X	X		X	X	X	X
(3) Articles of incorporation and by-laws	X			X	X			X		X	X	X	X			X
(4) Instruments defining the rights of security holders including indentures	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X
(5) Opinion re legality	X	X		X	X	X	X	X	X	X	X	X				
(6) Opinion re discount on capital shares	X	X		X	X	X		X	X	X	X	X	X			
(7) Opinion re liquidation preference	X	X		X	X	X		X		X	X	X	X			
(8) Opinion re tax matters	X	X	X	X	X	X	X	X		X	X	X				
(9) Voting trust agreement	X	X		X	X			X		X	X	X	X			X
(10) Material contracts	X	X		X	X	X		X		X	X	X	X			X
(11) Statement re computation of per share earnings	X	X		X	X	X		X		X	X		X		X	X
(12) Statements re computation of ratios ³	X	X		X	X		X	X		X	X		X			X
(13) Annual report ² computation to security holders, Form 10-Q or quarterly report to security holders							X	X	X				X			X
(14) Material foreign patents	X			X	X			X			X	X	X			
(15) Letter re unaudited interim financial information	X	X	X	X	X	X	X	X	X	X	X	X			X	
(16) Letter re change in certifying accountant														X		
(17) Letter re director resignation														X		
(18) Letter re change in accounting principles															X	X
(19) Previously unfilled documents															X	X
(20) Report furnished to security holders															X	
(21) Other documents or statements to security holders														X		
(22) Subsidiaries of the registrant	X			X	X			X		X			X			X
(23) Published report regarding matters submitted to vote of security holders															X	X
(24) Consents of experts and counsel	X	X	X	X	X	X	X	X	X	X	X	X		X ⁴	X ⁴	X ⁴
(25) Power of attorney	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X
(26) Statement of eligibility of trustee	X	X	X	X	X	X	X	X		X	X	X				
(27) Invitations for competitive bids	X	X	X	X	X	X	X	X				X				
(28) Additional exhibits	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X
(29) Information from reports furnished to state insurance regulatory authorities					X	X	X	X	X		X		X			X

¹ Where incorporated by reference into the text of prospectus as permitted by the registration statement.

² Where incorporated by reference into a previously filed Securities Act registration statement.

³ An exhibit need not be provided about a company if (1) with respect to such company an election has been made under Form S-4 or F-4 to provide information about such company at a level prescribed by Form S-2, S-3, F-2 or F-3 and (2) the form, the level of which has been elected under Form S-4 or F-4, would not require such company to provide such exhibit if it were registering a primary offering.

(b) ***

(4) ***

(ii) Except as set forth in paragraph (b)(4) of this section (iii) for filings on Forms S-1, S-4, S-11, S-14 and F-4 under the Securities Act (§§ 239.1, and 25, 18, 23 and 34 of this chapter) and Forms 10 and 10-K (§§ 249.210 and 310 of this chapter) under the Exchange Act all instruments defining the rights of holders of long-term debt of the registrant and its consolidated subsidiaries and for any of its unconsolidated subsidiaries for which financial statements are required to be filed.

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

5. By revising the Preliminary Note to § 230.145 to read as follows:

§ 230.145 Reclassification of securities, mergers, consolidations and acquisitions of assets.

Preliminary Note

Rule 145 (§ 230.145 of this chapter) is designed to make available the protection provided by registration under the Securities Act of 1933, as amended (Act), to persons who are offered securities in a business combination of the type described in paragraphs (a) (1), (2) and (3) of the rule. The thrust of the rule is that an "offer," "offer to sell," "offer for sale," or "sale" occurs when there is submitted to security holders a plan or agreement pursuant to which such holders are required to elect, on the basis of what is in substance a new investment decision whether to accept a new or different security in exchange for their existing security. Rule 145 embodies the Commission's determination that such transactions are subject to the registration requirements of the Act, and that the previously existing "no-sale" theory of Rule 133 is no longer consistent with the statutory purposes of the Act. See Release No. 33-5316 (October 6, 1972) [37 FR 23631]. Securities issued in

transactions described in paragraph (a) of Rule 145 may be registered on Form S-4 or F-4 (§ 239.25 or 34 of this chapter) under the Act.

Transactions for which statutory exemptions under the Act, including those contained in sections 3(a) (9), (10), (11) and 4(2), are otherwise available are not affected by Rule 145.

Note 1.—Reference is made to Rule 153a (§ 230.153a of this chapter) describing the prospectus delivery required in a transaction of the type referred to in Rule 145.

Note 2.—A reclassification of securities covered by Rule 145 would be exempt from registration pursuant to section 3(a) (9) or (11) of the Act if the conditions of either of these sections are satisfied.

6. By revising the section heading and paragraph (a) of § 230.406 to read as follows:

§ 230.406 Confidential treatment of information filed with the Commission.

(a) Any person submitting any information in a document required to

be filed under the Act may make written objection to its public disclosure by following the procedure in paragraph (b) of this section, which shall be the exclusive means of requesting confidential treatment of information included in any document (hereinafter referred to as the "material filed") required to be filed under the Act, except that if the material filed is a registration statement on Form S-8 (§ 239.16b of this chapter) or on Form S-3, F-2, F-3 (§ 239.13, 32 or 33 of this chapter) relating to a dividend or interest reinvestment plan, or on Form S-4 (§ 239.25 of this chapter) complying with General Instruction G of that Form or on Form F-4 (§ 239.34 of this chapter) complying with General Instruction F of that Form, or if the material filed is a registration statement that does not contain a delaying amendment pursuant to Rule 473 (§ 230.473 of this chapter), the person shall comply with the procedure in paragraph (b) prior to the filing of a registration statement.

7. By amending § 230.463 to include new paragraphs (d) (8) and (9) as follows:

§ 230.463 Report of offering of securities and use of proceeds therefrom.

(d) * * *

(8) In a merger in which a vote or consent of the security holders of the company being acquired is not required pursuant to applicable state law; or

(9) In an exchange offer for the securities of the issuer or another entity.

8. By revising the section heading, the introductory paragraph and paragraph (b) of § 230.464 to read as follows:

§ 230.464 Effective date of post-effective amendments to registration statements filed on Form S-8 and on certain Forms S-3, S-4, F-2, F-3, and F-4.

Provided. That, at the time of filing of each post-effective amendment with the Commission, the issuer continues to meet the requirements of filing on Form S-8 (§ 239.16b of this chapter); or on Form S-3, F-2 or F-3 (§ 239.13, 32 or 33 of this chapter) for a registration statement relating to a dividend or interest reinvestment plan; or in the case of a registration statement on Form S-4 (§ 239.25 of this chapter) that there is continued compliance with General Instruction G of that Form or on Form F-4 (§ 239.34 of this chapter) that there is continued compliance with General Instruction F of that Form:

(b) With respect to securities sold on or after the filing date pursuant to a prospectus which forms a part of a Form S-8 registration statement; or a Form S-

3, F-2, or F-3 registration statement relating to a dividend or interest reinvestment plan; or a Form S-4 registration statement complying with General Instruction G of that Form or a Form F-4 registration statement complying with General Instruction F of that Form and which has been amended to include or incorporate new full year financial statements or to comply with the provisions of section 10(a)(3) of the Act, the effective date of the registration statement shall be deemed to be the filing date of the post-effective amendment.

9. By revising paragraph (d) of § 230.473 to read as follows:

§ 230.473 Delaying amendments.

(d) No amendments pursuant to paragraph (a) of this section may be filed with a registration statement on Form S-8 (§ 239.16b of this chapter); on Form S-3, F-2, or F-3 (§ 239.13, 32 or 33 of this chapter) relating to a dividend or interest reinvestment plan; or on Form S-4 (§ 239.25 of this chapter) complying with General Instruction G of that Form or on Form F-4 (§ 239.34 of this chapter) complying with General Instruction F of that Form.

10. By revising § 230.475a to read as follows:

§ 230.475a Pre-effective amendments on Form S-8 and certain pre-effective amendments on Forms S-3, S-4, F-2, F-3 and F-4 deemed filed with the consent of Commission.

Amendments to a registration statement on Form S-8 (§ 239.16b of this chapter); on Form S-3, F-2, or F-3 (§ 239.13, 32 or 33 of this chapter) relating to a dividend or interest reinvestment plan; or on Form S-4 (§ 239.25 of this chapter) complying with General Instruction G of that Form or on Form F-4 complying with General Instruction F of that Form filed prior to the effectiveness of such registration statement shall be deemed to have been filed with a consent of the Commission and shall accordingly be treated as part of the registration statement.

11. By revising paragraph (b) of § 230.477 to read as follows:

§ 230.477 Withdrawal of registration statement or amendment.

(b) Any application for withdrawal of a registration statement filed on Form S-8 (§ 239.16b of this chapter); or on Form S-3, F-2, or F-3 (§ 239.13, 32 or 33 of this chapter), relating to a dividend or interest reinvestment plan; or on Form S-4 (§ 239.25 of this chapter) complying with General Instruction G of that Form or on Form F-4 (§ 239.34 of this chapter) complying with General Instruction F of

that Form and/or any pre-effective amendment thereto, will be deemed granted upon filing if such filing is made prior to the effective date.

PART 239—FORMS PRESCRIBED UNDER THE SECURITIES ACT OF 1933

12. By removing § 239.29.

§ 239.29 [Removed]

13. By revising the section heading and § 239.23 to read as follows:

§ 239.23 Form S-14, for simplified registration of securities issued in certain transactions under Rules 133 and 145 [17 CFR 230.133, 230.145] by registered investment companies and business development companies.

This form and Form S-1 [17 CFR 239.11] may be used for registration under the Securities Act of 1933 of securities to be issued in a transaction specified in paragraph (a) of § 230.145: *Provided, however,* That Form S-14 shall not be so used unless the registrant is a registered investment company or a business development company as defined by section 2(a)(48) of the Investment Company Act of 1940, the prospectus is delivered to security holders whose vote or consent is solicited at least 20 days prior to the date on which the meeting of such security holders is held or the date on which the transaction is effectuated if no such meeting is held: *Provided further,* That if applicable law of the jurisdiction permits the furnishing of a notice of the meeting or other actions within less than the 20-day period specified herein, then compliance with such provisions of such law shall be deemed to satisfy this requirement. Form S-14 may also be used by persons and parties who may be deemed underwriters, for the registration of a public offering of securities issued in a transaction specified in paragraph (a) of § 230.145 of this chapter or in a transaction specified in paragraph (a) of § 230.133 of this chapter exempted by the latter section prior to its rescission effective on and after January 1, 1973.

14. By adding § 239.25 to read as follows:

§ 239.25 Form S-4, for the registration of securities issued in business combination transactions.

This Form may be used for registration under the Securities Act of 1933 of securities to be issued (a) in a transaction of the type specified in paragraph (a) of Rule 145 (§ 230.145 of this chapter); (b) in a merger in which the applicable state law would not require the solicitation of the votes or

consents of all of the security holders of the company being acquired; (c) in an exchange offer for securities of the issuer or another entity; (d) in a public reoffering or resale of any such securities acquired pursuant to this registration statement; or (e) in more than one of the kinds of transactions listed in paragraphs (a) through (d) registered on one registration statement.

(Secs. 5, 6, 7, 10, 19(a), 48 Stat. 77, 78, 81, 85; Secs. 204, 205, 209, 48 Stat. 906, 908; secs. 7, 8, 68 Stat. 684, 685; sec. 1, 79 Stat. 1051; sec. 308(a)(2), (90 Stat. 57; 15 U.S.C. 77e, 77f, 77g, 77j, 77s(a); secs. 14(a), 14(c), 23(a), 48 Stat. 895, 901; sec. 203(a), 49 Stat. 704; sec. 8, 49 Stat. 1379; sec. 5, 78 Stat. 569, 570; sec. 18, 89 Stat. 155; 15 U.S.C. 78a (a), (c), 78w(a))

Note.—The text of Form S-4 does not appear in the Code of Federal Regulations.

Securities and Exchange Commission

Washington, D.C. 20549

Form S-4

Registration Statement Under the Securities Act of 1933

(Exact name of registrant as specified in its charter)

(State or other jurisdiction of incorporation or organization)

(Primary Standard Industrial Classification Code Number)

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

(Address, including ZIP Code, and telephone number, including area code, of registrant's principal executive officers)

(Name, address, include ZIP Code, and telephone number including area code, of agent for service)

Approximate date of commencement of proposed sale of the securities to the public

If the securities being registered on this Form are being offered in connection with the formation of a holding company and there is compliance with General Instruction G, check the following box ☐

CALCULATION OF REGISTRATION FEE

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

General Instructions

A. Rule as to Use of Form S-4

1. This Form may be used for registration under the Securities Act of 1933 ("Securities Act") of securities to

be issued (1) in a transaction of the type specified in paragraph (a) of Rule 145 (§ 230.145 of this chapter); (2) in a merger in which the applicable state law would not require the solicitation of the votes or consents of all of the security holders of the company being acquired; (3) in an exchange offer for securities of the issuer or another entity; (4) in a public reoffering or resale of any such securities acquired pursuant to this registration statement; or (5) in more than one of the kinds of transactions listed in (1) through (4) registered on one registration statement.

2. If the registrant meets the requirements of and elects to comply with the provisions in any item of this Form or Form F-4 (§ 239.34 of this chapter) that provides for incorporation by reference of information about the registrant or the company being acquired, the prospectus must be sent to the security holders no later than 20 business days prior to the date on which the meeting of such security holders is held or, if no meeting is held, the earlier of 20 business days prior to (1) the date of such vote, consent or authorization, or (2) the date the transaction is consummated or the votes, consents or authorizations may be used to effect the transaction. Attention is directed to sections 13(e), 14(d) and 14(e) of the Securities Exchange Act of 1934 ("Exchange Act") and the rules and regulations thereunder regarding other time periods in connection with exchange offers and going private transactions.

3. This Form shall not be used if the registrant is a registered investment company or a business development company as defined in section 2(a)(48) of the Investment Company Act of 1940.

B. Information With Respect to the Registrant

1. Information with respect to the registrant shall be provided in accordance with the items referenced in one of the following subparagraphs:

a. Items 10 and 11 of this Form, if the registrant elects this alternative and meets the following requirements of Form S-3 (§ 239.13 of this chapter) (hereinafter, with respect to the registrant, "meets the requirements for use of Form S-3") for this offering of securities:

(i) the registrant meets the requirements of General Instruction I.A. of Form S-3; and

(ii) one of the following is met:

A. The registrant meets the aggregate market value requirement of General Instruction I.B.1. of Form S-3; or

B. Non-convertible debt or preferred securities are to be offered pursuant to

this registration statement and are "investment grade securities" as defined in General Instruction I.B.2. of Form S-3; or

C. The registrant is a majority-owned subsidiary and one of the conditions of General Instruction I.C. of Form S-3 is met.

b. Items 12 and 13 of this Form, if the registrant meets the requirements for use of Form S-2 (§ 239.12 of this chapter) or Form S-3 and elects this alternative; or

c. Item 14 of this Form, if the registrant does not meet the requirements for use of Form S-2 or S-3, or if it otherwise elects this alternative.

2. If the registrant is a real estate entity of the type described in General Instruction A to Form S-11 (§ 239.18 of this chapter), the information prescribed by Items 12, 13, 14, 15 and 16 of Form S-11 shall be furnished about the registrant in addition to the information provided pursuant to Items 10 through 14 of this Form. The information prescribed by such Items of Form S-11 may be incorporated by reference into the prospectus if (a) a registrant qualifies for and elects to provide information pursuant to alternative 1.a. or 1.b. of this instruction and (b) the documents incorporated by reference pursuant to such elected alternative contain such information.

C. Information With Respect to the Company Being Acquired

1. Information with respect to the company whose securities are being acquired (hereinafter including, where securities of the registrant are being offered in exchange for securities of another company, such other company) shall be provided in accordance with the items referenced in one of the following subparagraphs:

a. Item 15 of this Form, if the company being acquired meets the requirements of General Instructions I.A. and I.B.1. of Form S-3 (hereinafter, with respect to the company being acquired, "meets the requirements for use of Form S-3") of Form S-3 and this alternative is elected;

b. Item 16 of this Form, if the company being acquired meets the requirements for use of Form S-2 or S-3 and this alternative is elected; or

c. Item 17 of this Form, if the company being acquired does not meet the requirements for use of Form S-2 or S-3 or if this alternative is otherwise elected.

2. If the company being acquired is a real estate entity of the type described in General Instruction A to Form S-11, the information that would be required by Items 13, 14, 15 and 16(a) of Form S-

11 if securities of such company were being registered shall be furnished about such company being acquired in addition to the information provided pursuant to this Form. The information prescribed by such Items of Form S-11 may be incorporated by reference into the prospectus if (a) the company being acquired would qualify for use of the level of disclosure prescribed by alternative 1.a. or 1.b. of this instruction and such alternative is elected and (b) the documents incorporated by reference pursuant to such elected alternative contain such information.

D. Application of General Rules and Regulations.

1. Attention is directed to the General Rules and Regulations under the Securities Act, particularly those comprising Regulation C thereunder (§ 230.400 et seq. of this chapter). That Regulation contains general requirements regarding the preparation and filing of registration statements.

2. Attention is directed to Regulation S-K (Part 229 of this chapter) for the requirements applicable to the content of non-financial statement portions of registration statements under the Securities Act. Where this Form directs the registrant to furnish information required by Regulation S-K and the item of Regulation S-K so provides, information need only be furnished to the extent appropriate.

E. Compliance With Exchange Act Rules

1. If a corporation or other person submits a proposal to its security holders entitled to vote on, or consent to, the transaction in which the securities being registered are to be issued, and such person's submission to its security holders is subject to Regulation 14A (§§ 240.14a-1 through 240.14b-1 of this chapter) or 14C (§§ 240.14c-1 through 240.14c-101 of this chapter) under the Exchange Act, then the provisions of such Regulations shall apply in all respects to such person's submission, except that (a) the prospectus may be in the form of a proxy or information statement and may contain the information required by this Form in lieu of that required by Schedule 14A (§ 240.14a-101) or 14C (§ 240.14c-101) of Regulation 14A or 14C under the Exchange Act; and (b) copies of the preliminary and definitive proxy or information statement, form of proxy or other material filed as a part of the registration statement shall be deemed filed pursuant to such person's obligations under such Regulations.

2. If the proxy or information material sent to security holders is not subject to

Regulation 14A or 14C, all such material shall be filed as a part of the registration statement at the time the statement is filed or as an amendment thereto prior to the use of such material.

3. If the transaction in which the securities being registered are to be issued is subject to Section 139(e), 14(d) or 14(e) of the Exchange Act, the provisions of those sections and the rules and regulations thereunder shall apply to the transaction in addition to the provisions of this Form.

F. Transactions Involving Foreign Private Issuers

If a U.S. registrant is acquiring a foreign private issuer, as defined by Rule 405 (§ 230.405 of this chapter), eligible to use Form 20-F (§ 249.220f of this chapter), such registrant may use this Form and may present information about the foreign private issuer pursuant to Form F-4. If the registrant is a foreign private issuer, such registrant may use Form F-4 and (1) if the company being acquired is a foreign private issuer eligible to use Form 20-F, may present information about such foreign company pursuant to Form F-4 or (2) if the company being acquired is a U.S. company or a foreign private issuer not eligible to use Form 20-F, may present information about such company pursuant to this Form.

G. Filing and Effectiveness of Registration Statement Involving Formation of Holding Companies; Requests for Confidential Treatment; Number of Copies

Original registration statements on this Form S-4 will become effective automatically on the twentieth day after the date of filing (Rule 456, § 230.456 of this chapter), pursuant to the provisions of Section 8(a) of the Act (Rule 459, § 230.459 of this chapter) provided:

1. The transaction in connection with which securities are being registered involves the organization of a bank or savings and loan holding company for the sole purpose of issuing common stock to acquire all of the common stock of the company that is organizing the holding company; and

2. the following conditions are met:

a. The financial institution furnishes its security holders with an annual report that includes financial statements prepared on the basis of generally accepted accounting principles;

b. There are no anticipated changes in the security holders' relative equity ownership interest in the underlying company's assets except for redemption of no more than a nominal number of shares of unaffiliated persons who dissent;

c. In the aggregate, only nominal borrowings are to be incurred for such purposes as organizing the holding company to pay non-affiliated persons who dissent, or to meet minimum capital requirements;

d. There are no new classes of stock authorized other than those corresponding to the stock of the company being acquired immediately prior to the reorganization;

e. There are no plans or arrangements to issue any additional shares to acquire any business other than the company being acquired; and

f. There has been no material adverse change in the financial condition of the company being acquired since the latest fiscal year end included in the annual report to security holders.

Pre-effective amendments with respect to such a registration statement may be filed prior to effectiveness, and such amendments will be deemed to have been filed with the consent of the Commission (Rule 475a, § 230.475a of this chapter). Accordingly, the filing of a pre-effective amendment to such a registration statement will not commence a new twenty-day period. Post-effective amendments to such a registration statement on this Form shall become effective upon the date of filing (Rule 464, § 230.464 of this chapter). Delaying amendments are not permitted in connection with either original filings or amendments on such a registration statement (Rule 473(d), § 230.473(d) of this chapter), and any attempt to interpose a delaying amendment of any kind will be ineffective. All filings made on or in connection with this Form pursuant to this instruction become public upon filing with the Commission. As a result, requests for confidential treatment made under Rule 406 (§ 230.406 of this chapter) must be processed by the Commission's staff prior to the filing of such a registration statement. The number of copies of such a registration statement and of each amendment required by Rules 402 and 472 (§§ 230.402, 472 of this chapter) shall be filed with the Commission; *Provided, however,* That the number of additional copies referred to in Rule 402(b) may be reduced from ten to three and the number of additional copies referred to in Rule 472(a) may be reduced from eight to three, one of which shall be marked to clearly and precisely indicate changes.

H. Registration Statements Subject to Rule 415(a)(1)(viii) (§ 230.415(a)(1)(viii) of this chapter)

If the registration statement relates to offerings of securities pursuant to Rule

415(a)(1)(viii), required information about the type of contemplated transaction or the company to be acquired only need be furnished as of the date of initial effectiveness of the registration statement to the extent practicable. The required information about the specific transaction and the particular company being acquired, however, must be included in the prospectus by means of a post-effective amendment; *Provided, however*, that where the transaction in which the securities are being offered pursuant to a registration statement under the Securities Act of 1933 would itself qualify for an exemption from Section 5 of the Act, absent the existence of other similar (prior or subsequent) transactions, a prospectus supplement could be used to furnish the information necessary in connection with such transaction.

Part I—Information Required in the Prospectus

A. Information About the Transaction

Item 1. Forepart of Registration Statement and Outside Front Cover Page of Prospectus. Set forth in the forepart of the registration statement and on the outside front cover page of the prospectus the information required by Item 501 of Regulation S-K (§ 229.501 of this chapter).

Item 2. Inside Front and Outside Back Cover Page of Prospectus. Set forth on the inside front cover page of the prospectus or, where permitted, on the outside back cover page, the information required by Item 502 of Regulation S-K (§ 229.502 of this chapter). In addition, on the inside front cover page include the following statement in bold face type, where applicable:

This prospectus incorporates documents by reference which are not presented herein or delivered herewith. These documents are available upon request from (name, address and telephone number to which a request is to be directed). In order to ensure timely delivery of the documents, any request should be made by (date five business days prior to the date on which the final investment decision must be made).

Item 3. Risk Factors, Ratio of Earnings to Fixed Charges and Other Information. Provide in the forepart of the prospectus a summary containing the information required by Item 503 of Regulation S-K (§ 229.503 of this chapter) and the following:

(a) The name, complete mailing address (including the Zip Code), and telephone number (including the area code) of the principal executive offices

of the registrant and the company being acquired;

(b) A brief description of the general nature of the business conducted by the registrant and by the company being acquired;

(c) A brief description of the transaction in which the securities being registered are to be offered;

(d) The information required by Item 301 of Regulation S-K (§ 229.301 of this chapter) (selected financial data) for (i) the registrant; (ii) the company being acquired; and (iii) if material, the registrant, on a pro forma basis, giving effect to the transaction. To the extent the information is required to be presented in the prospectus pursuant to Items 12, 14, 16 or 17, it need not be repeated pursuant to this Item;

(e) In comparative columnar form, historical and pro forma per share data of the registrant and historical and equivalent pro forma per share data of the company being acquired for the following items:

(1) book value per share as of the date financial data is presented pursuant to Item 301 of Regulation S-K (§ 229.301 of this chapter) (selected financial data);

(2) cash dividends declared per share for the periods for which financial data is presented pursuant to Item 301 of Regulation S-K (§ 229.301 of this chapter) (selected financial data);

(3) income (loss) per share from continuing operations for the periods for which financial data is presented pursuant to Item 301 of Regulation S-K (§ 229.301 of this chapter) (selected financial data).

Instructions to paragraph (e)

For a business combination accounted for as a purchase, the pro forma and equivalent pro forma income (loss) from continuing operations per share and equivalent pro forma cash dividends declared per share shall be presented only for the most recent fiscal year and interim period. Equivalent pro forma per share amounts shall be calculated by multiplying the pro forma income (loss) per share before non-recurring charges or credits directly attributable to the transaction, pro forma book value per share, and the pro forma dividends per share of the registrant by the exchange ratio so that the per share amounts are equated to the respective values for one share of the company being acquired.

(f) In comparative columnar form, the market value of securities of the company being acquired (on an historical and equivalent per share basis) and the market value of the securities of the registrant (on an historical basis) as of the date preceding public announcement of the proposed

transaction, or if no such public announcement was made, as of the day preceding the day the agreement with respect to the transaction was entered into;

(g) With respect to the registrant and the company being acquired, a brief statement comparing the percentage of outstanding shares entitled to vote held by directors, executive officers and their affiliates and the vote required for approval of the proposed transaction;

(h) A statement as to whether any federal or state regulatory requirements must be complied with or approval must be obtained in connection with the transaction, and if so, the status of such compliance or approval;

(i) A statement about whether or not dissenters' rights of appraisal exist, including a cross-reference to the information provided pursuant to Item 18 or 19 of this Form; and

(j) A brief statement about the tax consequences of the transaction, or if appropriate, consisting of a, cross-reference to the information provided pursuant to Item 4 of this Form.

Item 4. Terms of the transaction.

(a) Furnish a summary of the material features of the proposed transaction. The summary shall include, where applicable:

(1) A brief summary of the terms of the acquisition agreement;

(2) The reasons of the registrant and of the company being acquired for engaging in the transaction;

(3) The information required by Item 202 of Regulation S-K (§ 229.202 of this chapter), description of registrant's securities, unless: (i) the registrant would meet the requirements for use of Form S-3, (ii) capital stock is to be registered and (iii) securities of the same class are registered under Section 12 of the Exchange Act, and (i) listed for trading or admitted to unlisted trading privileges on a national securities exchange; or (ii) are securities for which bid and offer quotations are reported in an automated quotations system operated by a national securities association;

(4) An explanation of any material differences between the rights of security holders of the company being acquired and the rights of holders of the securities being offered;

(5) A brief statement as to the accounting treatment of the transaction; and

(6) The federal income tax consequences of the transaction.

(b) If a report, opinion or appraisal materially relating to the transaction has been received from an outside party, and such report, opinion or appraisal is

referred to in the prospectus, furnish the same information as would be required by Item 9 (b)(1) through (6) of Schedule 13E-3 (§ 240.13e-100 of this chapter).

(c) Incorporate the acquisition agreement by reference into the prospectus by means of a statement to that effect.

Item 5. Pro Forma Financial Information. Furnish financial information required by Article 11 of Regulation S-X (§ 210.11-01 et seq. of this chapter) with respect to this transaction.

Instruction

1. Any other Article 11 information that is presented (rather than incorporated by reference) pursuant to other items of this Form shall be presented together with the information provided pursuant to Item 5, but the presentation shall clearly distinguish between this transaction and any other.

2. If pro forma financial information with respect to all other transactions is incorporated by reference pursuant to Item 11 or 15 of this Form only the pro forma results need be presented as part of the pro forma financial information required by this Item.

Item 6. Material Contacts with the Company Being Acquired. Describe any past, present or proposed material contacts, arrangements, understandings, relationships, negotiations or transactions during the periods for which financial statements are presented or incorporated by reference pursuant to Part I.B. or C of this Form between the company being acquired or its affiliates and the registrant or its affiliates such as those concerning a merger, consolidation or acquisition; a tender offer or other acquisition of securities; an election of directors; or a sale or other transfer of a material amount of assets.

Item 7. Additional Information Required for Reoffering by Persons and Parties Deemed to be Underwriters. If any of the securities are to be reoffered to the public by any person or party who is deemed to be an underwriter thereof, furnish the following information in the prospectus, at the time it is being used for the reoffer of the securities to the extent it is not already furnished therein:

(a) The information required by Item 507 of Regulation S-K (§ 229.507 of this chapter), selling security holders; and

(b) Information with respect to the consummation of the transaction pursuant to which the securities were acquired and any material change in the registrant's affairs subsequent to the transaction.

Item 8. Interests of Named Experts and Counsel. Furnish the information required by Item 509 of Regulation S-K (§ 229.509 of this chapter).

Item 9. Disclosure of Commission Position on Indemnification for Securities Act Liabilities. Furnish the information required by Item 510 of Regulation S-K (§ 229.510 of this chapter).

B. Information About the Registrant

Item 10. Information With Respect to S-3 Registrants. If the registrant meets the requirements for use of Form S-3 and elects to furnish information in accordance with the provisions of this Item, furnish information as required below:

(a) Describe any and all material changes in the registrant's affairs that have occurred since the end of the latest fiscal year for which audited financial statements were included in the latest annual report to security holders and that have not been described in a report on Form 10-Q (§ 249.308a of this chapter) or Form 8-K (§ 249.308 of this chapter) filed under the Exchange Act.

(b) Include in the prospectus, if not incorporated by reference from the reports filed under the Exchange Act specified in Item 11 of this Form, a proxy or information statement filed pursuant to Section 14 of the Exchange Act, a prospectus previously filed pursuant to Rule 424 under the Securities Act (§ 230.424 of this chapter), or a Form 8-K filed during either of the two preceding fiscal years:

(1) Financial information required by Rule 3-05 (§ 210.3-05 of this chapter) and Article 11 of Regulation S-X with respect to transactions other than that pursuant to which the securities being registered are to be issued;

(2) Restated financial statements prepared in accordance with Regulation S-X (Part 210 of this chapter), if there has been a change in accounting principles or a correction of an error where such change or correction requires a material retroactive restatement of financial statements;

(3) Restated financial statements prepared in accordance with Regulation S-X where one or more business combinations accounted for by the pooling of interest method of accounting have been consummated subsequent to the most recent fiscal year and the acquired businesses, considered in the aggregate, are significant pursuant to Rule 11-01(b) of Regulation S-X (§ 210.11-01(b) of this chapter); or

(4) Any financial information required because of a material disposition of assets outside the normal course of business.

Item 11. Incorporation of Certain Information by Reference. If the registrant meets the requirements of Form S-3 and elects to furnish information in accordance with the provisions of Item 10 of this Form:

(a) Incorporate by reference into the prospectus, by means of a statement to that effect listing all documents so incorporated, the documents listed in paragraphs (1), (2) and, if applicable, (3) below.

(1) The registrant's latest annual report on Form 10-K (§ 249.310 of this chapter) filed pursuant to Section 13(a) or 15(d) of the Exchange Act which contains financial statements for the registrant's latest fiscal year for which a Form 10-K was required to be filed;

(2) All other reports filed pursuant to Section 13(a) or 15(d) of the Exchange Act since the end of the fiscal year covered by the annual report referred to in Item 11(a)(1) of this Form; and

(3) If capital stock is to be registered and securities of the same class are registered under Section 12 of the Exchange Act and: (i) Listed for trading or admitted to unlisted trading privileges on a national securities exchange; or (ii) are securities for which bid and offer quotations are reported in an automated quotations system operated by a national securities association, the description of such class of securities which is contained in a registration statement filed under the Exchange Act, including any amendment or reports filed for the purpose of updating such description.

(b) The prospectus also shall state that all documents subsequently filed by the registrant pursuant to Sections 13(a), 13(c), 14 or 15(d) of the Exchange Act, prior to one of the following dates, whichever is applicable, shall be deemed to be incorporated by reference into the prospectus:

(1) If a meeting of security holders is to be held, the date on which such meeting is held;

(2) If a meeting of security holders is not to be held, the date on which the transaction is consummated;

(3) If securities of the registrant are being offered in exchange for securities of any other issuer, the date the offering is terminated; or

(4) If securities are being offered in a reoffering or resale of securities acquired pursuant to this registration statement, the date the reoffering is terminated.

Instruction

Attention is directed to Rule 439 (§ 230.439 of this chapter) regarding

consent to the use of material incorporated by reference.

Item 12. Information With Respect to S-2 or S-3 Registrants. If the registrant meets the requirements for use of Form S-2 or S-3 and elects to comply with this Item, furnish the information required by either paragraph (a) or (b) of this Item. However, the registrant shall not provide prospectus information in the manner allowed by paragraph (a) of this Item, if the financial statements in the registrant's latest annual report to security holders do not reflect: (1) restated financial statements prepared in accordance with Regulation S-X if there has been a change in accounting principles or a correction of an error where such change or correction requires a material retroactive restatement of financial statements; (2) restated financial statements prepared in accordance with Regulation S-X where one or more business combinations accounted for by the pooling of interests method of accounting have been consummated subsequent to the most recent fiscal year and the acquired businesses, considered in the aggregate, are significant pursuant to Rule 11-01(b) of Regulations S-X; or (3) any financial information required because of a material disposition of assets outside of the normal course of business.

(a) If the registrant elects to deliver this prospectus together with its latest annual report to security holders, which at the time of original preparation met the requirements of either Rule 14a-3 (§ 240.14a-3 of this chapter) or 14c-3 (§ 240.14c-3 of this chapter), or a complete and legible facsimile of its latest annual report to security holders:

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

(2) Provide financial and other information with respect to the registrant in the form required by Part I of Form 10-Q as of the end of the most recent fiscal quarter which ended after the end of the latest fiscal year for which audited financial statements were included in the latest report to security holders and more than 45 days prior to the effective date of this registration statement (or as of a more recent date) by one of the following means:

(i) Including such information in the prospectus;

(ii) Providing without charge to each person to whom a prospectus is delivered a copy of the registrant's latest Form 10-Q; or

(iii) Providing without charge to each person to whom a prospectus is delivered a copy of the registrant's latest quarterly report that was delivered to its

security holders and that included the required financial information.

(3) If not reflected in the registrant's latest annual report to security holders, provide information required by Rule 3-05 and Article 11 of Regulation S-X with respect to transactions other than that pursuant to which the securities being registered are to be issued.

(4) Describe any and all material changes in the registrant's affairs that have occurred since the end of the latest fiscal year for which audited financial statements were included in the latest annual report to security holders and that were not described in a Form 10-Q or quarterly report delivered with the prospectus in accordance with paragraph (a)(2) (ii) or (iii) of this Item.

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

(1) Furnish a brief description of the business done by the registrant and its subsidiaries during the most recent fiscal year as required by Rule 14a-3 to be included in an annual report to security holders. The description also should take into account changes in the registrant's business that have occurred between the end of the latest fiscal year and the effective date of the registration statement.

(2) Include financial statements and information as required by Rule 14a-3(b)(1) (§ 240.14a-3(b)(1) of this chapter) to be included in an annual report to security holders. In addition, provide:

(i) The interim financial information required by Rule 10-01 of Regulation S-X (§ 210.10-01 of this chapter) for a filing on Form 10-Q;

(ii) Financial information required by Rule 3-05 and Article 11 of Regulation S-X with respect to transactions other than that pursuant to which the securities being registered are to be issued;

(iii) Restated financial statements prepared in accordance with Regulation S-X if there has been a change in accounting principles or a correction of an error where such change or correction requires a material retroactive restatement of financial statements;

(iv) Restated financial statements prepared in accordance with Regulation S-X where one or more business combinations accounted for by the pooling of interest method of accounting have been consummated subsequent to the most recent fiscal year and the acquired businesses, considered in the aggregate, are significant pursuant to Rule 11-01(b) of Regulation S-X; and

(v) Any financial information required because of a material disposition of

assets outside of the normal course of business.

(3) Furnish the information required by the following:

(i) Item 101 (b), (c)(1)(i) and (d) of Regulation S-K (§ 229.101 of this chapter), industry segments, classes of similar products or services, foreign and domestic operations and export sales;

(ii) Where common equity securities are being offered, Item 201 of Regulation S-K (§ 229.201 of the chapter), market price of and dividends on the registrant's common equity and related stockholder matters;

(iii) Item 301 of Regulation S-K (§ 229.301 of this chapter), selected financial data;

(iv) Item 302 of Regulation S-K (§ 229.302 of the chapter), supplementary financial information;

(v) Item 303 of Regulation S-K (§ 229.303 of this chapter), management's discussion and analysis of financial condition and results of operations; and

(vi) Item 304 of Regulation S-K (§ 229.304 of this chapter), disagreements with accountants on accounting and financial disclosure.

Item 13. Incorporation of Certain Information by Reference. If the registrant meets the requirements of Form S-2 or S-3 and elects to furnish information in accordance with the provisions of Item 12 of this Form:

(a) Incorporate by reference into the prospectus, by means of a statement to that effect in the prospectus listing all documents so incorporated, the documents listed in paragraphs (1) and (2) of this Item and, if applicable, the portions of the documents listed in paragraphs (3) and (4) thereof.

(1) The registrant's latest annual report on Form 10-K filed pursuant to Section 13(a) or 15(d) of the Exchange Act which contains audited financial statements for the registrant's latest fiscal year for which a Form 10-K was required to be filed.

(2) All other reports filed pursuant to Section 13(a) or 15(d) of the Exchange Act since the end of the fiscal year covered by the annual report referred to in paragraph (a)(1) of this Item.

(3) If the registrant elects to deliver its latest annual report to security holders pursuant to Item 12 of this Form, the information furnished in accordance with the following:

(i) Item 101 (b), (c)(1)(i) and (d) of Regulation S-K, segments, classes of similar products or services, foreign and domestic operations and export sales;

(ii) Where common equity securities are being issued, Item 201 of Regulation S-K, market price of and dividends on

the registrant's common equity and related stockholder matters;

(iii) Item 301 of Regulation S-K, selected financial data;

(iv) Item 302 of Regulation S-K, supplementary financial information;

(v) Item 303 of Regulation S-K, management's discussion and analysis of financial condition and results of operations; and

(vi) Item 304 of Regulation S-K, disagreements with accountants on accounting and financial disclosure.

(4) If the registrant elects, pursuant to Item 12(a)(2)(iii) of this Form, to provide a copy of its latest quarterly report which was delivered to security holders, financial information equivalent to that required to be presented in Part I of Form 10-Q.

Instruction

Attention is directed to Rule 439 regarding consent to the use of material incorporated by reference.

(b) The registrant also may state, if it so chooses, that specifically described portions of its annual or quarterly report to security holders, other than those portions required to be incorporated by reference pursuant to paragraphs (a) (3) and (4) of this Item, are not part of the registration statement. In such case, the description of portions that are not incorporated by reference or that are excluded shall be made with clarity and in reasonable detail.

Item 14. Information With Respect to Registrants Other Than S-3 or S-2 Registrants. If the registrant does not meet the requirements for use of Form S-2 or S-3, or otherwise elects to comply with this Item in lieu of Item 10 or 12, furnish the information required by:

(a) Item 101 of Regulation S-K, description of business;

(b) Item 102 of Regulation S-K, description of property;

(c) Item 103 of Regulation S-K, legal proceedings;

(d) Where common equity securities are being issued, Item 201 of Regulation S-K, market price of and dividends on the registrant's common equity and related stockholder matters;

(e) Financial statements meeting the requirements of Regulation S-X, (schedules required by Regulation S-X shall be filed as "Financial Statement Schedules" pursuant to Item 21 of this Form), as well as financial information required by Rule 3-05 and Article 11 of Regulation S-X with respect to transactions other than that pursuant to which the securities being registered are to be issued.

(f) Item 301 of Regulation S-K, selected financial data;

(g) Item 302 of Regulation S-K, supplementary financial information;

(h) Item 303 of Regulation S-K, management's discussion and analysis of financial condition and results of operations; and

(i) Item 304 of Regulation S-K, disagreements with accountants on accounting and financial disclosure.

C. Information About the Company Being Acquired

Item 15. Information With Respect to S-3 Companies. If the company being acquired meets the requirements for use of Form S-3 and compliance with this Item is elected, furnish the information that would be required by Items 10 and 11 of this Form if securities of such company were being registered.

Item 16. Information With Respect to S-2 or S-3 Companies. If the company being acquired meets the requirements for use of Form S-2 or S-3 and compliance with this Item is elected, furnish the information that would be required by Items 12 and 13 of this Form if securities of such company were being registered.

Item 17. Information With Respect to Companies Other Than S-3 or S-2 Companies. If the company being acquired does not meet the requirements for use of Form S-2 or S-3, or compliance with this Item is otherwise elected in lieu of Item 15 or 16, furnish the information required by paragraph (a) or (b) of this Item, whichever is applicable.

(a) If the company being acquired is subject to the reporting requirements of Section 13(a) or 15(d) of the Exchange Act, or compliance with this subparagraph in lieu of subparagraph (b) of this Item is elected, furnish the information that would be required by Item 14 of this Form if the securities of such company were being registered; however, only those schedules required by Rules 12-15, 28 and 29 of Regulation S-X (§ 210.12-15, 28, 29 of this chapter) need be provided with respect to the company being acquired.

(b) If the company being acquired is not subject to the reporting requirements of either Section 13(a) or 15(d) of the Exchange Act, or, because of section 12(i) of the Exchange Act, has not furnished an annual report to security holders pursuant to Rule 14a-3 (§ 240.14a-3 of this chapter) or Rule 14c-3 (§ 240.14c-3 of this chapter) for its latest fiscal year, furnish the information that would be required by the following if securities of such company were being registered:

(1) A brief description of the business done by the company which indicates

the general nature and scope of the business;

(2) Item 201 of Regulation S-K, market price of and dividends on the registrant's common equity and related stockholder matters;

(3) Item 301 of Regulation S-K, selected financial data;

(4) Item 302 of Regulation S-K, supplementary financial information;

(5) Item 303 of Regulation S-K, management's discussion and analysis of financial condition and results of operations;

(6) Item 304 of Regulation S-K, disagreements with accountants on accounting and financial disclosure;

(7) Financial statements as would have been required to be included in an annual report furnished to security holders pursuant to Rules 14a-3(b)(1) and (b)(2) (§ 240.14a-3 of this chapter) or Rules 14c-3(a)(1) and (a)(2) (§ 240.14c-3 of this chapter), had the company being acquired been required to prepare such a report; *Provided, however*, that the balance sheet for the year preceding the latest full fiscal year and the income statements for the two years preceding the latest full fiscal year need not be audited if they have not previously been audited. In any case, such financial statements need only be audited to the extent practicable. If this Form is used for resale to the public by any person who with regard to the securities being reoffered is deemed to be an underwriter within the meaning of Rule 145(c), the financial statements of such companies must be audited for the periods required to be presented pursuant to Rule 3-05.

(8) The quarterly financial and other information as would have been required had the company being acquired been required to file Part I of Form 10-Q (§ 249.308a) for the most recent quarter for which such a report would have been on file at the time the registration statement becomes effective or for a period ending as of a more recent date.

(9) Schedules required by Rules 12-15, 28 and 29 of Regulation S-X.

D. Voting and Management Information

Item 18. Information if Proxies, Consents or Authorizations are to be Solicited.

(a) If proxies, consents or authorizations are to be solicited, furnish the following information, except as provided by paragraph (b) of this Item:

(1) The information required by Item 1 of Schedule 14A, revocability of proxy;

(2) The information required by Item 2 of Schedule 14A, dissenters' rights of appraisal;

(3) The information required by Item 3 of Schedule 14A, persons making the solicitation;

(4) With respect to both the registrant and the company being acquired, the information required by:

(i) Item 4 of Schedule 14A, interest of certain persons in matters to be acted upon; and

(ii) Item 5 of Schedule 14A, voting securities and principal holders thereof;

(5) The information required by Item 8 of Schedule 14A, relationship with independent public accountants;

(6) The information required by Item 22 of Schedule 14A, vote required for approval; and

(7) With respect to each person who will serve as a director or an executive officer of the surviving or acquiring company, the information required by:

(i) Item 401 of Regulation S-K, (§ 229.401 of this chapter), directors and executive officers;

(ii) Item 402 of Regulation S-K, (§ 229.402 of this chapter), executive compensation; and

(iii) Item 404 of Regulation S-K, (§ 229.404 of this chapter), certain relationships and related transactions.

(b) If the registrant or the company being acquired meets the requirements for use of Form S-2 or S-3, any information required by paragraphs (a) (4)(ii) and (7) of this Item with respect to such company may be incorporated by reference from its latest annual report on Form 10-K.

Item 19. Information if Proxies, Consents or Authorizations are not to be Solicited or in an Exchange Offer.

(a) If the transaction is an exchange offer or if proxies, consents or authorizations are not to be solicited, furnish the following information, except as provided by paragraph (c) of this Item:

(1) The information required by Item 2 of Schedule 14C, statement that proxies are not to be solicited;

(2) The information required by Item 3 of Schedule 14C, date, time and place of meeting;

(3) The information required by Item 2 of Schedule 14A, dissenters' rights of appraisal;

(4) With respect to both the registrant and the company being acquired, a brief description of any material interest, direct or indirect, by security holdings or otherwise, of affiliates of the registrant and of the company being acquired, in the proposed transaction;

Instruction

This subparagraph shall not apply to any interest arising from the ownership of securities of the registrant where the security holder receives no extra or special benefit not shared on a pro rata basis by all other holders of the same class.

(5) With respect to both the registrant and the company being acquired, the information required by Item 5 of Schedule 14A, voting securities and principal holders thereof;

(6) The information required by Item 8 of Schedule 14A, relationship with independent public accountants;

(7) The information required by Item 22 of Schedule 14A, vote required for approval; and

(8) With respect to each person who will serve as a director or an executive officer of the surviving or acquiring company, the information required by:

(i) Item 401 of Regulation S-K, directors and executive officers;

(ii) Item 402 of Regulation S-K, executive compensation; and

(iii) Item 404 of Regulation S-K, certain relationships and related transactions.

(b) If the transaction is an exchange offer, furnish the information required by paragraphs (a)(4), (a)(5), (a)(6) and (a)(8) of this Item, except as provided by paragraph (c) of this Item.

(c) If the registrant or the company being acquired meets the requirements for use of Form S-2 or S-3, any information required by paragraphs (a) (5) and (8) of this Item with respect to such company may be incorporated by reference from its latest annual report on Form 10-K.

Part II—Information Not Required in Prospectus

Item 20. Indemnification of Directors and Officers. Furnish the information required by Item 702 of Regulation S-K (§ 229.702 of this chapter).

Item 21. Exhibits and Financial Statement Schedules.

(a) Subject to the rules regarding incorporation by reference, furnish the exhibits as required by Item 601 of Regulation S-K (§ 229.601 of this chapter).

(b) Furnish the financial statement schedules required by Regulation S-X and Item 14(e), Item 17(a) or Item 17(b)(9) of this Form. These schedules should be lettered or numbered in the manner described for exhibits in paragraph (a) of this Item.

(c) If information is provided pursuant to Item 4(b) of this Form, furnish the report, opinion or appraisal as an exhibit hereto, unless it is furnished as part of the prospectus.

Item 22. Undertakings.

(a) Furnish the undertakings required by Item 512 of Regulation S-K (§ 229.512 of this chapter).

(b) Furnish the following undertaking: The undersigned registrant hereby undertakes to respond to requests for information that is incorporated by reference into the prospectus pursuant to Item 4, 10(b), 11, or 13 of this Form, within one business day of receipt of such request, and to send the incorporated documents by first class mail or other equally prompt means. This includes information contained in documents filed subsequent to the effective date of the registration statement through the date of responding to the request.

(c) Furnish the following undertaking: The undersigned registrant hereby undertakes to supply by means of a post-effective amendment all information concerning a transaction, and the company being acquired involved therein, that was not the subject of and included in the registration statement when it became effective.

Signatures

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

(Registrant) _____
By (Signature and Title) _____
Pursuant to the requirements of the Securities Act of 1933, this registration statement has been signed by the following persons in the capacities and on the dates indicated.
(Signature) _____
(Title) _____
(Date) _____

Instructions

1. The registration statement shall be signed by the registrant, its principal executive officer or officers, its principal financial officer, its controller or principal accounting officer, and by at least a majority of the board of directors or persons performing similar functions. If the registrant is a foreign person, the registration statement shall also be signed by its authorized representative in the United States. Where the registrant is a limited partnership, the registration statement shall be signed by a majority of the board of directors of any corporate general partner signing the registration statement.

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

each capacity in which he signs the registration statement. Attention is directed to Rule 402 (§ 230.402 of this chapter) concerning manual signatures and Item 601 of Regulation S-K (§ 229.601 of this chapter) concerning signatures pursuant to powers of attorney.

3. If the securities to be offered are those of a corporation not yet in existence at the time the registration statement is filed which will be a party to a consolidation involving two or more existing corporations, then each such existing corporation shall be deemed a registrant and shall be so designated on the cover page of this Form, and the registration statement shall be signed by each such existing corporation and by the officers and directors of each such existing corporation as if each such existing corporation were the registrant.

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

15. By revising paragraph (a) of § 240.14a-3 to read as follows:

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

(a) No solicitation subject to this regulation shall be made unless each person solicited is concurrently furnished or has previously been furnished with a written proxy statement containing the information specified in Schedule 14A (§ 240.14a-101 of this chapter) or with a written proxy statement included in a registration statement filed under the Securities Act of 1933 on Form S-4 or F-4 (§ 239.25 or 34 of this chapter) and containing the information specified in such Form.

16. By revising paragraph (j) of § 240.14a-6 to read as follows:

§ 240.14a-6 Material required to be filed.

(j) Notwithstanding the foregoing provisions of this section, any proxy statement, form of proxy or other soliciting material included in a registration statement filed under the Securities Act of 1933 on Form S-14, S-4 or F-4 (§ 239.23 or 34 of this chapter) shall be deemed filed both for the purposes of that Act and for the purposes of this section, but separate copies of such material need not be furnished pursuant to this section nor shall any fee be required under paragraph (i) of this section. However, any additional soliciting material used after the effective date of the registration statement on Form S-14, S-4 or F-4 shall be filed in accordance with

this section, unless separate copies of such material are required to be filed as an amendment of such registration statement.

17. By revising paragraph (a) of § 240.14c-2 to read as follows:

§ 240.14c-2 Distribution of information statement.

(a) In connection with every annual or other meeting of the holders of a class of securities registered pursuant to section 12 of the Act, including the taking of corporate action with the written authorization or consent of the holders of a class of securities so registered, the issuer of such securities shall transmit a written information statement containing the information specified in Schedule 14C (§ 240.14c-101 of this chapter) or a written information statement included in a registration statement filed under the Securities Act of 1933 on Form S-4 or F-4 (§ 239.25 or 34 of this chapter) and containing the information specified in such Form, to every such security holder who is entitled to vote or give an authorization or consent in regard to any matter to be acted upon and from whom a proxy, authorization or consent is not solicited on behalf of the management of the issuer pursuant to section 14(a) of the Act: *Provided, however*, That in the case of a class of securities in unregistered or bearer form, such statements need be transmitted only to those security holders whose names are known to the issuer.

18. By revising paragraph (e) of § 240.14c-5 to read as follows:

§ 240.14c-5 Filing of information statement.

(e) Notwithstanding the foregoing provisions of this section, any information statement or other material included in a registration statement filed under the Securities Act of 1933 on Form S-14, S-4, or F-4 (§ 239.23, 25 or 34 of this chapter) shall be deemed filed both for the purposes of that Act and for the purposes of this section, but separate copies of such material need not be furnished pursuant to this section, nor shall any fee be required under paragraph (a) of this section. However, any additional material used after the effective date of the registration statement on Form S-14, S-4 or F-4 shall be filed in accordance with this section, unless separate copies of such material are required to be filed as an amendment of such registration statement.

PART 249—FORMS, SECURITIES EXCHANGE ACT OF 1934

19. By revising paragraph (a)(4) of Item 7 and adding Instructions to Item 7 of Form 8-K described in § 249.308 to read as follows:

§ 249.308 Form 8-K, for current reports.

Item 7. Financial Statements and Exhibits.

(a)
(4) If it is impracticable to provide the required financial statements for an acquired business at the time the report on Form 8-K is filed, the registrant should (i) so indicate in the Form 8-K report; (ii) file such of the required financial statements as are available; (iii) state when the required financial statements will be filed; and (iv) file the required financial statements for an acquired business under cover of Form 8 as soon as practicable, but not later than 60 days after the report on Form 8-K must be filed. In such circumstances, the registrant may, at its option, include unaudited financial statements in the initial report on Form 8-K.

Instructions

1. Requests for further extensions of time for filing the required financial statements will not be considered.
2. During the pendency of an extension pursuant to this paragraph, registrants will be deemed current for purposes of their reporting obligations under section 13(a) or 15(d) of the Securities Exchange Act of 1934. With respect to filings under the Securities Act of 1933, however, registration statements will not be declared effective and post-effective amendments to registration statements will not be declared effective. In addition, offerings should not be made pursuant to effective registration statements, or pursuant to Rules 505 and 506 of Regulation D (§§ 230.501 through 506 of this chapter), where any purchasers are not accredited investors under Rule 501(a) of that Regulation, until the required audited financial statements are filed; *Provided, however*, that the following offerings or sales of securities shall not be affected by this restriction:

(a) Offerings or sales of securities or upon the conversion of outstanding convertible securities or upon the exercise of outstanding warrants or rights;

(b) Dividend or interest reinvestment plans;

(c) Employee benefit plans;

(d) Transactions involving secondary offerings; or

(e) Sales of securities pursuant to Rule 144 (§ 230.144 of this chapter).

(Secs. 5, 6, 7, 10, 19(a), 48 Stat. 77, 78, 81, 85; secs. 204, 205, 209, 48 Stat. 906, 908; secs. 7, 8, 68 Stat. 684, 685; sec. 1, 79 Stat. 1051; sec. 308(a)(2), 90 Stat. 57; 15 U.S.C. 77e, 77f, 77g, 77j, 77s(a); secs. 14(a), 14(c), 23(a), 48 Stat. 895, 901; sec. 203(a), 49 Stat. 704; sec. 8, 49 Stat. 1379; sec. 5, 78 Stat. 569, 570; sec. 18, 89 Stat. 155; 15 U.S.C. 78n(a), (c), 78w(a))

Dated: April 23, 1985.

By the Commission.

John Wheeler,

Secretary.

[FR Doc. 85-10577 Filed 5-3-85; 8:45 am]

BILLING CODE 8010-01-M

17 CFR Parts 230 and 239

[Release Nos. 33-6579; 34-21983; FR-19; File No. S7-21-84]

Business Combination Transactions; Adoption of Registration Form; Foreign Registrants

AGENCY: Securities and Exchange Commission.

ACTION: Final rules.

SUMMARY: The Commission announces the adoption of a new form to be used to register securities under the Securities Act of 1933 in connection with business combination transactions involving foreign private registrants. The form applies the principles of the integrated disclosure system to disclosure in the context of mergers and exchange offers. The form is designed to improve the effectiveness of the business combination prospectus by requiring that information be presented in a more accessible and meaningful format.

DATES: Effective Date: The Form F-4 and the amendments to Rule 145 are effective July 1, 1985, for all documents filed on or after that date with respect to transactions begun thereafter.

Compliance Date: Registrants are permitted, however, to use Form F-4 immediately upon publication in the Federal Register.

FOR FURTHER INFORMATION CONTACT: Carl T. Bodolus (202) 272-3246, or Martin L. Meyrowitz (202) 272-3250, Office of International Corporate Finance, Division of Corporation Finance, Securities and Exchange Commission, 450 Fifth Street NW., Washington, D.C. 20549.

SUPPLEMENTARY INFORMATION: Form F-4, as adopted, is available for registration under the Securities Act of 1933 ("Securities Act")¹ of securities issued by certain foreign private issuers² in: (i) Transactions of the type specified in Rule 145(a);³ (ii) mergers in

which the applicable law would not require the solicitation of the votes or consents of all of the security holders of the company being acquired; (iii) exchange offers for securities of the issuer or another entity; and (iv) reoffers and resales of securities registered on this Form. Form F-4 employs the principles underlying the integrated disclosure system developed for foreign private issuers. Thus, the Form permits incorporation by reference of information from reports filed pursuant to the continuous reporting requirements under the Securities Exchange Act of 1934 ("Exchange Act")⁴ generally to the same extent as is permitted when a foreign private registrant registers securities under the Securities Act in a primary offering not involving a business combination. In addition, the Commission is adopting an amendment to Rule 145(a)(2) under the Securities Act⁵ to codify a prior staff interpretation. In a separate release published today, the Commission is further adopting a parallel form for use by domestic registrants, Form S-4, together with a number of other amendments to certain rules which also have application to Form F-4 (the "Form S-4 Release").⁶

I. Executive Summary

The Form S-4 Release contains an extensive discussion of Form S-4, as adopted, including the changes from the Form as proposed. Since Form F-4 is the counterpart for foreign private issuers to Form S-4, the discussion in Form S-4 Release may be helpful in understanding the operation of Form F-4. Commentators generally supported the Commission's effort, and the Commission is adopting Form F-4 substantially as proposed.⁷

¹ 15 U.S.C. 78a-78kk (1976 and Supp. V 1981), as amended by Act of June 6, 1983, Pub. L. No. 98-38, 97 Stat. 205 (1983).

² 17 CFR 230.145(a)(2).

³ Release No. 33-6578 (April 23, 1985). The Commission also adopted amendments to: (1) Rule 3-05 of Regulation S-X (17 CFR 210.3-05); (2) Items 502, 512 and 601 of Regulation S-K (17 CFR 229.502, 512, 601); (3) Rules 145, 406, 463, 464, 473, 475a and 477 under the Securities Act (17 CFR 230.145, 406, 463, 464, 473, 475a, 477); (4) Rules 14a-3, 14a-6, 14c-2 and 14c-5 under the Exchange Act (17 CFR 240.14a-3, 14a-6, 14c-2, 14c-5); and (5) Form 8-K under the Exchange Act (17 CFR 249.306). To the extent that these rules have specific application to Form F-4, the rule amendments in Release No. 33-6578 so reflect.

⁴ Release No. 33-6535 (May 9, 1984) (49 FR 20852). The Commission received 5 comment letters addressing solely proposed Form F-4. Forty-three comment letters concerning proposed Form S-4 were also received. As was indicated in the Form F-4 proposing release, the comments received on the proposals in the Form S-4 proposing release were considered in connection with the actions taken today with respect to Form F-4. All the comment

Form F-4 extends the principles of integrated disclosure to all business combination registration statements. The integrated disclosure system, on which Forms F-4 and S-4 are both based, proceeds from the premise that investors in the primary market need much the same information as investors in the trading market. Integration also specifies the manner in which information should be delivered to investors. The Commission implemented the integrated disclosure system by adopting the three tiered registration system of Forms S-1, S-2,⁸ and S-3⁹ for domestic and certain foreign issuers, and by adopting a separate system, Forms F-1,¹⁰ F-2,¹¹ and F-3,¹² for certain foreign private issuers eligible to use Form 20-F.¹³ The integrated disclosure system for foreign private issuers was adopted primarily because the registration and reporting requirements for foreign private issuers under the Exchange Act are significantly different from those for domestic issuers.¹⁴ Another reason for the separate system was the desire of foreign registrants and other public commentators to ensure that future amendments intended primarily for domestic registrants are considered in the light of the different circumstances of foreign registrants.¹⁵

Like Form S-4, the prospectus requirements of Form F-4 are divided into four sections. The first section calls for information about the transaction, which will be presented in the prospectus in all cases, and which is designed to make the complex transactions that typify business combinations more easily understood by investors. The next two sections specify the information about the entities involved and prescribe different levels of prospectus presentation and incorporation by reference depending upon which form under the Securities Act the companies could use in making a primary offering of their securities.

letters and a summary of the comments prepared by the staff area available for inspection and copying at the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, D.C. 20549 (see File No. S7-21-84).

⁸ 17 CFR 239.11 and 12, respectively.

⁹ 17 CFR 239.13.

¹⁰ 17 CFR 239.31.

¹¹ 17 CFR 239.32.

¹² 17 CFR 239.33.

¹³ 17 CFR 249.220.

¹⁴ For a discussion of these rules and forms and their development, including the Commission's rationale and objectives regarding various aspects of the integrated disclosure system for foreign private issuers, see Release Nos. 33-6360 (November 20, 1981) (46 FR 58511), 33-6361 (November 20, 1981) (46 FR 58505), and 33-6362 (November 20, 1981) (46 FR 58507).

¹⁵ *Id.*

¹ 15 U.S.C. 77a-77aa (1976 and Supp. V 1981), as amended by Business Regulatory Reform Act of 1982, Pub. L. No. 97-261, section 19(d), 96 Stat. 1121 (1982).

² As defined in Rule 405 (17 CFR 230.405).

³ 17 CFR 230.145. The transactions specified in Rule 145 include certain reclassifications, mergers, consolidations and transfers of assets.